



**SCHWABE, WILLIAMSON & WYATT®**  
ATTORNEYS AT LAW

Equitable Center, 530 Center St., NE, Suite 400, Salem, OR 97301 | Phone 503.540.4262 | Fax 503.399.1645 | www.schwabe.com

**MARTHA O. PAGEL**

Admitted in Oregon and Washington

Direct Line: Salem 503-540-4260; Portland 503-796-2872

E-Mail: mpagel@schwabe.com

RECEIVED BY OWRD

October 14, 2014

OCT 15 2014

SALEM, OR

**BY HAND DELIVERY**

Tim Wallin  
Manager, Water Rights Section  
Oregon Water Resources Department  
725 Summer St NE Ste A  
Salem OR 97301-1271

Re: Application for Ground Water Application: Nicholson  
Our File No.: 111728-136995

Dear Tim:

The enclosed Application for a Permit to Use Ground Water is submitted for filing on behalf of our clients, Roger Nicholson, Productive Timberland LLC and NBCC LLC (Nicholson). We have also enclosed Mr. Nicholson's check in the amount of \$1,450, for the application fee. I will serve as the contact person and designated agent for the application.

Please note that the application is submitted pursuant to a recently finalized settlement agreement involving our clients, JaCox Ranches, Oreg., Ltd. (JaCox), the Klamath Basin Rangeland Trust (KBRT), and the Oregon Water Resources Department (OWRD), in connection with an instream transfer application filed by JaCox and KBRT (Application T-11375). A copy of the fully executed settlement agreement is enclosed for the application file. As part of the settlement agreement, the parties contemplated that Nicholson would submit this application for 1.0 cubic foot per second (cfs) of ground water, to be used for supplemental irrigation on Nicholson property in the Klamath Basin. Pursuant to the agreement, up to 1.0 cfs of the surface water approved for instream transfer under T-11375 would be available, as needed, for mitigation to offset potential surface water impacts from the proposed ground water use. As further described in the settlement agreement, we understand OWRD is prepared to issue an initial review indicating the ground water application can be approved with mitigation as proposed.

G-17942

Portland, OR 503.222.9981 | Salem, OR 503.540.4262 | Bend, OR 541.749.4044 | Eugene, OR 541.686.3299  
Seattle, WA 206.622.1711 | Vancouver, WA 360.694.7551 | Washington, DC 202.488.4302

PDX\111728\136995\MOP\14750156.1

Tim Wallin  
October 14, 2014  
Page 2

Because of OWRD's involvement in the settlement process and prior review of the draft application, we trust you will find the application to be complete and in order. However, if you have questions or do need any additional information, please let me know.

Thank you, in advance, for your assistance.

Sincerely,



Martha O. Pagel

MOP:kdo  
Enclosure

cc: Roger Nicholson (w/encl)  
Patricia McCarty (w/encl.)  
Matthew B. DeVore (w/o encl.)  
Kirk B. Maag (w/o encl.)

RECEIVED BY OWRD

OCT 15 2014

SALEM, OR

G-17942



# Application for a Permit to Use Ground Water



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

## SECTION 1: APPLICANT INFORMATION AND SIGNATURE

RECEIVED BY OWRD

### Applicant Information

NAME		PHONE (HM)	OCT 15 2014	
PHONE (WK)	CELL		FAX	
ADDRESS				
SALEM, OR				
CITY	STATE	ZIP	E-MAIL *	

### Organization Information

NAME		PHONE	FAX	
PRODUCTIVE TIMBERLAND LLC AND NBCC, LLC		541-381-2274	541-381-2274	
ADDRESS			CELL	
C/O ROGER NICHOLSON, PO BOX 458			541-591-0824	
CITY	STATE	ZIP	E-MAIL *	
FORT KLAMATH	OR	97626	ROGER@FORTKLAMATH.NET	

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

AGENT / BUSINESS NAME		PHONE	FAX	
MARTHA O. PAGEL, SCHWABE WILLIAMSON & WYATT		503-540-4260	503-796-2900	
ADDRESS			CELL	
530 CENTER ST. NE, SUITE 400			503-507-7293	
CITY	STATE	ZIP	E-MAIL *	
SALME	OR	97301	MPAGEL@SCHWABE.COM	

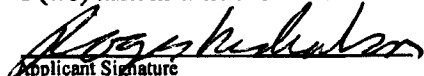
Note: Attach multiple copies as needed

\* By providing an e-mail address, consent is given to receive all correspondence from the department electronically. (paper copies of the final order documents will also be mailed.)

### By my signature below I confirm that I understand:

- I am asking to use water specifically as described in this application.
- Evaluation of this application will be based on information provided in the application.
- I cannot use water legally until the Water Resources Department issues a permit.
- Oregon law requires that a permit be issued before beginning construction of any proposed well, unless the use is exempt. Acceptance of this application does not guarantee a permit will be issued.
- If I get a permit, I must not waste water.
- If development of the water use is not according to the terms of the permit, the permit can be cancelled.
- The water use must be compatible with local comprehensive land-use plans.
- Even if the Department issues a permit, I may have to stop using water to allow senior water-right holders to get water to which they are entitled.

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

  
Applicant Signature

ROGER NICHOLSON  
Print Name and title if applicable

9/25/14  
Date

Applicant Signature

Print Name and title if applicable

Date

For Department Use		
App. No. G-17942	Permit No. _____	Date _____

**SECTION 2: PROPERTY OWNERSHIP**

Please indicate if you own all the lands associated with the project from which the water is to be diverted, conveyed, and used.

- Yes
  - There are no encumbrances.
  - This land is encumbered by easements, rights of way, roads or other encumbrances.
- No
  - I have a recorded easement or written authorization permitting access.
  - I do not currently have written authorization or easement permitting access.
  - Written authorization or an easement is not necessary, because the only affected lands I do not own are state-owned submersible lands, and this application is for irrigation and/or domestic use only (ORS 274.040).
  - Water is to be diverted, conveyed, and/or used only on federal lands.

List the names and mailing addresses of all affected landowners (*attach additional sheets if necessary*).

Roger Nicholson, PO Box 458, Fort. Klamath, OR 97626 (point of appropriation is located on Nicholson property.) Permission granted by signature on this application form.

*You must provide the legal description of: 1. The property from which the water is to be diverted, 2. Any property crossed by the proposed ditch, canal or other work, and 3. Any property on which the water is to be used as depicted on the map.*

**SECTION 3: WELL DEVELOPMENT**

WELL NO.	NAME OF NEAREST SURFACE WATER	IF LESS THAN 1 MILE:	
		DISTANCE TO NEAREST SURFACE WATER	ELEVATION CHANGE BETWEEN NEAREST SURFACE WATER AND WELL HEAD
1	Sevenmile Creek	N/A	N/A

Please provide any information for your existing or proposed well(s) that you believe may be helpful in evaluating your application. For existing wells, describe any previous alteration(s) or repair(s) not documented in the attached well log or other materials (*attach additional sheets if necessary*).

KLAM 57662 (Nicholson)

RECEIVED BY OWRD

**SECTION 3: WELL DEVELOPMENT, CONTINUED**

Total maximum rate requested: 1.0 cfs (each well will be evaluated at the maximum rate unless you indicate well-specific rates and annual volumes in the table below).

The table below must be completed for each source to be evaluated or the application will be returned. If this is an existing well, the information may be found on the applicable well log. (*If a well log is available, please submit it in addition to completing the table.*) If this is a proposed well, or well-modification, consider consulting with a licensed well driller, geologist, or certified water right examiner to obtain the necessary information.

PROPOSED USE
--------------

RECEIVED BY OWRD  
OCT 15 2014  
SALEM, OR

OWNER'S WELL NAME OR NO.	PROPOSED	EXISTING	WELL ID (WELL TAG) NO.* OR WELL LOG ID**	FLOWING ARTESIAN	CASING DIAMETER	CASING INTERVALS (IN FEET)	PERFORATED OR SCREENED INTERVALS (IN FEET)	SEAL INTERVALS (IN FEET)	MOST RECENT STATIC WATER LEVEL & DATE (IN FEET)	SOURCE AQUIFER***	TOTAL WELL DEPTH	WELL-SPECIFIC RATE (GPM)	ANNUAL VOLUME (ACRE-FEET)
1	<input type="checkbox"/>	<input checked="" type="checkbox"/>	KLAM 57662	<input type="checkbox"/>	see well log							448.83	240 AF
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									

\* Licensed drillers are required to attach a Department-supplied Well Tag, with a unique Well ID or Well Tag Number to all new or newly altered wells. Landowners can request a Well ID for existing wells that do not have one. The Well ID is intended to serve as a unique identification number for each well.

\*\* A well log ID (e.g. MARI 1234) is assigned by the Department to each log in the agency's well log database. A separate well log is required for each subsequent alteration of the well.

\*\*\* Source aquifer examples: Troutdale Formation, gravel and sand, alluvium, basalt, bedrock, etc.

RECEIVED BY OWRD  
 OCT 15 2014  
 SALEM, OR

Revised 2/1/2012 G-17942

Ground Water/5

WR

**SECTION 4: WATER USE**

USE	PERIOD OF USE	ANNUAL VOLUME (ACRE-FEET)
Supplemental Irrigation	Irrigation Season	240

**Exempt Uses:** Please note that 15,000 gallons per day for single or group domestic purposes and 5,000 gallons per day for a single industrial or commercial purpose are exempt from permitting requirements.

**For irrigation use only:**

Please indicate the number of primary and supplemental acres to be irrigated (*must match map*).

Primary: \_\_\_\_\_ Acres                      Supplemental: 570 Acres

List the Permit or Certificate number of the underlying primary water right(s): 10900, 10904, 10922, 10926 (portions not already covered by existing supplemental ground water rights)

Indicate the maximum total number of acre-feet you expect to use in an irrigation season: 240

- If the use is **municipal or quasi-municipal**, attach Form M
- If the use is **domestic**, indicate the number of households: \_\_\_\_\_  
If the use is **mining**, describe what is being mined and the method(s) of extraction: \_\_\_\_\_

**SECTION 5: WATER MANAGEMENT**

**A. Diversion and Conveyance**

What equipment will you use to pump water from your well(s)?

Pump (give horsepower and type): 30 hp Pioneer, centrifugal

Other means (describe): \_\_\_\_\_

Provide a description of the proposed means of diversion, construction, and operation of the diversion works and conveyance of water. \_\_\_\_\_

**B. Application Method**

What equipment and method of application will be used? (e.g., drip, wheel line, high-pressure sprinkler) flood

**C. Conservation**

Please describe why the amount of water requested is needed and measures you propose to: prevent waste; measure the amount of water diverted; prevent damage to aquatic life and riparian habitat; prevent the discharge of contaminated water to a surface stream; prevent adverse impact to public uses of affected surface waters.

water will be used only as needed to supplement available surface water; ground water use impacts will be mitigated with transfer of existing surface water irrigation rights to instream flow

RECEIVED BY \_\_\_\_\_  
OCT 15 2014  
SALEM, OR

**SECTION 6: STORAGE OF GROUND WATER IN A RESERVOIR**

If you would like to store ground water in a reservoir, complete this section (*if more than one reservoir, reproduce this section for each reservoir*).

Reservoir name: N/A Acreage inundated by reservoir: \_\_\_\_\_

Use(s): \_\_\_\_\_

Volume of Reservoir (acre-feet): \_\_\_\_\_ Dam height (feet, if excavated, write "zero"): \_\_\_\_\_

*Note: If the dam height is greater than or equal to 10.0' above land surface AND the reservoir will store 9.2 acre feet or more, engineered plans and specifications must be approved prior to storage of water.*

**SECTION 7: USE OF STORED GROUND WATER FROM THE RESERVOIR**

If you would like to use stored ground water from the reservoir, complete this section (*if more than one reservoir, reproduce this section for each reservoir*).

Annual volume (acre-feet): N/A

USE OF STORED GROUND WATER	PERIOD OF USE

**SECTION 8: PROJECT SCHEDULE**

Date construction will begin: Upon approval

Date construction will be completed: within one year

Date beneficial water use will begin: within five years

RECEIVED BY OWRD

OCT 15 2014

SALEM, OR

**SECTION 9: WITHIN A DISTRICT**

Check here if the point of diversion or place of use are located within or served by an irrigation or other water district.

Irrigation District Name <u>N/A</u>	Address	
City	State	Zip

**SECTION 10: REMARKS**

Use this space to clarify any information you have provided in the application (*attach additional sheets if necessary*).

See attached.



STATE OF OREGON  
WATER SUPPLY WELL REPORT

(as required by ORS 537.765 & OAR 690-205-0210)

12-06-2010

WELL LABEL # L 105253

START CARD # 1010831

(1) LAND OWNER Owner Well I.D. \_\_\_\_\_

First Name MR. ROGER Last Name NICHOLSON  
Company \_\_\_\_\_  
Address P.O. BOX 458  
City FORT KLAMATH State OR Zip 97626

(2) TYPE OF WORK  New Well  Deepening  Conversion  
 Alteration (repair/recondition)  Abandonment

(3) DRILL METHOD  
 Rotary Air  Rotary Mud  Cable  Auger  Cable Mud  
 Reverse Rotary  Other \_\_\_\_\_

(4) PROPOSED USE  Domestic  Irrigation  Community  
 Industrial/ Commercial  Livestock  Dewatering  
 Thermal  Injection  Other \_\_\_\_\_

(5) BORE HOLE CONSTRUCTION Special Standard  (Attach copy)  
Depth of Completed Well 534.00 ft.

BORE HOLE			SEAL			sacks/ lbs	
Dia	From	To	Material	From	To	Amt	lbs
24	0	38	Cement	0	518	616	S
20	38	518					
15	518	534					

How was seal placed: Method  A  B  C  D  E

Other \_\_\_\_\_

Backfill placed from \_\_\_\_\_ ft. to \_\_\_\_\_ ft. Material \_\_\_\_\_

Filter pack from \_\_\_\_\_ ft. to \_\_\_\_\_ ft. Material \_\_\_\_\_ Size \_\_\_\_\_

Explosives used:  Yes Type \_\_\_\_\_ Amount \_\_\_\_\_

(6) CASING/LINER

Casing	Liner	Dia	+	From	To	Gauge	Stl	Plstc	Wld	Thrd
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	20		1.5	38.5	.250	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	18		1.5	118.5	.375	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	16		118.5	219	.250	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	16		219	518	.375	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Shoe  Inside  Outside  Other Location of shoe(s) 518

Temp casing  Yes Dia \_\_\_\_\_ From \_\_\_\_\_ To \_\_\_\_\_

(7) PERFORATIONS/SCREENS

Perforations Method \_\_\_\_\_

Screens Type \_\_\_\_\_ Material \_\_\_\_\_

Perf/S	Casing/ Screen	Liner	Dia	From	To	Scr/slot width	Slot length	# of slots	Tele/ pipe size

(8) WELL TESTS: Minimum testing time is 1 hour

Pump  Bailer  Air  Flowing Artesian  
Yield gal/min Drawdown Drill stem/Pump depth Duration (hr)

860			24

Temperature 39 °F Lab analysis  Yes By \_\_\_\_\_

Water quality concerns?  Yes (describe below)

From	To	Description	Amount	Units

(9) LOCATION OF WELL (legal description)

County Klamath Twp 33.00 S N/S Range 7.50 E E/W WM  
Sec 19 NW 1/4 of the NE 1/4 Tax Lot 3800  
Tax Map Number \_\_\_\_\_ Lot \_\_\_\_\_  
Lat \_\_\_\_\_ " or \_\_\_\_\_ DMS or DD  
Long \_\_\_\_\_ " or \_\_\_\_\_ DMS or DD  
 Street address of well  Nearest address

Corner of Hackler and Nicholson Rd., FORT KLAMATH, OREGON 97626

(10) STATIC WATER LEVEL

Existing Well / Predeepening	Date	SWL(psi)	+ SWL(ft)
Completed Well	11-17-2010	1.5	<input checked="" type="checkbox"/> 3.5

Flowing Artesian?  Dry Hole?

WATER BEARING ZONES Depth water was first found 2

SWL Date	From	To	Est Flow	SWL (psi)	+ SWL (ft)
07-29-2010	3	38	50		<input type="checkbox"/> 3
08-03-2010	38	430	2,000		<input type="checkbox"/> 3
08-04-2010	430	534	5,000		<input checked="" type="checkbox"/> 3.5

(11) WELL LOG

Ground Elevation \_\_\_\_\_

Material	From	To
Sandy Loam & Cobbles	0	2
Silty Black Sand	2	24
Sticky Silty Sand	24	90
Very Fine Black Sand	90	260
Black Sand & Gray Clay	260	290
Course Black Sand	290	380
Fine Black Sand	380	430
Black Sand & Burnt Wood (Charcoal)	430	508
Fractured Gray Basalt	508	534
RECEIVED BY OWRD		
OCT 15 2014		
SALEM, OR		

Date Started 07-27-2010 Completed 11-17-2010

(unbonded) Water Well Constructor Certification

I certify that the work I performed on the construction, deepening, alteration, or abandonment of this well is in compliance with Oregon water supply well construction standards. Materials used and information reported above are true to the best of my knowledge and belief.

License Number \_\_\_\_\_ Date \_\_\_\_\_

Electronically Filed

Signed \_\_\_\_\_

(bonded) Water Well Constructor Certification

I accept responsibility for the construction, deepening, alteration, or abandonment work performed on this well during the construction dates reported above. All work performed during this time is in compliance with Oregon water supply well construction standards. This report is true to the best of my knowledge and belief.

License Number 1385 Date 12-06-2010

Electronically Filed

Signed ROBERT BUCKNER (E-filed)

Contact Info (optional)

G-17942

**Land Use**  
**Information Form**

RECEIVED BY OWRD

OCT 15 2014

SALEM, OR



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

## NOTE TO APPLICANTS

In order for your application to be processed by the Water Resources Department (WRD), this Land Use Information Form must be completed by a local government planning official in the jurisdiction(s) where your water right will be used and developed. The planning official may choose to complete the form while you wait, or return the receipt stub to you. Applications received by WRD without the Land Use Form or the receipt stub will be returned to you. Please be aware that your application will not be approved without land use approval.

**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, exchange, permit amendment, or ground water registration modification, and all of the following apply:
  - a) The existing and proposed water use is located entirely within lands zoned for exclusive farm-use or within an irrigation district;
  - b) The application involves a change in place of use only;
  - c) The change does not involve the placement or modification of structures, including but not limited to water diversion, impoundment, distribution facilities, water wells and well houses; and
  - d) The application involves irrigation water uses only.

## NOTE TO LOCAL GOVERNMENTS

The person presenting the attached Land Use Information Form is applying for or modifying a water right. The Water Resources Department (WRD) requires its applicants to obtain land-use information to be sure the water rights do not result in land uses that are incompatible with your comprehensive plan. Please complete the form or detach the receipt stub and return it to the applicant for inclusion in their water right application. You will receive notice once the applicant formally submits his or her request to the WRD. The notice will give more information about WRD's water rights process and provide additional comment opportunities. You will have 30 days from the date of the notice to complete the land-use form and return it to the WRD. If no land-use information is received from you within that 30-day period, the WRD may presume the land use associated with the proposed water right is compatible with your comprehensive plan. Your attention to this request for information is greatly appreciated by the Water Resources Department. If you have any questions concerning this form, please contact the WRD's Customer Service Group at 503-986-0801.

# Land Use Information Form

RECEIVED BY OWRD

OCT 15 2014



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

SALEM, OR

Applicant: \_\_\_\_\_  
First Last

Mailing Address: \_\_\_\_\_

\_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Daytime Phone: \_\_\_\_\_

## A. Land and Location

Please include the following information for all tax lots where water will be diverted (taken from its source), conveyed (transported), and/or used or developed. 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.

Township	Range	Section	¼ ¼	Tax Lot #	Plan Designation (e.g., Rural Residential/RR-5)	Water to be:			Proposed Land Use:
33S	7.5E	20	NE			<input checked="" type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	Irr
33S	7 SE	19, 30				<input type="checkbox"/> Diverted	<input checked="" type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	Irr
33S	6 E	24				<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 all counties and cities where water is proposed to be diverted, conveyed, and/or used or developed:

Klamath -- See attached Map / Exhibit A

## B. Description of Proposed Use

Type of application to be filed with the Water Resources Department:

- Permit to Use or Store Water   
  Water Right Transfer   
  Permit Amendment or Ground Water Registration Modification  
 Limited Water Use License   
  Allocation of Conserved Water   
  Exchange of Water

Source of water:  Reservoir/Pond     Ground Water     Surface Water (name) \_\_\_\_\_

Estimated quantity of water needed: 240     cubic feet per second     gallons per minute     acre-feet

Intended use of water:  Irrigation     Commercial     Industrial     Domestic for \_\_\_\_\_ household(s)  
 Municipal     Quasi-Municipal     Instream     Other \_\_\_\_\_

Briefly describe:

Supplemental irrigation from ground water.

**Note to applicant:** If the Land Use Information Form cannot be completed while you wait, please have a local government representative sign the receipt at the bottom of the next page and include it with the application filed with the Water Resources Department.

See bottom of Page 3. →

## For Local Government Use Only

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 that case, only the city planning agency must complete this form. This deals only with the local land-use plan. Do not include approval for activities such as building or grading permits.

**Please check the appropriate box below and provide the requested information**

- Land uses to be served by the proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s): LDC Article 54, 020.
- Land uses to be served by the proposed water uses (including proposed construction) involve discretionary land-use approvals as listed in the table below. (Please attach documentation of applicable land-use approvals which have already been obtained. Record of Action/land-use decision and accompanying findings are sufficient.) **If approvals have been obtained but all appeal periods have not ended, check "Being pursued."**

Type of Land-Use Approval Needed (e.g., plan amendments, rezones, conditional-use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	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

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

RECEIVED BY OWRD

OCT 15 2014

SALEM, OR

Name: Mark Gallagher Title: Interim Planning Director  
 Signature: [Signature] Phone: 541-851-3668 Date: 9-30-14  
 Government Entity: Klamath County

**Note to local government representative:** Please complete this form or sign the receipt below and return it to the applicant. If you sign the receipt, 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**

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

BEFORE THE WATER RESOURCES DEPARTMENT  
OF THE  
STATE OF OREGON

OCT 15 2014

SALEM, OR

In the Matter of Instream Transfer )  
Application T-11375, Klamath County ) FINAL ORDER APPROVING A  
) CHANGE IN PLACE OF USE AND  
) CHARACTER OF USE AND PARTIAL  
) CANCELLATION OF A WATER  
) RIGHT

**Authority**

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department’s procedures and criteria for evaluating transfer applications. OAR Chapter 690, Division 077 provides additional criteria for evaluating transfers to instream water rights.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

**Applicant**

JACOX RANCHES, OREG., LTD  
1945 MORNING GROVE COURT  
RENO, NV 89523

**Agent**

CHRYSTEN LAMBERT  
KLAMATH BASIN RANGELAND TRUST (KBRT)  
700 MAIN STREET, SUITE 201A  
KLAMATH FALLS, OR 97601

**Findings of Fact**

**Background**

1. On March 19, 2012, JaCox Ranches filed an application to change the place of use and character of use under Certificates 10900, 10901, 42822, and 8679 to instream use. The Department assigned the application number T-11375. The application included the proposed cancellation of certain portions of Certificates 10900 and 42822.
2. The application identifies Chrysten Lambert, Klamath Basin Rangeland Trust (KBRT), as the agent for the applicant.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

3. Notice of the application for transfer was published on March 27, 2012, pursuant to OAR 690-380-4000. On April 16, 2012, a request was received from Martha Pagel, attorney representing Roger Nicholson, for a copy of the Preliminary Determination, when issued by the Department. No additional comments were filed in response to the notice.
4. On January 14, 2013, the Department sent the applicant and the KBRT a deficiency letter identifying a number of items that needed to be addressed in order to complete and clarify the transfer application. Deficiencies included identification of remaining rights on certain application maps, clarification of the shaping of the place of use on certain application maps, identification of possible layered water rights not included in the transfer application, a description of the system capacity for Certificates 10901 and 8679, request for affidavits of cancellation for portions of those rights proposed to be cancelled, and clarification of evidence of use for Certificate 10900.
5. Revised application materials and information necessary to complete and clarify the transfer application were received on March 5, 2013.
6. Follow up correspondence (via e-mail) requesting additional information and modifications was sent to the KBRT on June 17 and 18, 2013.
7. One of the items identified by the Department was the need for clarification of whether the transfer included the domestic and stock portions of Certificates 10900, 10901 and 8679. The agent for the applicant clarified that the transfer application does include these uses as associated with the irrigation use during the irrigation season. This was affirmed in correspondence from the KBRT on June 19, 2013.
8. On June 27, 2013, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11375 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 27, 2013, for the applicant to respond. The cover letter also identified additional information, consistent with previous e-mail correspondence, as well as information necessary to demonstrate that the applicant is authorized to pursue the transfer. On July 2, 2013, the applicant provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
9. Other information requested by the Department was received on July 3, 8 and 31, 2013, August 1, 2013, and August 12, 2013.
10. On July 15 and July 16, 2013, the Department requested additional information (via e-mail) to clarify certain portions of the application associated with Certificates 10900, 10901 and 8679, and the cancellation of Certificates 7641 and 45299.
11. During the review process, the Department identified several potentially layered rights associated with Certificate 10900, being Certificates 42754, 42755, 45299, and 7641, not included as part of the transfer application. Certificates 42754 and 42755 also appear to affect a portion of the footprint for Certificates 10901, 10900 and 8679. The agent (KBRT) for the applicant identified as part of revised application materials received on March 5, 2013, that the overlapping portions of 45299 and 7641 are to be cancelled. Affidavits of

Cancellation were received on March 5, 2013, and updated affidavits on July 31, 2013, and updated maps showing the portions to be cancelled and remaining under each right were received on August 1, 2013.

On June 19, 2013, the KBRT requested that the portion of Certificate 10900 that overlaps with Certificates 47254 and 42755 be removed from the transfer application. On July 3, 2013, the KBRT also requested that the affected portions of Certificates 10901 and 8679 also be removed from the transfer application. Final revised application maps for Certificates 10900, 10901, and 8679 were also received on August 1 and 12, 2013. Certificates 42754 and 42755 appear to overlap with 2.2 acres involved in the original transfer application request.

12. Based upon modifications made to the portions of Certificates 10900, 10901, 8679, and 42822 proposed for transfer to instream use, on July 3, 2013, the KBRT amended the description of the requested instream use to be created from each certificate.
13. One of the issues identified in correspondence to the KBRT was with the request to cancel portions of Certificates 10900 and 42822, including portions located within Nicholson Road, which runs along the southern section line of Section 18 (T33S, R7.5E) and Section 13 (T33S, R6E). An affidavit for cancellation of a portion of Certificate 10900 was received on March 5, 2013. An affidavit of cancellation was not received for Certificate 42822. However, the Department has identified that the applicant does not have sufficient authorization to pursue the cancellation of those portions located within the roadway. These portions also may not be included as part of the transfer application. To cancel or transfer the portions of these rights located within Nicholson Road, authorization is needed from the appropriate Klamath County Department.

On August 1, 2013, the KBRT provided revised application maps for Certificates 10900 and 42822 that differentiate the portions within the roadway to be excluded from the transfer and that show the portions proposed for cancellation located on JaCox Ranch property. The legal description for the property involved in the transfer application excludes the county road and the Klamath County tax lot map identifies the area of the road as 60 feet wide. Given the location of the road in each of the affected quarter quarters, the location of the water right, the size of the road based on the County tax lot map, the Department has identified that the portions of Certificate 10900 and 42822 that do not appear to be available for transfer is greater than the acres shown on the revised applications maps. The revised maps identified a total of 5.7 acres under Certificate 10900 and 0.46 acre under Certificate 42822 as being located within Nicholson Road. Without additional information to determine otherwise, the portions located in the roadway, as identified by the Department, that may not be cancelled or transferred by the applicant appear to be as follows:

Certificate 10900

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	13	SE SW	0.9
33 S	6 E	WM	13	SW SE	1.8
33 S	6 E	WM	13	SE SE	1.8
33 S	7.5 E	WM	18	SW SW	1.8

RECEIVED BY OWRD

OCT 15 2014

SALEM, OR

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	7.5 E	WM	18	SE SW	1.6
				<b>Total</b>	<b>7.9</b>

Certificate 42822

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	13	SE SW	0.9

14. On August 1 and 12, 2013, the KBRT, on behalf of the applicant, provided final revised application maps showing the portion of each right proposed for transfer, proposed to remain, and proposed to be cancelled. Revised application maps identify that the portion of Certificate 10900 proposed for transfer is 720.7 acres, Certificate 10901 is 161.6 acres, Certificate 42822 is 56.14 acres and Certificate 8679 is 94.3 acres. Based upon review of the revised application materials and Finding of Fact No. 13, the Department has determined that the number of acres available for transfer under Certificates 10900 and 42822 is less than the number of acres proposed for transfer. This is reflected in Findings of Fact No. 20 and No. 31.
15. On August 8, 2013, the Department mailed a copy of a revised draft Preliminary Determination proposing to approve Transfer Application T-11375 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of September 6, 2013, for the applicant to respond. On August 14, 2013, the agent, on behalf of the applicant, requested that the Department issue the Preliminary Determination.
16. Shortly prior to issuance of this Preliminary Determination, an additional water right was identified appurtenant to a portion of the lands to be transferred under Certificates 10900 and 42822. This water right is described in the Wood River Decree and has a 1900 priority date. However, a certificate has not yet been issued for this right consistent with the Decree. On August 26, 2013, the Department received affidavits to cancel the portion of this decreed right that is layered with Certificate 10900. Original affidavits of cancellation were received on August 27, 2013.
17. On August 26, 2013, the Department issued a Preliminary Determination proposing to approve Transfer T-11375 and mailed a copy to the applicant, agent and Martha Pagel, on behalf of Roger Nicholson. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on August 27, 2013, and in the Herald and News newspaper on August 30 and September 6, 2013 pursuant to ORS 540.520 and OAR 690-380-4020. A protest was filed on October 7, 2013, by Martha Pagel, on behalf of Roger Nicholson and his related business entities of Productive Timberland LLC and NBCC LLC. The protest was accompanied by Proof of Service to both JaCox Ranch and the Klamath Basin Rangeland Trust.
18. On August 18, 28, and 29, 2014, to resolve the protest a Settlement Agreement was signed by JaCox Ranch, Roger Nicholson, the Klamath Basin Rangeland Trust and the Department. Based upon this Settlement Agreement, up to 1.0 cubic foot per second and 240.0 acre-feet of this instream transfer may be used as mitigation for a groundwater permit application filed by Roger Nicholson. The protest was withdrawn on August 29, 2014.



19. During the process of evaluating the protest, the Department identified a few errors in calculating the quantities that may be protected instream. Also, based upon continued evaluation, the Department also identified a scrivener's error in the description of the point of diversion for Certificate 10901. In addition, the Department also identified a discrepancy in the River Mile locations identified for return flows for Certificates 10900 and 8679. This Final Order clarifies the quantities that may be protected instream, the location of return flows, and the location of the point of diversion for Certificate 10901.
20. The portion of the first right to be transferred has been modified from the original transfer application and is as follows:

**Certificate:** 10900 in the name of JAMES T. DIXON (confirmed by Wood River (F) in the order record of the State Engineer in volume 12, at page 269)

**Use:** IRRIGATION of 718.45 acres and the associated portion of DOMESTIC and LIVESTOCK use during the irrigation season

**Priority Date:** 1891

**Rate:** 14.37 CUBIC FEET PER SECOND (CFS) prior to July 20  
8.98 CFS thereafter

**Limit/Duty:** The amount of water to which such right is entitled, for the purposes of the aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1/50<sup>th</sup> of one cubic foot per second per acre irrigated prior to July 20, and 1/80<sup>th</sup> of one cubic foot per second per acre irrigated thereafter, and shall not exceed 5.0 acre-feet per acre during the irrigation season.

**Period of Use:** April 1 to October 1

**Source:** SEVENMILE CREEK, tributary to Agency Lake

**Authorized Point of Diversion:** Not described on the Certificate

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	13	SW NE	36.80
33 S	6 E	WM	13	SE NE	26.40
33 S	6 E	WM	13	SE NW	14.40
33 S	6 E	WM	13	NE SW	30.00
33 S	6 E	WM	13	SE SW	27.90
33 S	6 E	WM	13	NE SE	39.90
33 S	6 E	WM	13	NW SE	39.85
33 S	6 E	WM	13	SW SE	37.70
33 S	6 E	WM	13	SE SE	38.20
33 S	6 E	WM	24	NE NE	20.00
33 S	6 E	WM	24	NW NE	40.00
33 S	6 E	WM	24	SW NE	39.90
33 S	6 E	WM	24	SE NE	20.00
33 S	6 E	WM	24	NE NW	31.20
33 S	6 E	WM	24	NW NW	8.80
33 S	6 E	WM	24	SW NW	22.40
33 S	6 E	WM	24	SE NW	38.40
33 S	6 E	WM	24	NE SW	20.00
33 S	6 E	WM	24	NW SW	6.00

RECEIVED BY OWRD  
OCT 15 2014  
SALEM, OR

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	24	NE SE	19.70
33 S	6 E	WM	24	NW SE	35.00
33 S	6 E	WM	24	SW SE	5.00
33 S	6 E	WM	24	SE SE	8.80
33 S	7.5 E	WM	18	NE SW	9.20
33 S	7.5 E	WM	18	NW SW	28.00
33 S	7.5 E	WM	18	SW SW	37.70
33 S	7.5 E	WM	18	SE SW	37.20
<b>Total Acres</b>					<b>718.45</b>

21. Certificate 10900 does not describe the location of the Point of Diversion. The Wood River Decree describes the name of the ditch associated with this water right as the Upper Sevenmile or Upper Cox Ditch. Information provided with the transfer application, identifies that the Point of Diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	6 E	WM	11	SE SE	150 FEET NORTH AND 960 FEET WEST FROM THE SE CORNER OF SECTION 11

22. A total of 3592.25 acre-feet of water may be beneficially used annually under the existing right.
23. The applicant is also proposing to transfer the entirety of Certificates 10901 and 8679 to instream use. The Department has determined that a portion of the lands on which Certificates 10901 and 8679 (supplemental to Certificate 10901) are appurtenant are sub-irrigated from Sevenmile Creek during the irrigation season and may not be transferred to instream use as identified in Finding of Fact No. 43. Therefore, the portions of Certificates 10901 and 8679 that may be transferred have been reduced. This reduction is reflected in the findings below describing the portion of each right available for transfer.
24. The portion of the second right to be transferred has been modified based upon Findings of Fact No. 11, 23 and 43 and is as follows:

**Certificate:** 10901 in the name of JAMES T DIXON (confirmed by Wood River (F) in the order record of the State Engineer in volume 12, at page 269)

**Use:** IRRIGATION of 155.4 acres and the associated portion of DOMESTIC and LIVESTOCK use during the irrigation season

**Priority Date:** 1898

**Rate:** 3.11 CUBIC FEET PER SECOND (CFS) prior to July 20  
1.94 CFS thereafter

**Limit/Duty:** The amount of water to which this right is entitled, for the purposes of the aforesaid, is limited to 1/50<sup>th</sup> of one cubic foot per second per acre irrigated prior to July 20, and 1/80<sup>th</sup> of one cubic foot per second per acre irrigated thereafter, and shall not exceed 5.0 acre-feet per acre during the irrigation season.

**Period of Use:** April 1 to October 1

**Source:** SEVENMILE CREEK, tributary to Agency Lake

**Authorized Point of Diversion:** Not described on the Certificate.

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	24	SW NW	17.30
33 S	6 E	WM	24	NE SW	20.00
33 S	6 E	WM	24	NW SW	20.00
33 S	6 E	WM	24	SW SW	11.00
33 S	6 E	WM	24	SE SW	37.80
33 S	6 E	WM	24	NW SE	5.00
33 S	6 E	WM	24	SW SE	35.00
33 S	6 E	WM	24	SE SE	9.30
<b>Total Acres</b>					<b>155.40</b>

RECEIVED BY OWRD

OCT 10 2014

SALEM, OR

25. Certificate 10901 does not describe the location of the Point of Diversion. The Wood River Decree describes the name of the ditch associated with this water right as the Melhase-Kingdon Ditch. Information provided with the transfer application, identifies that the Point of Diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	6 E	WM	24	SW NW	1875 FEET SOUTH AND 390 FEET EAST FROM THE NW CORNER OF SECTION 24

26. A total of 777.0 acre-feet of water may be beneficially used annually under the existing right.
27. The portion of the third right to be transferred has been modified based upon Findings of Fact No. 11, 23 and 43 and is as follows:

**Certificate:** 8679 in the name of JAS T. DIXON (perfected under Permit S-9371)  
**Use:** IRRIGATION OF 88.1 ACRES  
**Priority Date:** SEPTEMBER 25, 1928  
**Rate:** 1.19 CUBIC FEET PER SECOND  
**Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent in case of rotation.

**Period of Use:** May 11 to October 1

**Source:** BLUE SPRINGS, tributary to SEVENMILE CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	6 E	WM	23	NE SE	NONE GIVEN
33 S	6 E	WM	24	NW SW	NONE GIVEN

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	24	SW SW	11.00
33 S	6 E	WM	24	SE SW	37.80
33 S	6 E	WM	24	SW SE	30.00

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	24	SE SE	9.30
<b>Total Acres</b>					<b>88.10</b>

28. Certificate 8679 does not provide measured distances for the location of the point of diversion. Rather the certificate, based upon review, identifies the general location of Blue Springs. Based upon information provided by the agent and the revised transfer application map, the POD is more accurately located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	6 E	WM	24	NW SW	1545 FEET NORTH AND 95 FEET EAST FROM THE SW CORNER OF SECTION 24

29. The Wood River Decree clarifies that Certificate 8679 is a supplemental irrigation use.
30. Certificate 8679 does not specify an annual duty per acre. The duty of other rights involved in this transfer, based on the Wood River Decree, is limited to 5.0 acre-feet per acre. However, the season of use associated with Certificate 8679 limits the maximum volume of water that could be diverted over the course of the season to 337.5 AF given a rate limit of up to 1.19 CFS. This is equivalent to 3.83 acre-feet per acre. Given that this is a supplemental use, it is a reasonable amount considering beneficial use without waste.
31. The portion of the fourth right to be transferred has been modified based upon Finding of Fact No. 13 and is as follows:

**Certificate:** 42822 in the name of ANDREW AND DOROTHY POPSON (perfected under Permit S-35790)

**Use:** IRRIGATION of 55.7 ACRES

**Priority Date:** SEPTEMBER 24, 1971

**Rate:** 0.98 CUBIC FOOT PER SECOND, with any deficiency in the available supply from drainage to be made up by appropriation from Sevenmile Creek.

**Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-FIFTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 5.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** DRAINAGE DITCH and Sevenmile Creek, tributary to Agency Lake

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	6 E	WM	11	SE SE	Sevenmile Creek - 150 FEET NORTH AND 960 FEET WEST FROM SE CORNER OF SECTION 11
33 S	6 E	WM	13	SE NW NE SW SE SW	Drainage - DRAINAGE COLLECTED BETWEEN POINTS 3320 FEET NORTH AND 20 FEET NORTH BOTH FROM SOUTHWEST CORNER OF THE SE SW OF SECTION 13

OCT 15 2014

SALEM, OR

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	13	SE NW	13.60
33 S	6 E	WM	13	NE SW	10.00
33 S	6 E	WM	13	SE SW	10.30
33 S	6 E	WM	24	NE NW	8.80
33 S	6 E	WM	24	NW NW	13.00
<b>Total Acres</b>					<b>155.4</b>

32. A total of 278.5 acre-feet of water may be beneficially used annually under the existing right.
33. Certificate 42822 does not specify an irrigation season. However, the irrigation season, consistent with the Wood River Decree, is April 1 to October 1.
34. Transfer Application T-11375 proposes to change the character of use to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.
35. Transfer Application T-11375 proposes to change the place of use of the right to create an instream reach from each of the authorized Points of Diversion, described above in Findings of Fact No. 21, 25, 28 and 31 to the mouth of Sevenmile Creek.
36. As modified by the KBRT on July 3, 2013, the applicant proposes the quantities water to be transferred instream be protected as follows:

Certificate	Period	Rate (cfs)	Volume (acre-feet)
10900	April 1 through July 19	10.54	3602.0
	July 20 through September 30	9.00	
10901	April 1 through July 19	2.37	817.5
	July 20 through September 30	2.07	
42822	May 11 through September 30	0.99	280.8
8679 (supplemental)	May 11 through September 30	1.32	374.4

37. The applicant has requested that any instream water right established as a result of this instream transfer be additive to existing instream water rights for the same reach established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process). The applicant has also requested that any instream water rights established as a result of this instream transfer replace a portion of any existing instream rights established pursuant to ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency instream application process), with a more senior priority date.

**Instream Transfer Review Criteria (OAR 690-77-0075 and 690-380-4010)**

38. Each of the rights proposed for transfer has been leased instream under IL-479. This instream lease began in 2005 and is scheduled to terminate on September 30, 2018. Therefore, water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
39. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-11375.
40. The applicant has requested to protect water instream under Certificate 8679 from the POD on Blue Springs, through the natural channel for Blue Springs and into Sevenmile Creek to its mouth. An instream reach is generally from the point of diversion to the mouth of the source stream (Blue Springs) but may be protected further if measurable in the receiving stream (Sevenmile Creek) (OAR 690-077-0015 (8)). The quantity that may be transferred to instream use from Blue Springs is measurable into Sevenmile Creek and may be protected instream in Sevenmile Creek.
41. The applicant has also requested to protect water instream under Certificate 42822, which has an identified source of drainage collected in a ditch with deficiency in supply made up from Sevenmile Creek. The Department has identified that with irrigation discontinuing as a result of this transfer, there will not likely be any water in the drainage ditch. Therefore, the source of water for the instream use will be Sevenmile Creek with the instream use beginning at the Sevenmile Creek POD described in Finding of Fact No. 31. This is also consistent with the definition of an instream water right, which by definition does not require a diversion or any other means of physical control over the water. ORS 537.322(3)
42. The applicant has requested to protect water instream from the PODs as described in Findings of Fact No. 21, 25, 28 and 31 to the mouth of Sevenmile Creek. A portion of the water diverted under Certificates 10900, 10901, and 8679 returns to Sevenmile Creek within the proposed reach and is available to downstream water right holders. To prevent injury to downstream water right holders and enlargement, the quantity of water that may be protected instream requires modification to account for return flows.

The place of use described below for Certificates 10900, 10901 and 8679 is located in close proximity to Sevenmile Creek and will have approximately 20.0% return flows along the creek.

a) Certificate 10900

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	24	SW NW	6.00
33 S	6 E	WM	24	NW SW	6.00
<b>Total Acres</b>					<b>12.00</b>

Return flows associated with Certificate 10900 should be accounted for at approximately River Mile (RM) 15.52, where the lands intersect Sevenmile Creek in the SW NW of Section 24.

b) Certificate 10901

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	24	SW NW	17.30
33 S	6 E	WM	24	NW SW	20.00
33 S	6 E	WM	24	SW SW	9.00
33 S	6 E	WM	24	SE SW	17.80
<b>Total Acres</b>					<b>64.10</b>

Return flows associated with Certificate 10901 should be accounted for at the Melhase-Kingdon Ditch, located as described in Finding of Fact No. 25.

c) Certificate 8679

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	24	SW SW	9.00
33 S	6 E	WM	24	SE SW	17.80
<b>Total Acres</b>					<b>26.80</b>

Return flows associated with Certificate 8679 should be accounted for at approximately RM 14.62, where the lands intersect Sevenmile Creek in the SW SW of Section 24.

43. The applicant is also proposing to transfer the entirety Certificates 10901 and 8679 to instream use. The Department has determined that a portion of the lands on which Certificates 10901 and 8679 (supplemental to Certificate 10901) are appurtenant are sub-irrigated from Sevenmile Creek during the irrigation season. Use of water under the existing water rights is subject to beneficial use without waste in accordance with ORS 536.310. These lands are located in close proximity to Sevenmile Creek and will continue to be sub-irrigated from the creek upon completion of the transfer application. Sevenmile Creek is the primary source of water for the following 6.2 acres under Certificate 10901 that will continue to receive water from the same source:

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	24	SW SW	4.00
33 S	6 E	WM	24	SE SW	2.20

Since use may not be suspended as a result of sub-irrigation from the same source, the above described portion of Certificate 10901 may not be transferred to instream use without enlargement of the right. Enlargement includes, by definition, failing to keep the original place of use from receiving water from the same source. OAR 690-380-0100 (2). Subsequently, the associated portion of supplemental Certificate 8679 may not be transferred to instream use as well.

RECEIVED BY OWRD

T-11375.lkw

Page 11 of 19

Special Order Volume 93 Page 432

G-17942

OCT 15 2014

SALEM, OR

44. The modified instream use, as described in Finding of Fact No. 36, requires additional modification to account for amendments to the application, amount of sub-irrigated acres not available for transfer under Certificates 10901 and 8679, and return flows.
45. Based on the above findings, modifications to the application affecting the portion of each right proposed for transfer and Finding of Fact No. 13, the Department has determined the quantities that may be transferred and protected instream are as follows:

**Instream Use resulting from Transfer of Certificate 10900**

Sevenmile Creek, tributary to Agency Lake

**Instream Reach No. 1:** From the POD (as described in Finding of Fact No. 21) to RM 15.52

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
1891	10.50	2290.91	April 1 through July 19
	8.98	1300.24	July 20 through September 30
<b>Total Volume</b>		<b>3591.15</b>	

**Instream Reach No. 2:** From RM 15.52 to the mouth of Sevenmile Creek

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
1891	10.46	2283.25	April 1 through July 19
	8.95	1295.90	July 20 through September 30
<b>Total Volume</b>		<b>3579.15</b>	

**Instream Use resulting from Transfer of Certificate 10901**

Sevenmile Creek, tributary to Agency Lake

**Instream Reach No. 1:** At the POD (as described in Finding of Fact No. 25)

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
1898	2.27	496.10	April 1 through July 19
	1.94	280.90	July 20 through September 30
<b>Total Volume</b>		<b>777.00</b>	

**Instream Reach No. 2:** From immediately below the POD to the mouth of Sevenmile Creek

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
1898	2.08	455.17	April 1 through July 19
	1.78	257.73	July 20 through September 30
<b>Total Volume</b>		<b>712.90</b>	



**Instream Use resulting from Transfer of Certificate 8679  
(Supplemental to Certificate 10901)**

Blue Springs, tributary to Sevenmile Creek

**Instream Reach No. 1:** From the POD (as described in Finding of Fact No. 28) to the mouth of Blue Springs and into Sevenmile Creek to RM 14.62

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
9/25/1928	1.19	337.50	May 11 through September 30

**Instream Reach No. 2:** From RM 14.62 to the mouth of Sevenmile Creek

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
9/25/1928	1.12	317.08	May 11 through September 30

Certificate 8679 is supplemental to Certificate 10901. The portion of Certificate 8679 converted to instream use shall only be protected instream if the full rate and duty is not available under the primary instream use created as a result of the transfer of Certificate 10901.

**Instream Use resulting from Transfer of Certificate 42822**

Sevenmile Creek, tributary to Agency Lake

**Instream Reach:** From the POD on Sevenmile Creek (as described in Finding of Fact No. 31) to the mouth of Sevenmile Creek

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
9/24/1971	0.98	278.5	May 11 through September 30

46. The proposed changes, as modified, would not result in enlargement of the rights.
47. The proposed changes, as modified, would not result in injury to other water rights.
48. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
49. The protection of flows within the proposed reach is appropriate, considering:
  - a) The instream water rights begin at the recorded points of diversion;
  - b) The location of confluences with other streams downstream of the points of diversion;
  - c) There are no known areas of natural loss of streamflow to the river bed downstream from the points of diversion; and
  - d) Return flows would re-enter the within the reach on Sevenmile Creek. Return flows associated with Certificates 10900, 10901 and 8679 have been accounted for as

described in Findings of Fact No. 42 and 45. Any return flows resulting from the exercise of Certificate 42822 would re-enter the river downstream of the reach of the instream water right.

50. Presently there are no existing certificated instream water rights on Blue Springs or Sevenmile Creek. There is an instream water right application, filed by the Oregon Department of Fish and Wildlife (ODFW), pending for Sevenmile Creek. This application is requesting the use of water for required stream flows for rainbow, brown and brook trout for migration, spawning, egg incubation, fry emergence and juvenile and adult rearing. This application, if approved, will have a priority date of October 26, 1990.
51. The flows requested for the pending instream water right application within the reach may be sufficient to protect the monthly quantities of water necessary for fish habitat but may not always be met due to existing senior consumptive uses on Sevenmile Creek.
52. By replacing a portion of any instream water right established by the application filed by ODFW, the instream rights created as a result of this transfer will provide protection for stream flows identified as necessary for fish habitat under earlier priority dates.
53. The applicant has also requested that any instream rights created as a result of this transfer be additive to other instream rights created as a result of instream transfers, instream leases and allocations of conserved water. By adding to other instream water rights for the same location, the instream rights will provide protection for additional stream flows necessary for fish and wildlife habitat.
54. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose and do not exceed the estimated average natural flow.
55. There is an instream lease, IL-479, currently in effect for the portions of the rights proposed for transfer to instream use. Renewal of this instream lease was approved by the Department on April 15, 2014, as evidenced by Special Order Volume 92, Page 125. The instream lease is scheduled to terminate on September 30, 2018, and includes a condition allowing for early termination of the lease order. This lease must be terminated before Transfer T-11375 may be approved. Also, the date on which this instream transfer may be approved may be affected by the date on which the existing instream lease is terminated to prevent injury and enlargement.

#### ***Partial Cancellation of a Water Right***

56. ORS 537.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.
57. On March 5, 2013, the applicant submitted an affidavit to voluntarily cancel a portion of Certificate 10900 contingent upon approval of Transfer Application T-11375. As identified in Finding of Fact No. 13, the Department has identified that a portion of the right proposed

for cancellation may not be cancelled by the applicant. Based upon evaluation of a revised application map and the original affidavit of cancellation, the applicant has abandoned any and all interest in the portion of water right Certificate 10900 described as follows:

**Certificate:** 10900 in the name of JAMES T. DIXON (confirmed by Wood River (F) in the order record of the State Engineer in volume 12, at page 269)

**Use:** Irrigation of 1.65 acres and the associated portion of DOMESTIC and LIVESTOCK use during the irrigation season

**Priority Date:** 1891

**Limit/Duty:** The amount of water to which such right is entitled, for the purposes of the aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1/50<sup>th</sup> of one cubic foot per second per acre irrigated prior to July 20, and 1/80<sup>th</sup> of one cubic foot per second per acre irrigated thereafter, and shall not exceed 5.0 acre-feet per acre during the irrigation season.

**Period of Use:** April 1 to October 1

**Source:** SEVENMILE CREEK, tributary to Agency Lake

**Authorized Point of Diversion:** Not described on the Certificate

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	13	NW SE	0.15
33 S	6 E	WM	13	SW SE	0.50
33 S	7.5 E	WM	18	SW SW	0.50
33 S	7.5 E	WM	18	SE SW	0.50

58. On March 5, 2013, the applicant submitted an affidavit to voluntarily cancel a portion of Certificate 7641 contingent upon approval of Transfer Application T-11375. A revised affidavit and map showing the portion to be cancelled was submitted on July 31 and August 1, 2013. The applicant has abandoned any and all interest in the portion of water right Certificate 7641 described as follows:

**Certificate:** 7641 in the name of JAMES T. DIXON (perfected under Permit S-8029)

**Use:** IRRIGATION of 27.2 ACRES

**Priority Date:** JUNE 25, 1927

**Rate:** 0.34 CFS

**Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent in case of rotation.

**Source:** ANNA CREEK (also known as Annie Creek), tributary to the WOOD RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
32 S	7.5 E	WM	31	NE SW

RECEIVED BY OWRD

T-11375.lkw  
G-17942

OCT 15 2014

Page 15 of 19

Special Order Volume 93 Page 436

SALEM, OR

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	7.5 E	WM	18	NE SW	9.20
33 S	7.5 E	WM	18	NW SW	4.00
33 S	7.5 E	WM	18	SE SW	14.00

59. On March 5, 2013, the applicant submitted an affidavit to voluntarily cancel a portion of Certificate 45299 contingent upon approval of Transfer Application T-11375. A revised affidavit and map showing the portion to be cancelled was submitted on July 31 and August 1, 2013. The applicant has abandoned any and all interest in the portion of water right Certificate 45299 described as follows:

**Certificate:** 45299 in the name of R. S. DIXON (perfected under Permit S-8028)

**Use:** IRRIGATION of 18.76 ACRES

**Priority Date:** JUNE 25, 1927

**Rate:** 0.23 CFS

**Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

**Source:** ANNA CREEK (also known as ANNIE CREEK), tributary to the WOOD RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
32 S	7.5 E	WM	31	SW NW

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	13	SE NE	18.76

60. On August 27, 2013, the applicant submitted an affidavit to voluntarily cancel a portion of a water right described in the Wood River Decree, not yet certificated, contingent upon approval of Transfer Application T-11375. During the review process, the Department identified that there is a typo on the affidavit. The acreage identified in the NE NE of Section 13 is actually within the SE NE of Section 13. The applicant has abandoned any and all interest in the portion of this water right described as follows:

**Water Right:** Proof No. 11, page 45, of the State Engineer's Findings and Order of Determination in the name of James Dixon (Confirmed and clarified by Wood River (F) in the order record of the State Engineer in volume 12, at page 269)

**Use:** IRRIGATION of 45.96 ACRES

**Priority Date:** 1900

**Source:** ANNA CREEK (also known as ANNIE CREEK), tributary to the WOOD RIVER

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	13	SE NE	18.76
33 S	6 E	WM	13	SW NE	36.8
33 S	6 E	WM	13	SE NW	28.0
33 S	7.5 E	WM	18	NE SW	9.20
33 S	7.5 E	WM	18	NW SW	4.00
33 S	7.5 E	WM	18	SE SW	14.00

RECEIVED BY OWRD

OCT 15 2014

SALEM, OR

**Conclusions of Law**

The changes in character of use and place of use to instream use proposed in Transfer Application T-11375 are consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075 and the abandoned rights should be cancelled.

**Now, therefore, it is ORDERED:**

1. The changes in character of use and place of use to instream use proposed in Transfer Application T-11375 are approved. The portions of the rights that have been abandoned are cancelled.
2. Instream lease IL-479 shall be terminated in coordination with the issuance of a final order, contingent upon approval of this transfer, unless previously terminated by the parties to the lease or it terminates on its own on September 30, 2018.
3. Water right certificates 10900, 10901, 42822, and 8679 are cancelled. New certificates confirming the instream water rights shall be issued. New certificates will be issued, as needed, describing the portions of the rights not affected by this transfer and cancellation.
4. Water Right Certificates 45299 and 7641 and Proof No. 11, page 45, of the State Engineer's Findings and Order of Determination in the name of James Dixon (Confirmed and clarified by Wood River (F) in the order record of the State Engineer in volume 12, at page 269) are also cancelled. New certificates will be issued describing the portions of the rights not affected by this cancellation.
5. The instream water rights shall provide for the protection of stream flows as follows:

**Instream Use resulting from Transfer of Certificate 10900**

Sevenmile Creek, tributary to Agency Lake

**Instream Reach No. 1:** From the POD (as described in Finding of Fact No. 21) to RM 15.52

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
1891	10.50	2290.91	April 1 through July 19
	8.98	1300.24	July 20 through September 30
<b>Total Volume</b>		<b>3591.15</b>	

**Instream Reach No. 2:** From RM 15.52 to the mouth of Sevenmile Creek

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
1891	10.46	2283.25	April 1 through July 19
	8.95	1295.90	July 20 through September 30
<b>Total Volume</b>		<b>3579.15</b>	

**Instream Use resulting from Transfer of Certificate 10901**

Sevenmile Creek, tributary to Agency Lake

**Instream Reach No. 1:** At the POD (as described in Finding of Fact No. 25)

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
1898	2.27	496.10	April 1 through July 19
	1.94	280.90	July 20 through September 30
<b>Total Volume</b>		<b>777.00</b>	

**Instream Reach No. 2:** From immediately below the POD to the mouth of Sevenmile Creek

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
1898	2.08	455.17	April 1 through July 19
	1.78	257.73	July 20 through September 30
<b>Total Volume</b>		<b>712.90</b>	

**Instream Use resulting from Transfer of Certificate 8679 (Supplemental to Certificate 10901)**

Blue Springs, tributary to Sevenmile Creek

**Instream Reach No. 1:** From the POD (as described in Finding of Fact No. 28) to the mouth of Blue Springs and into Sevenmile Creek to RM 14.62

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
9/25/1928	1.19	337.50	May 11 through September 30

**Instream Reach No. 2:** From RM 14.62 to the mouth of Sevenmile Creek

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
9/25/1928	1.12	317.08	May 11 through September 30

Certificate 8679 is supplemental to Certificate 10901. The portion of Certificate 8679 converted to instream use shall only be protected instream if the full rate and duty is not available under the primary instream use created as a result of the transfer of Certificate 10901.

**Instream Use resulting from Transfer of Certificate 42822**

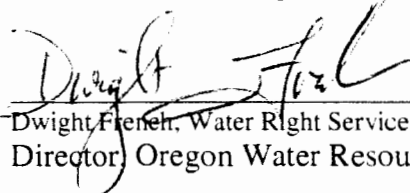
Sevenmile Creek, tributary to Agency Lake

**Instream Reach:** From the POD on Sevenmile Creek (as described in Finding of Fact No. 31) to the mouth of Sevenmile Creek

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
9/24/1971	0.98	278.5	May 11 through September 30

6. Water rights upstream of the original points of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original points of diversion.
7. Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original points of diversion.
8. The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.
9. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 10900, 10901, 42822, and 8679 and any related decree.
10. The former place of use of the transferred water shall no longer receive water as part of these rights.

Dated at Salem, Oregon this 18 day of September, 2014.

  
 \_\_\_\_\_  
 Dwight French, Water Right Services Division Administrator, for  
 Director Oregon Water Resources Department

Mailing date: SEP 19 2014

RECEIVED BY OWRD

OCT 15 2014

SALEM, OR

1 **BEFORE THE OREGON WATER RESOURCES DEPARTMENT**

2 **IN THE MATTER OF INSTREAM**  
3 **TRANSFER APPLICATION**  
4 **T-11375, KLAMATH COUNTY**

) **SETTLEMENT AGREEMENT**

5 **JACOX RANCHES, OREG., LTD.**  
6 *Applicant*

) **OAH Ref. No.: WR-13-008**

7 **KLAMATH BASIN RANGELAND TRUST**  
8 *Agent for Applicant*

) **OWRD Case No.: T-11375**

9 **PRODUCTIVE TIMBERLAND LLC,**  
10 **NBCC LLC, and**  
11 **ROGER NICHOLSON**  
12 *Protestant*

) **RECEIVED BY OWRD**

) **OCT 15 2014**

) **SALEM, OR**

13 The Oregon Water Resources Department (Department), JaCox Ranches, Oreg., Ltd.  
14 (JaCox Ranches), Klamath Basin Rangeland Trust (KBRT), and Roger Nicholson individually  
15 and on behalf of Productive Timberland LLC and NBCC LLC (collectively, Nicholson) do  
16 hereby agree and stipulate as follows:

17 **I. STIPULATED FACTS**

18 1. On January 5, 2005, the Department issued a Final Order approving the Instream Lease  
19 (L-479) of portions of Certificates 10900 and 10901 and all of certificates 8679 and 42822. The  
20 KBRT filed the application on behalf of JaCox Ranches. Roger Nicholson initially objected to  
21 the application, but the parties were able to resolve their disagreement through a Stipulated  
22 Agreement, which was incorporated into the Final Order. The Instream Lease L-479 was  
23 renewed in 2009.

2. On March 19, 2012, the KBRT, on behalf of JaCox Ranches, filed an application to  
change the place of use and character of use under Certificates 10900, 10901, 42822, and 8679 to  
instream use. The Department assigned the application number T-11375. The KBRT sought to  
transfer water rights that had been subject to L-479.

3. On August 26, 2013, the Department issued a Preliminary Determination approving the  
transfer application, as amended through the review process.

4. On October 7, 2013, Nicholson filed a Protest and Request for Hearing, challenging the  
proposed transfer on several grounds.

5. On November 27, 2013, the Department referred the matter to the Office of  
Administrative Hearings (OAH) for a contested case hearing.



## II. TERMS OF AGREEMENT

1. The parties to this Agreement wish to resolve their dispute in a manner that is mutually agreeable and avoids further litigation on this matter.

2. The parties agree to waive any right to administrative or judicial review of either this Agreement or the Final Order on T-11375.

3. The parties agree that nothing in this Agreement or associated Final Orders shall be offered for or against a party as argument, admission, admission of wrongdoing, liability, or precedent regarding any issue of fact or law in any mediation, arbitration, litigation, or other administrative or legal proceeding, except that this Agreement may be used in any future proceeding to interpret or enforce the terms of this Agreement, consistent with applicable laws. This Agreement may also be used by any party in litigation by or against non-parties to implement or defend this Agreement. This section shall survive any termination of this Agreement.

4. The parties stipulate that this Agreement does not create any precedent for future mitigation calculations in the Klamath Basin.

5. The parties agree to resolve their dispute under the following terms:

a) Nicholson will submit an application for use of groundwater at the rate of 1.0 cfs, and with an annual duty of 3 acre-feet per acre and a total volume limit of 240 acre-feet from well id # KLAM57662, as supplemental irrigation to Nicholson's existing water rights. The application will indicate that mitigation for the proposed new groundwater use will be provided by up to 1 cfs and 240 acre-feet of instream flow approved under T-11375. The application submitted by Nicholson will be in substantially the same form as the draft application attached hereto as Exhibit A.

b) The Department agrees to expedite processing of Nicholson's groundwater application; however, the Department cannot, and does not, make any promises or representations regarding the ultimate outcome of the application. Based on its review of the draft application, the Department will issue an initial review indicating the groundwater application can be approved with mitigation as proposed. Subject to the Department's obligation to consider and address legal or factual issues identified as a result of the public comment process, or the discovery of new information that has a bearing on whether the application can be approved, the Department is prepared to issue a proposed final order recommending approval of the groundwater application with mitigation.

c) Nicholson and the Department share a good faith belief that the groundwater application with the proposed mitigation can be approved by the Department following completion of the required review process, public comment and protest opportunities; however, the parties stipulate and agree that this Agreement is not conditioned upon the ultimate approval of Nicholson's groundwater application.

1 on federal statutory easements for access and use of the point of diversion, the obligations  
2 of KBRT and Nicholson under this paragraph are deemed to be satisfied.

3 Notwithstanding any other requirement of this paragraph, if the permits or other  
4 authorizations necessary to install, operate, and maintain a fish screen have not been  
5 obtained within five years of the date of this Agreement, KBRT's obligations under this  
6 paragraph are deemed satisfied, unless the failure to obtain such permits or other  
7 authorizations resulted from KBRT's breach of this Agreement.

8 6. Upon complete execution of this Agreement by all parties, Nicholson hereby withdraws  
9 his protest, with prejudice and agrees to allow T-11375 to proceed to Final Order. The parties  
10 understand that the Department will issue a Final Order on T-11375 based on this Agreement  
11 and prior to completion of the review of Mr. Nicholson's new groundwater application.

12 7. Upon complete execution of the Agreement by all parties and withdrawal of Nicholson's  
13 protest to the preliminary determination for T-11375, the Department will withdraw this matter  
14 from the OAH and issue a Final Order on T-11375 incorporating the terms of this Agreement, in  
15 the form attached as Exhibit B.

16 8. The parties agree that this Agreement shall be binding upon and shall inure to the benefit  
17 of the parties and their respective heirs, executors, administrators, trustees, beneficiaries,  
18 predecessors, successors, affiliated and related entities, officers, directors, principals, agents,  
19 employees, assigns, representatives, and all persons, firms, associations, or corporations  
20 connected with them.

21 9. Each party to this Agreement represents, warrants, and agrees that the person who  
22 executed this Agreement on its behalf has the full right and authority to enter into this Agreement  
23 on behalf of that party and bind that party to the terms of the Agreement.

10 10. The terms, provisions, conditions, and covenants of this Agreement are not severable;  
11 however, if any term, provision, condition, or covenant of this Agreement is held by a court of  
12 competent jurisdiction to be invalid, void, or unenforceable, the remainder of the terms,  
13 provisions, conditions, and covenants shall remain in full force and effect and shall in no way be  
14 affected, impaired, or invalidated.

15 11. This Agreement comprises the entire agreement and no promise, inducement, or  
16 representation other than herein set forth has been made, offered, or agreed upon, and the terms  
17 of this Agreement are contractual and not merely a recital.

18 12. The parties agree to each bear their own costs and attorneys' fees.

19 13. This Agreement may be executed simultaneously or with separate signature pages and in  
20 more than one counterpart, each of which will be deemed an original, and all of which together  
21 shall constitute one and the same Agreement. This Agreement shall be effective as of the date of  
22 the last signature hereto.

23 RECEIVED BY OWRD

OCT 15 2014

SALEM, OR

Special Order  
Vol. 93 Pg. 440C

1 d) The Department expects that Nicholson's proposed new groundwater use will  
2 interfere with scenic waterway flows and will require mitigation to surface flows as may  
3 be determined by the Department in review of the groundwater application. The  
4 Department anticipates that a permanent transfer of 240 acre-feet of water, at a rate of 1.0  
cfs from a consumptive out-of-stream use to an instream use as provided under Transfer  
T-11375 would serve as sufficient mitigation for the proposed new groundwater use.

5 e) KBRT agrees to allow the use of up to 240 acre-feet at the rate of 1.0 cfs of the  
6 water transferred under T-11375 to mitigate for Mr. Nicholson's proposed new  
groundwater right as described in paragraph (a) above.

7 f) The Department's Final Order on T-11375 will recognize that up to 1.0 cfs and  
8 240 acre-feet of KBRT's proposed transfer shall be used as mitigation for Mr.  
Nicholson's pending groundwater application.

9 g) The Final Order on T-11375 will not include a condition requiring installation of  
10 a regulatory device at the point of diversion for Certificate 10900; however, KBRT  
11 agrees to make a good faith effort to secure funding to install a new regulatory device at  
12 the authorized point of diversion for Certificate 10900, provided that Nicholson and the  
13 Department agree on a design for such device. KBRT's obligation under the preceding  
sentence is limited to the amount of funding KBRT can secure for such purpose using  
reasonable efforts within two years after Nicholson and the Department agree on a design  
for such device. If Nicholson and the Department do not agree on a design within two  
years from the date of this Agreement, KBRT's obligations under this paragraph are  
deemed satisfied.

14 h) The Final Order on T-11375 will not include a condition requiring installation of  
15 a fish screen at the point of diversion for Certificate 10900; however, if a fish screen  
16 becomes required, as a result of the exercise of other state or federal regulatory authority,  
17 in order to divert water under Certificate 10900 (and other certificates authorizing use of  
18 the Sevenmile Ditch point of diversion), KBRT will seek funding to provide, install,  
19 maintain, and pay all costs associated with such fish screen. Nicholson agrees (i) to  
20 cooperate in good faith with KBRT to obtain any permits or other authorizations  
21 necessary to install, operate, and maintain a fish screen, and (ii) that, to the extent  
22 allowed under applicable laws, KBRT will have control over the design, operation, and  
23 sources of funding for such fish screen, except that nothing in this sentence shall require  
Nicholson to forfeit any existing right he may have to rely on federal statutory easements  
for access to and use of the point of diversion. KBRT agrees to pursue a fish screen  
design that does not require relocating the authorized point of diversion for Certificate  
10900, provided that the installation, maintenance, and costs associated with such design  
are economically feasible. A design is not economically feasible if the installation,  
maintenance, and costs associated with such design exceed the funding that can be  
secured by KBRT using reasonable efforts in the two years after a fish screen becomes  
required. If such design is not economically feasible, or if, in Nicholson's judgment the  
fish screen cannot be pursued without jeopardizing any rights Nicholson may have to rely

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

\_\_\_\_\_  
Jim Popson, JaCox Ranches

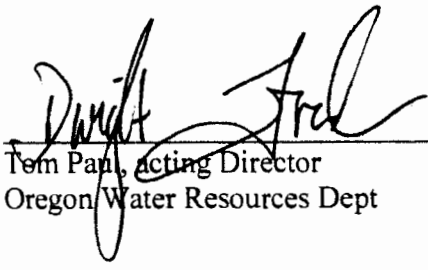
\_\_\_\_\_  
Date

\_\_\_\_\_  
Chrysten Lambert, KBRT

\_\_\_\_\_  
Date

\_\_\_\_\_  
Roger Nicholson, individually and on behalf of  
Productive Timberland LLC and NBCC LLC

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Tom Paul, Acting Director  
Oregon Water Resources Dept

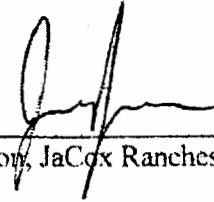
August 18, 2014  
Date

RECEIVED BY OWRD

OCT 15 2014

SALEM, OR

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

  
\_\_\_\_\_  
Jim Popson, JaCox Ranches

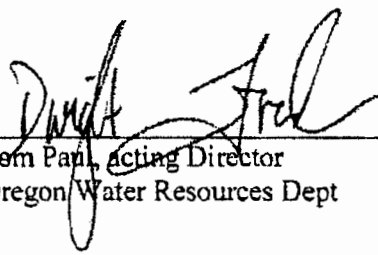
8/29/14  
Date

\_\_\_\_\_  
Chrysten Lambert, KBRT

\_\_\_\_\_  
Date

\_\_\_\_\_  
Roger Nicholson, individually and on behalf of  
Productive Timberland LLC and NBCC LLC

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Tom Paul, Acting Director  
Oregon Water Resources Dept

August 15, 2014  
Date

RECEIVED BY OWRD  
OCT 15 2014  
SALEM, OR

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

\_\_\_\_\_  
Jim Popson, JaCox Ranches


\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Chrysten Lambert, KBRT

August 28, 2014  
Date

\_\_\_\_\_  
Roger Nicholson, individually and on behalf of  
Productive Timberland LLC and NBCC LLC

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Tom Paul, Acting Director  
Oregon Water Resources Dept

August 15, 2014  
Date

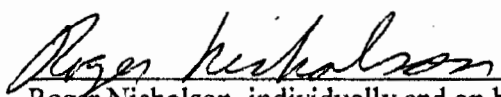
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

\_\_\_\_\_  
Jim Popson, JaCox Ranches

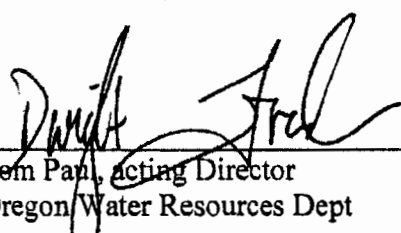
\_\_\_\_\_  
Date

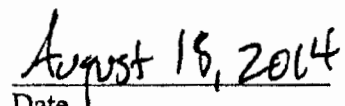
\_\_\_\_\_  
Chrysten Lambert, KBRT

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Roger Nicholson, individually and on behalf of  
Productive Timberland LLC and NBCC LLC

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Tom Paul, acting Director  
Oregon Water Resources Dept

  
\_\_\_\_\_  
Date

RECEIVED BY OWRD

OCT 15 2014

SALEM, OR

# Application for a Permit to Use Ground Water

RECEIVED BY OWRD

OCT 15 2014

SALEM, OR



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

## Water-Use Permit Application Processing

### 1. Completeness Determination

The Department evaluates whether the application and accompanying map contain all of the information required under OAR 690-310-0040 and OAR 690-310-0050 ([www.oregon.gov/owrd/law](http://www.oregon.gov/owrd/law)). The Department also determines whether the proposed use is prohibited by statute. If the Department determines that the application is incomplete, all fees have not been paid, or the use is prohibited by statute, the application and all fees submitted are returned to the applicant.

### 2. Initial Review

The Department reviews the application to determine whether water is available during the period requested, whether the proposed use is restricted or limited by rule or statute, and whether other issues may preclude approval of or restrict the proposed use. An Initial Review (IR) containing preliminary determinations is mailed to the applicant. The applicant has 14 days from the mailing date to withdraw the application from further processing and receive a refund of all fees paid minus \$200. The applicant may put the application on hold for up to 180 days and may request additional time if necessary.

### 3. Public Notice

Within 7 days of the mailing of the initial review, the Department gives public notice of the application in the weekly notice published by the Department at [www.oregon.gov/owrd](http://www.oregon.gov/owrd). The public comment period is 30 days from publication in the weekly notice.

### 4. Proposed Final Order Issued

The Department reviews any comments received, including comments from other state agencies related to the protection of sensitive, threatened or endangered fish species. Within 60 days of completion of the IR, the Department issues a Proposed Final Order (PFO) explaining the proposed decision to deny or approve the application. A PFO proposing approval of an application will include a draft permit, and may request additional information or outstanding fees required prior to permit issuance.

### 5. Public Notice

Within 7 days of issuing the PFO, the Department gives public notice in the weekly notice. Notice includes information about the application and the PFO. Protest must be received by the Department within 45 days after publication of the PFO in the weekly notice. Anyone may file a protest. The protest filing fee is \$350.00 for the applicant and \$700.00 for non-applicants. Protests are filed on approximately 10% of Proposed Final Orders. If a protest is filed, the Department will attempt to settle the protest but will schedule a contested case hearing if necessary.

### 6. Final Order Issued

If no protests are filed, the Department issues a Final Order consistent with the PFO. If the application is approved, a permit is issued that specifies the details of the authorized use and any terms, limitations or conditions that the Department deems appropriate.



# Minimum Requirements Checklist

Minimum Requirements (OAR 690-310-0040, OAR 690-310-0050 & ORS 537.615)

## Include this checklist with the application

Check that each of the following items is included. The application will be returned if all required items are not included. If you have questions, please call the Water Rights Customer Service Group at (503) 986-0900.

- SECTION 1: applicant information and signature
- SECTION 2: property ownership
- SECTION 3: well development
- SECTION 4: water use
- SECTION 5: water management
- SECTION 6: storage of groundwater in a reservoir
- SECTION 7: use of stored groundwater from the reservoir
- SECTION 8: project schedule
- SECTION 9: within a district
- SECTION 10: remarks

### Attachments:

- Land Use Information Form with approval and signature (*must be an original*) or signed receipt
- Provide the legal description of: (1) the property from which the water is to be diverted, (2) any property crossed by the proposed ditch, canal or other work, and (3) any property on which the water is to be used as depicted on the map. Example: A copy of the deed, land sales contract or title insurance policy.
- Fees - Amount enclosed \$  
See the Department's Fee Schedule at [www.oregon.gov/owrd](http://www.oregon.gov/owrd) or call (503) 986-0900.

### Provide a map and check that each of the following items is included:

- Permanent quality and drawn in ink
- Even map scale not less than 4" = 1 mile (example: 1" = 400 ft, 1" = 1320 ft, etc.)
- North Directional Symbol
- Township, Range, Section, Quarter/Quarter, Tax Lots
- Reference corner on map
- Location of each well, and/or dam if applicable, by reference to a recognized public land survey corner (distances north/south and east/west). Each well must be identified by a unique name and/or number.
- Indicate the area of use by Quarter/Quarter and tax lot clearly identified
- Number of acres per Quarter/Quarter and hatching to indicate area of use if for primary irrigation, supplemental irrigation, or nursery

- Location of main canals, ditches, pipelines or flumes (if well is outside of the area of use)
- Other \_\_\_\_\_

RECEIVED BY OWRD

OCT 15 2014

SALEM, OR

DRAFT

# Application for a Permit to Use Ground Water



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

## SECTION I: APPLICANT INFORMATION AND SIGNATURE

### Applicant Information

NAME		PHONE (HM)	
PHONE (WK)	CELL	FAX	
ADDRESS			
CITY	STATE	ZIP	E-MAIL*

### Organization Information

NAME PRODUCTIVE TIMBERLAND LLC AND NBCC, LLC		PHONE 541-381-2274	FAX 541-381-2274
ADDRESS C/O ROGER NICHOLSON, PO BOX 458		CELL 541-591-0824	
CITY FORT KLAMATH	STATE OR	ZIP 97626	E-MAIL ROGER@FORTKLAMATH.NET

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

AGENT / BUSINESS NAME MARTHA O. PAGEL, SCHWABE WILLIAMSON & WYATT		PHONE 503-540-4260	FAX 503-796-2900
ADDRESS 530 CENTER ST. NE, SUITE 400		CELL 503-507-7293	
CITY SALME	STATE OR	ZIP 97301	E-MAIL* MPAGEL@SCHWABE.COM

Note: Attach multiple copies as needed

\* By providing an e-mail address, consent is given to receive all correspondence from the department electronically. (paper copies of the final order documents will also be mailed.)

### By my signature below I confirm that I understand:

- I am asking to use water specifically as described in this application.
- Evaluation of this application will be based on information provided in the application.
- I cannot use water legally until the Water Resources Department issues a permit.
- Oregon law requires that a permit be issued before beginning construction of any proposed well, unless the use is exempt. Acceptance of this application does not guarantee a permit will be issued.
- If I get a permit, I must not waste water.
- If development of the water use is not according to the terms of the permit, the permit can be cancelled.
- The water use must be compatible with local comprehensive land-use plans.
- Even if the Department issues a permit, I may have to stop using water to allow senior water-right holders to get water to which they are entitled.



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

Applicant Signature

Print Name and title if applicable

Date

Applicant Signature

Print Name and title if applicable

Date

For Department Use		
App. No. <u>G-17942</u>	Permit No. _____	Date _____

Special Order  
Vol 03 Pg 440 AD

EXHIBIT A

OCT 15 2014

SALEM, OR

**SECTION 2: PROPERTY OWNERSHIP**

Please indicate if you own all the lands associated with the project from which the water is to be diverted, conveyed, and used.

- Yes
  - There are no encumbrances.
  - This land is encumbered by easements, rights of way, roads or other encumbrances.
- No
  - I have a recorded easement or written authorization permitting access.
  - I do not currently have written authorization or easement permitting access.
  - Written authorization or an easement is not necessary, because the **only** affected lands I do not own are state-owned submersible lands, and this application is for irrigation and/or domestic use only (ORS 274.040).
  - Water is to be diverted, conveyed, and/or used only on federal lands.

List the names and mailing addresses of all affected landowners (*attach additional sheets if necessary*).

Roger Nicholson, PO Box 458, Fort. Klamath, OR 97626 (point of appropriation is located on Nicholson property.) Permission granted by signature on this application form.

*You must provide the legal description of: 1. The property from which the water is to be diverted, 2. Any property crossed by the proposed ditch, canal or other work, and 3. Any property on which the water is to be used as depicted on the map.*

**SECTION 3: WELL DEVELOPMENT**

WELL NO.	NAME OF NEAREST SURFACE WATER	IF LESS THAN 1 MILE:	
		DISTANCE TO NEAREST SURFACE WATER	ELEVATION CHANGE BETWEEN NEAREST SURFACE WATER AND WELL HEAD
1	Sevenmile Creek	N/A	N/A

Please provide any information for your existing or proposed well(s) that you believe may be helpful in evaluating your application. For existing wells, describe any previous alteration(s) or repair(s) not documented in the attached well log or other materials (*attach additional sheets if necessary*).

KLAM 57662 (Nicholson)

**SECTION 3: WELL DEVELOPMENT, CONTINUED**

Total maximum rate requested: 1.0 cfs (each well will be evaluated at the maximum rate unless you indicate well-specific rates and annual volumes in the table below).

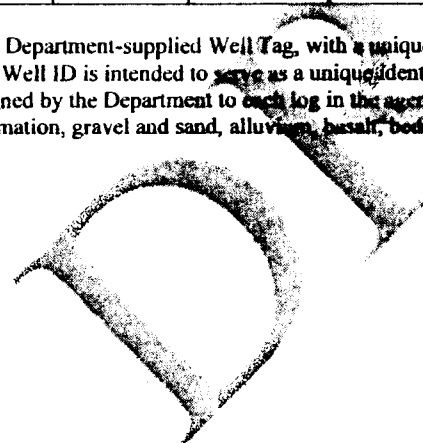
**The table below must be completed for each source to be evaluated or the application will be returned.** If this is an existing well, the information may be found on the applicable well log. *(If a well log is available, please submit it in addition to completing the table.)* If this is a proposed well, or well-modification, consider consulting with a licensed well driller, geologist, or certified water right examiner to obtain the necessary information.

PROPOSED USE
--------------

DRAFT

OWNER'S WELL NAME OR NO.	PROPOSED	EXISTING	WELL ID (WELL TAG) NO.* OR WELL LOG ID**	FLOWING ARTESIAN	CASING DIAMETER	CASING INTERVALS (IN FEET)	PERFORATED OR SCREENED INTERVALS (IN FEET)	SEAL INTERVALS (IN FEET)	MOST RECENT STATIC WATER LEVEL & DATE (IN FEET)	SOURCE AQUIFER***	TOTAL WELL DEPTH	WELL-SPECIFIC RATE (GPM)	ANNUAL VOLUME (ACRE-FEET)
1	<input type="checkbox"/>	<input checked="" type="checkbox"/>	KLAM 57662	<input type="checkbox"/>	see well log							448.83	240 AF
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									

- \* Licensed drillers are required to attach a Department-supplied Well Tag, with a unique Well ID or Well Tag Number to all new or newly altered wells. Landowners can request a Well ID for existing wells that do not have one. The Well ID is intended to serve as a unique identification number for each well.
- \*\* A well log ID (e.g. MARI 1234) is assigned by the Department to each log in the agency's well log database. A separate well log is required for each subsequent alteration of the well.
- \*\*\* Source aquifer examples: Troutdale Formation, gravel and sand, alluvium, basalt, bedrock, etc.



RECEIVED BY OWRD  
 OCT 15 2014  
 SALEM, OR

Revised 2/1/2012 G-17942

Ground Water/5

WR

Special Order  
 Vol 93 Pg 440A/C

Exhibit A

**SECTION 4: WATER USE**

USE	PERIOD OF USE	ANNUAL VOLUME (ACRE-FEET)
Supplemental Irrigation	Irrigation Season	240

**Exempt Uses:** Please note that 15,000 gallons per day for single or group **domestic** purposes and 5,000 gallons per day for a single **industrial or commercial** purpose are exempt from permitting requirements.

**For irrigation use only:**

Please indicate the number of primary and supplemental acres to be irrigated (*must match map*).

Primary: \_\_\_\_\_ Acres                      Supplemental: 570 Acres

List the Permit or Certificate number of the underlying primary water right(s): 10900, 10904, 10922, 10926 (portions not already covered by existing supplemental ground water rights)

Indicate the maximum total number of acre-feet you expect to use in an irrigation season: 240

- If the use is **municipal or quasi-municipal**, attach **Form M**
  - If the use is **domestic**, indicate the number of households: \_\_\_\_\_
- If the use is **mining**, describe what is being mined and the method(s) of extraction: \_\_\_\_\_

**SECTION 5: WATER MANAGEMENT**

**A. Diversion and Conveyance**

What equipment will you use to pump water from your well(s)?

Pump (give horsepower and type): 30 hp Pioneer, centrifugal

Other means (describe): \_\_\_\_\_

Provide a description of the proposed means of diversion, construction, and operation of the diversion works and conveyance of water. \_\_\_\_\_

**B. Application Method**

What equipment and method of application will be used? (e.g., drip, wheel line, high-pressure sprinkler) flood

**C. Conservation**

Please describe why the amount of water requested is needed and measures you propose to: prevent waste; measure the amount of water diverted; prevent damage to aquatic life and riparian habitat; prevent the discharge of contaminated water to a surface stream; prevent adverse impact to public uses of affected surface waters.

water will be used only as needed to supplement available surface water; ground water use impacts will be mitigated with transfer of existing surface water irrigation rights to instream flow

**SECTION 6: STORAGE OF GROUND WATER IN A RESERVOIR**

If you would like to store ground water in a reservoir, complete this section (*if more than one reservoir, reproduce this section for each reservoir*).

Reservoir name: N/A Acreage inundated by reservoir: \_\_\_\_\_

Use(s): \_\_\_\_\_

Volume of Reservoir (acre-feet): \_\_\_\_\_ Dam height (feet, if excavated, write "zero"): \_\_\_\_\_

*Note: If the dam height is greater than or equal to 10.0' above land surface AND the reservoir will store 9.2 acre feet or more, engineered plans and specifications must be approved prior to storage of water.*

**SECTION 7: USE OF STORED GROUND WATER FROM THE RESERVOIR**

If you would like to use stored ground water from the reservoir, complete this section (if more than one reservoir, reproduce this section for each reservoir).

Annual volume (acre-feet): N/A

USE OF STORED GROUND WATER	PERIOD OF USE

**SECTION 8: PROJECT SCHEDULE**

Date construction will begin: Upon approval

Date construction will be completed: within one year

Date beneficial water use will begin: within five years

RECEIVED BY OWRD

OCT 15 2014

SALEM, OR

**SECTION 9: WITHIN A DISTRICT**

Check here if the point of diversion or place of use are located within or served by an irrigation or other water district.

Irrigation District Name <u>N/A</u>	Address	
City	State	Zip

**SECTION 10: REMARKS**

Use this space to clarify any information you have provided in the application (attach additional sheets if necessary).

See attached.



# Land Use Information Form



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

## NOTE TO APPLICANTS

In order for your application to be processed by the Water Resources Department (WRD), this Land Use Information Form must be completed by a local government planning official in the jurisdiction(s) where your water right will be used and developed. The planning official may choose to complete the form while you wait, or return the receipt stub to you. Applications received by WRD without the Land Use Form or the receipt stub will be returned to you. Please be aware that your application will not be approved without land use approval.

**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, exchange, permit amendment, or ground water registration modification, and **all** of the following apply:
  - a) The existing and proposed water use is located entirely within lands zoned for exclusive farm-use or within an irrigation district;
  - b) The application involves a change in place of use only;
  - c) The change does not involve the placement or modification of structures, including but not limited to water diversion, impoundment, distribution facilities, water wells and well houses; and
  - d) The application involves irrigation water uses only.

## NOTE TO LOCAL GOVERNMENTS

The person presenting the attached Land Use Information Form is applying for or modifying a water right. The Water Resources Department (WRD) requires its applicants to obtain land-use information to be sure the water rights do not result in land uses that are incompatible with your comprehensive plan. Please complete the form or detach the receipt stub and return it to the applicant for inclusion in their water right application. You will receive notice once the applicant formally submits his or her request to the WRD. The notice will give more information about WRD's water rights process and provide additional comment opportunities. You will have 30 days from the date of the notice to complete the land-use form and return it to the WRD. If no land-use information is received from you within that 30-day period, the WRD may presume the land use associated with the proposed water right is compatible with your comprehensive plan. Your attention to this request for information is greatly appreciated by the Water Resources Department. If you have any questions concerning this form, please contact the WRD's Customer Service Group at 503-986-0801.

# Land Use

# Information Form

RECEIVED BY OWRD



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

OCT 15 2014

Applicant: \_\_\_\_\_ First **SALEM, OR** Last \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Daytime Phone: \_\_\_\_\_

## A. Land and Location

Please include the following information for all tax lots where water will be diverted (taken from its source), conveyed (transported), and/or used or developed. 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.

Township	Range	Section	¼ ¼	Tax Lot #	Plan Designation (e.g., Rural Residential RR-5)	Water to be:			Proposed Land Use:
33S	7.5E	20	all			<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	Irr
						<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	
						<input checked="" type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	

List all counties and cities where water is proposed to be diverted, conveyed, and/or used or developed:

Klamath

## B. Description of Proposed Use

Type of application to be filed with the Water Resources Department:

- Permit to Use or Store Water   
  Water Right Transfer   
  Permit Amendment or Ground Water Registration Modification  
 Limited Water Use License   
  Allocation of Conserved Water   
  Exchange of Water

Source of water:  Reservoir/Pond     Ground Water     Surface Water (name) \_\_\_\_\_

Estimated quantity of water needed: 240     cubic feet per second     gallons per minute     acre-feet

Intended use of water:  Irrigation     Commercial     Industrial     Domestic for \_\_\_\_\_ household(s)  
 Municipal     Quasi-Municipal     Instream     Other \_\_\_\_\_

Briefly describe:

Supplemental irrigation from ground water.

**Note to applicant:** If the Land Use Information Form cannot be completed while you wait, please have a local government representative sign the receipt at the bottom of the next page and include it with the application filed with the Water Resources Department.

See bottom of Page 3. →

# For Local Government Use Only

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 that case, only the city planning agency must complete this form. This deals only with the local land-use plan. Do not include approval for activities such as building or grading permits.

**Please check the appropriate box below and provide the requested information**

- Land uses to be served by the proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s): \_\_\_\_\_.
- Land uses to be served by the proposed water uses (including proposed construction) involve discretionary land-use approvals as listed in the table below. (Please attach documentation of applicable land-use approvals which have already been obtained. Record of Action/land-use decision and accompanying findings are sufficient.) **If approvals have been obtained but all appeal periods have not ended, check "Being pursued."**

Type of Land-Use Approval Needed (e.g., plan amendments, rezones, conditional-use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	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 checked="" type="checkbox"/> Being Pursued <input checked="" 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

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

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Phone: \_\_\_\_\_ Date: \_\_\_\_\_

Government Entity: \_\_\_\_\_

**Note to local government representative:** Please complete this form or sign the receipt below and return it to the applicant. If you sign the receipt, 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**

Applicant name: \_\_\_\_\_

City or County: \_\_\_\_\_ Staff contact: \_\_\_\_\_

Signature: \_\_\_\_\_ Phone: \_\_\_\_\_ Date: \_\_\_\_\_

Date \_\_\_\_\_

(For staff use only)



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

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

- SECTION 1: \_\_\_\_\_
- SECTION 2: \_\_\_\_\_
- SECTION 3: \_\_\_\_\_
- SECTION 4: \_\_\_\_\_
- SECTION 5: \_\_\_\_\_
- SECTION 6: \_\_\_\_\_
- SECTION 7: \_\_\_\_\_
- SECTION 8: \_\_\_\_\_
- SECTION 9: \_\_\_\_\_
- Land Use Information Form \_\_\_\_\_
- Provide the legal description of: (1) the **property** from which the water is to be diverted, (2) any property crossed by the proposed ditch, canal or other work, and (3) any property on which the water is to be used as depicted on the map.
- Fees \_\_\_\_\_

RECEIVED BY OWRD

OCT 15 2014

SALEM, OR

**MAP**

- Permanent quality and drawn in ink
- Even map scale **not less than 4" = 1 mile** (example: 1" = 400 ft, 1" = 1320 ft, etc.)
- North Directional Symbol
- Township, Range, Section, Quarter/Quarter, Tax Lots
- Reference corner on map
- Location of each well, and/or dam if applicable, by reference to a recognized public land survey corner (distances north/south and east/west). Each well must be identified by a unique name and/or number.
- Indicate the area of use by Quarter/Quarter and tax lot clearly identified
- Number of acres per Quarter/Quarter and hatching to indicate area of use if for primary irrigation, supplemental irrigation, or nursery
- Location of main canals, ditches, pipelines or flumes (if well is outside of the area of use)
- Other \_\_\_\_\_

OCT 15 2014

SALEM, OR

**BEFORE THE WATER RESOURCES DEPARTMENT  
OF THE  
STATE OF OREGON**

In the Matter of Instream Transfer )  
Application T-11375, Klamath County )  
 )  
 )  
 )  
 )

FINAL ORDER APPROVING A  
CHANGE IN PLACE OF USE AND  
CHARACTER OF USE AND PARTIAL  
CANCELLATION OF A WATER  
RIGHT

**Authority**

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications. OAR Chapter 690, Division 077 provides additional criteria for evaluating transfers to instream water rights.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

**Applicant**

JACOX RANCHES, OREG., LTD  
1945 MORNING GROVE COURT  
RENO, NV 89523

**Agent**

CHRYSTEN LAMBERT  
KLAMATH BASIN RANGELAND TRUST (KBRT)  
700 MAIN STREET, SUITE 201A  
KLAMATH FALLS, OR 97601

**Findings of Fact****Background**

1. On March 19, 2012, JaCox Ranches filed an application to change the place of use and character of use under Certificates 10900, 10901, 42822, and 8679 to instream use. The Department assigned the application number T-11375. The application included the proposed cancellation of certain portions of Certificates 10900 and 42822.
2. The application identifies Chrysten Lambert, Klamath Basin Rangeland Trust (KBRT), as the agent for the applicant.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

3. Notice of the application for transfer was published on March 27, 2012, pursuant to OAR 690-380-4000. On April 16, 2012, a request was received from Martha Pagel, attorney representing Roger Nicholson, for a copy of the Preliminary Determination, when issued by the Department. No additional comments were filed in response to the notice.
4. On January 14, 2013, the Department sent the applicant and the KBRT a deficiency letter identifying a number of items that needed to be addressed in order to complete and clarify the transfer application. Deficiencies included identification of remaining rights on certain application maps, clarification of the shaping of the place of use on certain application maps, identification of possible layered water rights not included in the transfer application, a description of the system capacity for Certificates 10901 and 8679, request for affidavits of cancellation for portions of those rights proposed to be cancelled, and clarification of evidence of use for Certificate 10900.
5. Revised application materials and information necessary to complete and clarify the transfer application were received on March 5, 2013.
6. Follow up correspondence (via e-mail) requesting additional information and modifications was sent to the KBRT on June 17 and 18, 2013.
7. One of the items identified by the Department was the need for clarification of whether the transfer included the domestic and stock portions of Certificates 10900, 10901 and 8679. The agent for the applicant clarified that the transfer application does include these uses as associated with the irrigation use during the irrigation season. This was affirmed in correspondence from the KBRT on June 19, 2013.
8. On June 27, 2013, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11375 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 27, 2013, for the applicant to respond. The cover letter also identified additional information, consistent with previous e-mail correspondence, as well as information necessary to demonstrate that the applicant is authorized to pursue the transfer. On July 2, 2013, the applicant provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
9. Other information requested by the Department was received on July 3, 8 and 31, 2013, August 1, 2013, and August 12, 2013.
10. On July 15 and July 16, 2013, the Department requested additional information (via e-mail) to clarify certain portions of the application associated with Certificates 10900, 10901 and 8679, and the cancellation of Certificates 7641 and 45299.
11. During the review process, the Department identified several potentially layered rights associated with Certificate 10900, being Certificates 42754, 42755, 45299, and 7641, not included as part of the transfer application. Certificates 42754 and 42755 also appear to affect a portion of the footprint for Certificates 10901, 10900 and 8679. The agent (KBRT) for the applicant identified as part of revised application materials received on March 5, 2013, that the overlapping portions of 45299 and 7641 are to be cancelled. Affidavits of

OCT 15 2014

SALEM, OR

Cancellation were received on March 5, 2013, and updated affidavits on July 31, 2013, and updated maps showing the portions to be cancelled and remaining under each right were received on August 1, 2013.

On June 19, 2013, the KBRT requested that the portion of Certificate 10900 that overlaps with Certificates 47254 and 42755 be removed from the transfer application. On July 3, 2013, the KBRT also requested that the affected portions of Certificates 10901 and 8679 also be removed from the transfer application. Final revised application maps for Certificates 10900, 10901, and 8679 were also received on August 1 and 12, 2013. Certificates 42754 and 42755 appear to overlap with 2.2 acres involved in the original transfer application request.

12. Based upon modifications made to the portions of Certificates 10900, 10901, 8679, and 42822 proposed for transfer to instream use, on July 3, 2013, the KBRT amended the description of the requested instream use to be created from each certificate.
13. One of the issues identified in correspondence to the KBRT was with the request to cancel portions of Certificates 10900 and 42822, including portions located within Nicholson Road, which runs along the southern section line of Section 18 (T33S, R7.5E) and Section 13 (T33S, R6E). An affidavit for cancellation of a portion of Certificate 10900 was received on March 5, 2013. An affidavit of cancellation was not received for Certificate 42822. However, the Department has identified that the applicant does not have sufficient authorization to pursue the cancellation of those portions located within the roadway. These portions also may not be included as part of the transfer application. To cancel or transfer the portions of these rights located within Nicholson Road, authorization is needed from the appropriate Klamath County Department.

On August 1, 2013, the KBRT provided revised application maps for Certificates 10900 and 42822 that differentiate the portions within the roadway to be excluded from the transfer and that show the portions proposed for cancellation located on JaCox Ranch property. The legal description for the property involved in the transfer application excludes the county road and the Klamath County tax lot map identifies the area of the road as 60 feet wide. Given the location of the road in each of the affected quarter quarters, the location of the water right, the size of the road based on the County tax lot map, the Department has identified that the portions of Certificate 10900 and 42822 that do not appear to be available for transfer is greater than the acres shown on the revised applications maps. The revised maps identified a total of 5.7 acres under Certificate 10900 and 0.46 acre under Certificate 42822 as being located within Nicholson Road. Without additional information to determine otherwise, the portions located in the roadway, as identified by the Department, that may not be cancelled or transferred by the applicant appear to be as follows:

Certificate 10900

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	13	SE SW	0.9
33 S	6 E	WM	13	SW SE	1.8
33 S	6 E	WM	13	SE SE	1.8
33 S	7.5 E	WM	18	SW SW	1.8

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	7.5 E	WM	18	SE SW	1.6
				Total	7.9

Certificate 42822

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	13	SE SW	0.9

14. On August 1 and 12, 2013, the KBRT, on behalf of the applicant, provided final revised application maps showing the portion of each right proposed for transfer, proposed to remain, and proposed to be cancelled. Revised application maps identify that the portion of Certificate 10900 proposed for transfer is 720.7 acres, Certificate 10901 is 161.6 acres, Certificate 42822 is 56.14 acres and Certificate 8679 is 94.3 acres. Based upon review of the revised application materials and Finding of Fact No. 13, the Department has determined that the number of acres available for transfer under Certificates 10900 and 42822 is less than the number of acres proposed for transfer. This is reflected in Findings of Fact No. 20 and No. 31.
15. On August 8, 2013, the Department mailed a copy of a revised draft Preliminary Determination proposing to approve Transfer Application T-11375 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of September 6, 2013, for the applicant to respond. On August 14, 2013, the agent, on behalf of the applicant, requested that the Department issue the Preliminary Determination.
16. Shortly prior to issuance of this Preliminary Determination, an additional water right was identified appurtenant to a portion of the lands to be transferred under Certificates 10900 and 42822. This water right is described in the Wood River Decree and has a 1900 priority date. However, a certificate has not yet been issued for this right consistent with the Decree. On August 26, 2013, the Department received affidavits to cancel the portion of this decreed right that is layered with Certificate 10900. Original affidavits of cancellation were received on August 27, 2013.
17. On August 26, 2013, the Department issued a Preliminary Determination proposing to approve Transfer T-11375 and mailed a copy to the applicant, agent and Martha Pagel, on behalf of Roger Nicholson. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on August 27, 2013, and in the Herald and News newspaper on August 30 and September 6, 2013 pursuant to ORS 540.520 and OAR 690-380-4020. A protest was filed on October 7, 2013, by Martha Pagel, on behalf of Roger Nicholson and his related business entities of Productive Timberland LLC and NBCC LLC. The protest was accompanied by Proof of Service to both JaCox Ranch and the Klamath Basin Rangeland Trust.
18. On July \*\*, 2014, to resolve the protest a Settlement Agreement was signed by JaCox Ranch, Roger Nicholson, the Klamath Basin Rangeland Trust and the Department. Based upon this Settlement Agreement, up to 1.0 cubic foot per second and 240.0 acre-feet of this instream transfer may be used as mitigation for a groundwater permit application filed by Roger Nicholson. The protest was withdrawn on \*\*\*, 2014.



19. During the process of evaluating the protest, the Department identified a few errors in calculating the quantities that may be protected instream. Also, based upon continued evaluation, the Department also identified a scrivener's error in the description of the point of diversion for Certificate 10901. In addition, the Department also identified a discrepancy in the River Mile locations identified for return flows for Certificates 10900 and 8679. This Final Order clarifies the quantities that may be protected instream, the location of return flows, and the location of the point of diversion for Certificate 10901.

20. The portion of the first right to be transferred has been modified from the original transfer application and is as follows:

**Certificate:** 10900 in the name of JAMES T. DIXON (confirmed by Wood River (F) in the order record of the State Engineer in volume 12, at page 269)

**Use:** IRRIGATION of 718.45 acres and the associated portion of DOMESTIC and LIVESTOCK use during the irrigation season

**Priority Date:** 1891

**Rate:** 14.37 CUBIC FEET PER SECOND (CFS) prior to July 20  
8.98 CFS thereafter

**Limit/Duty:** The amount of water to which such right is entitled, for the purposes of the aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1/50<sup>th</sup> of one cubic foot per second per acre irrigated prior to July 20, and 1/80<sup>th</sup> of one cubic foot per second per acre irrigated thereafter, and shall not exceed 5.0 acre-feet per acre during the irrigation season.

**Period of Use:** April 1 to October 1

**Source:** SEVENMILE CREEK, tributary to Agency Lake

**Authorized Point of Diversion:** Not described on the Certificate

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	13	SW NE	36.80
33 S	6 E	WM	13	SE NE	26.40
33 S	6 E	WM	13	SE NW	14.40
33 S	6 E	WM	13	NE SW	30.00
33 S	6 E	WM	13	SE SW	27.90
33 S	6 E	WM	13	NE SE	39.90
33 S	6 E	WM	13	NW SE	39.85
33 S	6 E	WM	13	SW SE	37.70
33 S	6 E	WM	13	SE SE	38.20
33 S	6 E	WM	24	NE NE	20.00
33 S	6 E	WM	24	NW NE	40.00
33 S	6 E	WM	24	SW NE	39.90
33 S	6 E	WM	24	SE NE	20.00
33 S	6 E	WM	24	NE NW	31.20
33 S	6 E	WM	24	NW NW	8.80
33 S	6 E	WM	24	SW NW	22.40
33 S	6 E	WM	24	SE NW	38.40
33 S	6 E	WM	24	NE SW	20.00
33 S	6 E	WM	24	NW SW	6.00

RECEIVED BY OWRD

OCT 15 2014

SALEM, OR

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	24	NE SE	19.70
33 S	6 E	WM	24	NW SE	35.00
33 S	6 E	WM	24	SW SE	5.00
33 S	6 E	WM	24	SE SE	8.80
33 S	7.5 E	WM	18	NE SW	9.20
33 S	7.5 E	WM	18	NW SW	28.00
33 S	7.5 E	WM	18	SW SW	37.70
33 S	7.5 E	WM	18	SE SW	37.20
<b>Total Acres</b>					<b>718.45</b>

21. Certificate 10900 does not describe the location of the Point of Diversion. The Wood River Decree describes the name of the ditch associated with this water right as the Upper Sevenmile or Upper Cox Ditch. Information provided with the transfer application, identifies that the Point of Diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	6 E	WM	11	SE SE	150 FEET NORTH AND 960 FEET WEST FROM THE SE CORNER OF SECTION 11

22. A total of 3592.25 acre-feet of water may be beneficially used annually under the existing right.
23. The applicant is also proposing to transfer the entirety of Certificates 10901 and 8679 to instream use. The Department has determined that a portion of the lands on which Certificates 10901 and 8679 (supplemental to Certificate 10901) are appurtenant are sub-irrigated from Sevenmile Creek during the irrigation season and may not be transferred to instream use as identified in Finding of Fact No. 43. Therefore, the portions of Certificates 10901 and 8679 that may be transferred have been reduced. This reduction is reflected in the findings below describing the portion of each right available for transfer.
24. The portion of the second right to be transferred has been modified based upon Findings of Fact No. 11, 23 and 43 and is as follows:

**Certificate:** 10901 in the name of JAMES T DIXON (confirmed by Wood River (F) in the order record of the State Engineer in volume 12, at page 269)

**Use:** IRRIGATION of 155.4 acres and the associated portion of DOMESTIC and LIVESTOCK use during the irrigation season

**Priority Date:** 1898

**Rate:** 3.11 CUBIC FEET PER SECOND (CFS) prior to July 20  
1.94 CFS thereafter

**Limit/Duty:** The amount of water to which this right is entitled, for the purposes of the aforesaid, is limited to 1/50<sup>th</sup> of one cubic foot per second per acre irrigated prior to July 20, and 1/80<sup>th</sup> of one cubic foot per second per acre irrigated thereafter, and shall not exceed 5.0 acre-feet per acre during the irrigation season.

**Period of Use:** April 1 to October 1

**Source:** SEVENMILE CREEK, tributary to Agency Lake

**Authorized Point of Diversion:** Not described on the Certificate.

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	24	SW NW	17.30
33 S	6 E	WM	24	NE SW	20.00
33 S	6 E	WM	24	NW SW	20.00
33 S	6 E	WM	24	SW SW	11.00
33 S	6 E	WM	24	SE SW	37.80
33 S	6 E	WM	24	NW SE	5.00
33 S	6 E	WM	24	SW SE	35.00
33 S	6 E	WM	24	SE SE	9.30
<b>Total Acres</b>					<b>155.40</b>

RECEIVED BY OWRD

OCT 15 2014

SALEM, OR

25. Certificate 10901 does not describe the location of the Point of Diversion. The Wood River Decree describes the name of the ditch associated with this water right as the Melhase-Kingdon Ditch. Information provided with the transfer application, identifies that the Point of Diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	6 E	WM	24	SW NW	1875 FEET SOUTH AND 390 FEET EAST FROM THE NW CORNER OF SECTION 24

26. A total of 777.0 acre-feet of water may be beneficially used annually under the existing right.
27. The portion of the third right to be transferred has been modified based upon Findings of Fact No. 11, 23 and 43 and is as follows:

**Certificate:** 8679 in the name of JAS T. DIXON (perfected under Permit S-9371)  
**Use:** IRRIGATION OF 88.1 ACRES  
**Priority Date:** SEPTEMBER 25, 1928  
**Rate:** 1.19 CUBIC FEET PER SECOND  
**Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent in case of rotation.

**Period of Use:** May 1 to October 1

**Source:** BLUE SPRINGS, tributary to SEVENMILE CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	6 E	WM	23	NE SE	NONE GIVEN
33 S	6 E	WM	24	NW SW	NONE GIVEN

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	24	SW SW	11.00
33 S	6 E	WM	24	SE SW	37.80
33 S	6 E	WM	24	SW SE	30.00

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	24	SE SE	9.30
<b>Total Acres</b>					<b>88.10</b>

28. Certificate 8679 does not provide measured distances for the location of the point of diversion. Rather the certificate, based upon review, identifies the general location of Blue Springs. Based upon information provided by the agent and the revised transfer application map, the POD is more accurately located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	6 E	WM	24	NW SW	1545 FEET NORTH AND 95 FEET EAST FROM THE SW CORNER OF SECTION 24

29. The Wood River Decree clarifies that Certificate 8679 is a supplemental irrigation use.
30. Certificate 8679 does not specify an annual duty per acre. The duty of other rights involved in this transfer, based on the Wood River Decree, is limited to 5.0 acre-feet per acre. However, the season of use associated with Certificate 8679 limits the maximum volume of water that could be diverted over the course of the season to 337.5 AF given a rate limit of up to 1.19 CFS. This is equivalent to 3.83 acre-feet per acre. Given that this is a supplemental use, it is a reasonable amount considering beneficial use without waste.
31. The portion of the fourth right to be transferred has been modified based upon Finding of Fact No. 13 and is as follows:

**Certificate:** 42822 in the name of ANDREW AND DOROTHY POPSON (perfected under Permit S-35790)

**Use:** IRRIGATION of 55.7 ACRES

**Priority Date:** SEPTEMBER 24, 1971

**Rate:** 0.98 CUBIC FOOT PER SECOND, with any deficiency in the available supply from drainage to be made up by appropriation from Sevenmile Creek.

**Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-FIFTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 5.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** DRAINAGE DITCH and Sevenmile Creek, tributary to Agency Lake

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	6 E	WM	11	SE SE	Sevenmile Creek - 150 FEET NORTH AND 960 FEET WEST FROM SE CORNER OF SECTION 11
33 S	6 E	WM	13	SE NW NE SW SE SW	Drainage - DRAINAGE COLLECTED BETWEEN POINTS 3320 FEET NORTH AND 20 FEET NORTH BOTH FROM SOUTHWEST CORNER OF THE SE SW OF SECTION 13

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	13	SE NW	13.60
33 S	6 E	WM	13	NE SW	10.00
33 S	6 E	WM	13	SE SW	10.30
33 S	6 E	WM	24	NE NW	8.80
33 S	6 E	WM	24	NW NW	13.00
<b>Total Acres</b>					<b>155.4</b>

RECEIVED BY OWRD

OCT 15 2014

SALEM, OR

32. A total of 278.5 acre-feet of water may be beneficially used annually under the existing right.
33. Certificate 42822 does not specify an irrigation season. However, the irrigation season, consistent with the Wood River Decree, is April 1 to October 1.
34. Transfer Application T-11375 proposes to change the character of use to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.
35. Transfer Application T-11375 proposes to change the place of use of the right to create an instream reach from each of the authorized Points of Diversion, described above in Findings of Fact No. 21, 25, 28 and 31 to the mouth of Sevenmile Creek.
36. As modified by the KBRT on July 3, 2013, the applicant proposes the quantities water to be transferred instream be protected as follows:

Certificate	Period	Rate (cfs)	Volume (acre-feet)
10900	April 1 through July 19	10.54	3602.0
	July 20 through September 30	9.00	
10901	April 1 through July 19	2.37	817.5
	July 20 through September 30	2.07	
42822	May 11 through September 30	0.99	280.8
8679 (supplemental)	May 11 through September 30	1.32	374.4

37. The applicant has requested that any instream water right established as a result of this instream transfer be additive to existing instream water rights for the same reach established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process). The applicant has also requested that any instream water rights established as a result of this instream transfer replace a portion of any existing instream rights established pursuant to ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency instream application process), with a more senior priority date.

**Instream Transfer Review Criteria (OAR 690-77-0075 and 690-380-4010)**

38. Each of the rights proposed for transfer has been leased instream under IL-479. This instream lease began in 2005 and is scheduled to terminate on September 30, 2018. Therefore, water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
39. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-11375.
40. The applicant has requested to protect water instream under Certificate 8679 from the POD on Blue Springs, through the natural channel for Blue Springs and into Sevenmile Creek to its mouth. An instream reach is generally from the point of diversion to the mouth of the source stream (Blue Springs) but may be protected further if measurable in the receiving stream (Sevenmile Creek) (OAR 690-077-0015 (8)). The quantity that may be transferred to instream use from Blue Springs is measurable into Sevenmile Creek and may be protected instream in Sevenmile Creek.
41. The applicant has also requested to protect water instream under Certificate 42822, which has an identified source of drainage collected in a ditch with deficiency in supply made up from Sevenmile Creek. The Department has identified that with irrigation discontinuing as a result of this transfer, there will not likely be any water in the drainage ditch. Therefore, the source of water for the instream use will be Sevenmile Creek with the instream use beginning at the Sevenmile Creek POD described in Finding of Fact No. 31. This is also consistent with the definition of an instream water right, which by definition does not require a diversion or any other means of physical control over the water. ORS 537.322(3)
42. The applicant has requested to protect water instream from the PODs as described in Findings of Fact No. 21, 25, 28 and 31 to the mouth of Sevenmile Creek. A portion of the water diverted under Certificates 10900, 10901, and 8679 returns to Sevenmile Creek within the proposed reach and is available to downstream water right holders. To prevent injury to downstream water right holders and enlargement, the quantity of water that may be protected instream requires modification to account for return flows.

The place of use described below for Certificates 10900, 10901 and 8679 is located in close proximity to Sevenmile Creek and will have approximately 20.0% return flows along the creek.

a) Certificate 10900

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	24	SW NW	6.00
33 S	6 E	WM	24	NW SW	6.00
<b>Total Acres</b>					<b>12.00</b>

Return flows associated with Certificate 10900 should be accounted for at approximately River Mile (RM) 15.52, where the lands intersect Sevenmile Creek in the SW NW of Section 24.

RECEIVED BY OWRD

OCT 15 2014

SALEM, OR

b) Certificate 10901

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	24	SW NW	17.30
33 S	6 E	WM	24	NW SW	20.00
33 S	6 E	WM	24	SW SW	9.00
33 S	6 E	WM	24	SE SW	17.80
<b>Total Acres</b>					<b>64.10</b>

Return flows associated with Certificate 10901 should be accounted for at the Melhase-Kingdon Ditch, located as described in Finding of Fact No. 25.

c) Certificate 8679

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	24	SW SW	9.00
33 S	6 E	WM	24	SE SW	17.80
<b>Total Acres</b>					<b>26.80</b>

Return flows associated with Certificate 8679 should be accounted for at approximately RM 14.62, where the lands intersect Sevenmile Creek in the SW SW of Section 24.

43. The applicant is also proposing to transfer the entirety Certificates 10901 and 8679 to instream use. The Department has determined that a portion of the lands on which Certificates 10901 and 8679 (supplemental to Certificate 10901) are appurtenant are sub-irrigated from Sevenmile Creek during the irrigation season. Use of water under the existing water rights is subject to beneficial use without waste in accordance with ORS 536.310. These lands are located in close proximity to Sevenmile Creek and will continue to be sub-irrigated from the creek upon completion of the transfer application. Sevenmile Creek is the primary source of water for the following 6.2 acres under Certificate 10901 that will continue to receive water from the same source:

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	24	SW SW	4.00
33 S	6 E	WM	24	SE SW	2.20

Since use may not be suspended as a result of sub-irrigation from the same source, the above described portion of Certificate 10901 may not be transferred to instream use without enlargement of the right. Enlargement includes, by definition, failing to keep the original place of use from receiving water from the same source. OAR 690-380-0100 (2). Subsequently, the associated portion of supplemental Certificate 8679 may not be transferred to instream use as well.

44. The modified instream use, as described in Finding of Fact No. 36, requires additional modification to account for amendments to the application, amount of sub-irrigated acres not available for transfer under Certificates 10901 and 8679, and return flows.
45. Based on the above findings, modifications to the application affecting the portion of each right proposed for transfer and Finding of Fact No. 13, the Department has determined the quantities that may be transferred and protected instream are as follows:

**Instream Use resulting from Transfer of Certificate 10900**

Sevenmile Creek, tributary to Agency Lake

**Instream Reach No. 1:** From the POD (as described in Finding of Fact No. 21) to RM 15.52

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
1891	10.50	2290.91	April 1 through July 19
	8.98	1300.24	July 20 through September 30
<b>Total Volume</b>		<b>3591.15</b>	

**Instream Reach No. 2:** From RM 15.52 to the mouth of Sevenmile Creek

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
1891	10.46	2283.25	April 1 through July 19
	8.95	1295.90	July 20 through September 30
<b>Total Volume</b>		<b>3579.15</b>	

**Instream Use resulting from Transfer of Certificate 10901**

Sevenmile Creek, tributary to Agency Lake

**Instream Reach No. 1:** At the POD (as described in Finding of Fact No. 25)

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
1898	2.27	496.10	April 1 through July 19
	1.94	280.90	July 20 through September 30
<b>Total Volume</b>		<b>777.00</b>	

**Instream Reach No. 2:** From immediately below the POD to the mouth of Sevenmile Creek

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
1898	2.08	455.17	April 1 through July 19
	1.78	257.73	July 20 through September 30
<b>Total Volume</b>		<b>712.90</b>	



OCT 15 2014

**Instream Use resulting from Transfer of Certificate 8679  
(Supplemental to Certificate 10901)**

SALEM, OR

Blue Springs, tributary to Sevenmile Creek

**Instream Reach No. 1:** From the POD (as described in Finding of Fact No. 28) to the mouth of Blue Springs and into Sevenmile Creek to RM 14.62

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
9/25/1928	1.19	337.50	May 11 through September 30

**Instream Reach No. 2:** From RM 14.62 to the mouth of Sevenmile Creek

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
9/25/1928	1.12	317.08	May 11 through September 30

Certificate 8679 is supplemental to Certificate 10901. The portion of Certificate 8679 converted to instream use shall only be protected instream if the full rate and duty is not available under the primary instream use created as a result of the transfer of Certificate 10901.

**Instream Use resulting from Transfer of Certificate 42822**

Sevenmile Creek, tributary to Agency Lake

**Instream Reach:** From the POD on Sevenmile Creek (as described in Finding of Fact No. 31) to the mouth of Sevenmile Creek

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
9/24/1971	0.98	278.5	May 11 through September 30

46. The proposed changes, as modified, would not result in enlargement of the rights.
47. The proposed changes, as modified, would not result in injury to other water rights.
48. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
49. The protection of flows within the proposed reach is appropriate, considering:
  - a) The instream water rights begin at the recorded points of diversion;
  - b) The location of confluences with other streams downstream of the points of diversion;
  - c) There are no known areas of natural loss of streamflow to the river bed downstream from the points of diversion; and
  - d) Return flows would re-enter the within the reach on Sevenmile Creek. Return flows associated with Certificates 10900, 10901 and 8679 have been accounted for as

described in Findings of Fact No. 42 and 45. Any return flows resulting from the exercise of Certificate 42822 would re-enter the river downstream of the reach of the instream water right.

50. Presently there are no existing certificated instream water rights on Blue Springs or Sevenmile Creek. There is an instream water right application, filed by the Oregon Department of Fish and Wildlife (ODFW), pending for Sevenmile Creek. This application is requesting the use of water for required stream flows for rainbow, brown and brook trout for migration, spawning, egg incubation, fry emergence and juvenile and adult rearing. This application, if approved, will have a priority date of October 26, 1990.
51. The flows requested for the pending instream water right application within the reach may be sufficient to protect the monthly quantities of water necessary for fish habitat but may not always be met due to existing senior consumptive uses on Sevenmile Creek.
52. By replacing a portion of any instream water right established by the application filed by ODFW, the instream rights created as a result of this transfer will provide protection for stream flows identified as necessary for fish habitat under earlier priority dates.
53. The applicant has also requested that any instream rights created as a result of this transfer be additive to other instream rights created as a result of instream transfers, instream leases and allocations of conserved water. By adding to other instream water rights for the same location, the instream rights will provide protection for additional stream flows necessary for fish and wildlife habitat.
54. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose and do not exceed the estimated average natural flow.
55. There is an instream lease, IL-479, currently in effect for the portions of the rights proposed for transfer to instream use. Renewal of this instream lease was approved by the Department on April 15, 2014, as evidenced by Special Order Volume 92, Page 125. The instream lease is scheduled to terminate on September 30, 2018, and includes a condition allowing for early termination of the lease order. This lease must be terminated before Transfer Transfer T-11375 may be approved. Also, the date on which this instream transfer may be approved may be affected by the date on which the existing instream lease is terminated to prevent injury and enlargement.

***Partial Cancellation of a Water Right***

56. ORS 537.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.
57. On March 5, 2013, the applicant submitted an affidavit to voluntarily cancel a portion of Certificate 10900 contingent upon approval of Transfer Application T-11375. As identified in Finding of Fact No. 13, the Department has identified that a portion of the right proposed

for cancellation may not be cancelled by the applicant. Based upon evaluation of a revised application map and the original affidavit of cancellation, the applicant has abandoned any and all interest in the portion of water right Certificate 10900 described as follows:

**Certificate:** 10900 in the name of JAMES T. DIXON (confirmed by Wood River (F) in the order record of the State Engineer in volume 12, at page 269)

**Use:** Irrigation of 1.65 acres and the associated portion of DOMESTIC and LIVESTOCK use during the irrigation season

**Priority Date:** 1891

**Limit/Duty:** The amount of water to which such right is entitled, for the purposes of the aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1/50<sup>th</sup> of one cubic foot per second per acre irrigated prior to July 20, and 1/80<sup>th</sup> of one cubic foot per second per acre irrigated thereafter, and shall not exceed 5.0 acre-feet per acre during the irrigation season.

**Period of Use:** April 1 to October 1

**Source:** SEVENMILE CREEK, tributary to Agency Lake

**Authorized Point of Diversion:** Not described on the Certificate

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	13	NW SE	0.15
33 S	6 E	WM	13	SW SE	0.50
33 S	7.5 E	WM	18	SW SW	0.50
33 S	7.5 E	WM	18	SE SW	0.50

RECEIVED BY OWRD

OCT 15 2014

SALEM, OR

58. On March 5, 2013, the applicant submitted an affidavit to voluntarily cancel a portion of Certificate 7641 contingent upon approval of Transfer Application T-11375. A revised affidavit and map showing the portion to be cancelled was submitted on July 31 and August 1, 2013. The applicant has abandoned any and all interest in the portion of water right Certificate 7641 described as follows:

**Certificate:** 7641 in the name of JAMES T. DIXON (perfected under Permit S-8029)

**Use:** IRRIGATION of 27.2 ACRES

**Priority Date:** JUNE 25, 1927

**Rate:** 0.34 CFS

**Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent in case of rotation.

**Source:** ANNA CREEK (also known as Annie Creek), tributary to the WOOD RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
32 S	7.5 E	WM	31	NE SW

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	7.5 E	WM	18	NE SW	9.20
33 S	7.5 E	WM	18	NW SW	4.00
33 S	7.5 E	WM	18	SE SW	14.00

59. On March 5, 2013, the applicant submitted an affidavit to voluntarily cancel a portion of Certificate 45299 contingent upon approval of Transfer Application T-11375. A revised affidavit and map showing the portion to be cancelled was submitted on July 31 and August 1, 2013. The applicant has abandoned any and all interest in the portion of water right Certificate 45299 described as follows:

**Certificate:** 45299 in the name of R. S. DIXON (perfected under Permit S-8028)  
**Use:** IRRIGATION of 18.76 ACRES  
**Priority Date:** JUNE 25, 1927  
**Rate:** 0.23 CFS  
**Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, and shall conform to such reasonable rotation system as may be ordered by the proper state officer.  
**Source:** ANNA CREEK (also known as ANNIE CREEK), tributary to the WOOD RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
32 S	7.5 E	WM	31	SW NW

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	13	SE NE	18.76

60. On August 27, 2013, the applicant submitted an affidavit to voluntarily cancel a portion of a water right described in the Wood River Decree, not yet certificated, contingent upon approval of Transfer Application T-11375. During the review process, the Department identified that there is a typo on the affidavit. The acreage identified in the NE NE of Section 13 is actually within the SE NE of Section 13. The applicant has abandoned any and all interest in the portion of this water right described as follows:

**Water Right:** Proof No. 11, page 45, of the State Engineer's Findings and Order of Determination in the name of James Dixon (Confirmed and clarified by Wood River (F) in the order record of the State Engineer in volume 12, at page 269)  
**Use:** IRRIGATION of 45.96 ACRES  
**Priority Date:** 1900  
**Source:** ANNA CREEK (also known as ANNIE CREEK), tributary to the WOOD RIVER

OCT 15 2014

SALEM, OR

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	13	SE NE	18.76
33 S	6 E	WM	13	SW NE	36.8
33 S	6 E	WM	13	SE NW	28.0
33 S	7.5 E	WM	18	NE SW	9.20
33 S	7.5 E	WM	18	NW SW	4.00
33 S	7.5 E	WM	18	SE SW	14.00

**Conclusions of Law**

The changes in character of use and place of use to instream use proposed in Transfer Application T-11375 are consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075 and the abandoned rights should be cancelled.

**Now, therefore, it is ORDERED:**

1. The changes in character of use and place of use to instream use proposed in Transfer Application T-11375 are approved. The portions of the rights that have been abandoned are cancelled.
2. Instream lease IL-479 shall be terminated in coordination with the issuance of a final order, contingent upon approval of this transfer, unless previously terminated by the parties to the lease or it terminates on its own on September 30, 2018.
3. Water right certificates 10900, 10901, 42822, and 8679 are cancelled. New certificates confirming the instream water rights shall be issued. New certificates will be issued, as needed, describing the portions of the rights not affected by this transfer and cancellation.
4. Water Right Certificates 45299 and 7641 and Proof No. 11, page 45, of the State Engineer's Findings and Order of Determination in the name of James Dixon (Confirmed and clarified by Wood River (F) in the order record of the State Engineer in volume 12, at page 269) are also cancelled. New certificates will be issued describing the portions of the rights not affected by this cancellation.
5. The instream water rights shall provide for the protection of stream flows as follows:

**Instream Use resulting from Transfer of Certificate 10900**

Sevenmile Creek, tributary to Agency Lake

**Instream Reach No. 1:** From the POD (as described in Finding of Fact No. 21) to RM 15.52

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
1891	10.50	2290.91	April 1 through July 19
	8.98	1300.24	July 20 through September 30
<b>Total Volume</b>		<b>3591.15</b>	

**Instream Reach No. 2: From RM 15.52 to the mouth of Sevenmile Creek**

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
1891	10.46	2283.25	April 1 through July 19
	8.95	1295.90	July 20 through September 30
Total Volume		3579.15	

**Instream Use resulting from Transfer of Certificate 10901**

Sevenmile Creek, tributary to Agency Lake

**Instream Reach No. 1: At the POD (as described in Finding of Fact No. 25)**

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
1898	2.27	496.10	April 1 through July 19
	1.94	280.90	July 20 through September 30
Total Volume		777.00	

**Instream Reach No. 2: From immediately below the POD to the mouth of Sevenmile Creek**

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
1898	2.08	455.17	April 1 through July 19
	1.78	257.73	July 20 through September 30
Total Volume		712.90	

**Instream Use resulting from Transfer of Certificate 8679**

(Supplemental to Certificate 10901)

Blue Springs, tributary to Sevenmile Creek

**Instream Reach No. 1: From the POD (as described in Finding of Fact No. 28) to the mouth of Blue Springs and into Sevenmile Creek to RM 14.62**

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
9/25/1928	1.19	337.50	May 11 through September 30

**Instream Reach No. 2: From RM 14.62 to the mouth of Sevenmile Creek**

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
9/25/1928	1.12	317.08	May 11 through September 30

Certificate 8679 is supplemental to Certificate 10901. The portion of Certificate 8679 converted to instream use shall only be protected instream if the full rate and duty is not available under the primary instream use created as a result of the transfer of Certificate 10901.

**Instream Use resulting from Transfer of Certificate 42822**

Sevenmile Creek, tributary to Agency Lake

**Instream Reach:** From the POD on Sevenmile Creek (as described in Finding of Fact No. 31) to the mouth of Sevenmile Creek

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
9/24/1971	0.98	278.5	May 11 through September 30

6. Water rights upstream of the original points of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original points of diversion.
7. Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original points of diversion.
8. The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.
9. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 10900, 10901, 42822, and 8679 and any related decree.
10. The former place of use of the transferred water shall no longer receive water as part of these rights.

Dated at Salem, Oregon this \_\_\_\_\_ day of August, 2014.

Dwight French, Water Right Services Division Administrator, for  
Director, Oregon Water Resources Department

Mailing date: \_\_\_\_\_

RECEIVED BY OWRD

OCT 15 2014

SALEM, OR

OCT 15 2014

## CERTIFICATE OF WATER RIGHT

SALEM, OR

THIS CERTIFICATE ISSUED TO

STATE OF OREGON  
WATER RESOURCES DEPARTMENT

confirms the right to use the waters of SEVENMILE CREEK, tributary to Agency Lake, for instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.

This right was confirmed by decree of the Circuit Court of the State of Oregon for Klamath County. The date of priority is 1891. The amount of water to which this right is entitled is limited to an amount actually beneficially used, and shall not exceed:

Instream Reach No.	Instream Rate	Instream Period
Reach No. 1	10.5 Cubic Feet per Second (CFS)	April 1 through July 19
	8.98 CFS	July 20 through September 30
Reach No. 2	10.46 CFS	April 1 through July 19
	8.95 CFS	July 20 through September 30

or its equivalent in case of rotation, measured at the point of diversion (for Reach No. 1).

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

Instream Reach No. 1: From the location of the diversion authorized previously under Certificate 10900, located approximately at:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	6 E	WM	11	SE SE	150 FEET NORTH AND 960 FEET WEST FROM THE SE CORNER OF SECTION 11

To River Mile 15.52.

Instream Reach No. 2: From River Mile 15.52 to the mouth of Sevenmile Creek

Water rights upstream of the original point of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original point of diversion.

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion.

The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and shall be in addition to instream water rights established pursuant to ORS 537.348 or 537.470, unless otherwise specified by a subsequent order establishing a new instream water right.

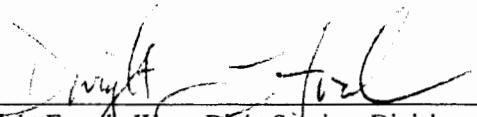
The right is subject to all other terms and conditions of Certificate 10900, and any related decree.

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.



This certificate is issued to confirm a change in use and place of use approved by an order of the Water Resources Director recorded in Special Order Volume 93, Page 422 approving Transfer T-11375, and along with Certificate 89516 supersedes Certificate 10900, State Record of Water Right Certificates.

WITNESS the signature of the Water Resources Director, affixed Sept 18, 2014.

  
\_\_\_\_\_  
Dwight French, Water Right Services Division Administrator, for  
Director, Oregon Water Resources Department

STATE OF OREGON  
 COUNTY OF KLAMATH  
 CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

JAMES T. DIXON  
 FORT KLAMATH, OREGON

confirms the right to use the waters of SEVENMILE CREEK for Irrigation of 400.4 acres, and Domestic and Stock Use.

This right was confirmed by decree of the Circuit Court of the State of Oregon for Klamath County. The decree is of record at Salem, in the Order Record of the State Engineer in Volume 12, at Page 269. The date of priority is 1891.

The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1/50<sup>th</sup> of one cubic foot per second per acre irrigated prior to July 20<sup>th</sup>, and 1/80<sup>th</sup> of one cubic foot per second per acre irrigated thereafter, and shall not exceed 5.0 acre-feet per acre during the irrigation season from April 1<sup>st</sup> to October 1<sup>st</sup> of each year.

A description of the lands irrigated under such right, and to which the water is appurtenant or, if for other purposes, the place where such water is put to beneficial use, is as follows:

IRRIGATION, DOMESTIC AND LIVESTOCK USE					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	13	SE SW	0.90
33 S	6 E	WM	13	SW SE	1.80
33 S	6 E	WM	13	SE SE	1.80
33 S	6 E	WM	24	NE NE	20.00
33 S	6 E	WM	24	SE NE	20.00
33 S	6 E	WM	24	NE SE	20.30
33 S	6 E	WM	24	SE SE	16.20
33 S	7.5 E	WM	18	SW SW	1.80
33 S	7.5 E	WM	18	SE SW	1.60
33 S	7.5 E	WM	19	NE NW	38.10
33 S	7.5 E	WM	19	NW NW	40.00
33 S	7.5 E	WM	19	SW NW	40.00
33 S	7.5 E	WM	19	SE NW	39.30
33 S	7.5 E	WM	19	NE SW	39.30
33 S	7.5 E	WM	19	NW SW	40.00
33 S	7.5 E	WM	19	SW SW	40.00
33 S	7.5 E	WM	19	SE SW	39.30

RECEIVED BY OWRD

Oct 10 2014

SALEM, OR

DOMESTIC AND LIVESTOCK USE ONLY DURING THE NON IRRIGATION SEASON					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	13	SW NE	36.80
33 S	6 E	WM	13	SE NE	26.40
33 S	6 E	WM	13	SE NW	14.40
33 S	6 E	WM	13	NE SW	30.00
33 S	6 E	WM	13	SE SW	27.90
33 S	6 E	WM	13	NE SE	39.90
33 S	6 E	WM	13	NW SE	40.00
33 S	6 E	WM	13	SW SE	38.20

G-17942

DOMESTIC AND LIVESTOCK USE ONLY DURING THE NON IRRIGATION SEASON					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	13	SE SE	38.20
33 S	6 E	WM	24	NE NE	20.00
33 S	6 E	WM	24	NW NE	40.00
33 S	6 E	WM	24	SW NE	39.90
33 S	6 E	WM	24	SE NE	20.00
33 S	6 E	WM	24	NE NW	31.20
33 S	6 E	WM	24	NW NW	8.80
33 S	6 E	WM	24	SW NW	22.40
33 S	6 E	WM	24	SE NW	38.40
33 S	6 E	WM	24	NE SW	20.00
33 S	6 E	WM	24	NW SW	6.00
33 S	6 E	WM	24	NE SE	19.70
33 S	6 E	WM	24	NW SE	35.00
33 S	6 E	WM	24	SW SE	5.00
33 S	6 E	WM	24	SE SE	8.80
33 S	7.5 E	WM	18	NE SW	9.20
33 S	7.5 E	WM	18	NW SW	28.00
33 S	7.5 E	WM	18	SW SW	38.20
33 S	7.5 E	WM	18	SE SW	37.70


This certificate describes that portion of the water right confirmed by Certificate 10900, State Record of Water Right Certificates, NOT modified by the provisions of an order of the Water Resources Director entered Sept. 18 2014, approving Transfer Application T-11375.

The issuance of this superseding certificate does not confirm the status of the water right in regard to the provisions of ORS 540.610 pertaining to forfeiture or abandonment.

And said right shall be subject to all other conditions and limitations contained in said decree.

The right to the use of the water for irrigation purposes is restricted to the lands or place of use herein described.

WITNESS the signature of the Water Resources Director, affixed Sept 18, 2014.

  
 \_\_\_\_\_  
 Dwight French, Water Right Services Division Administrator, for  
 Director, Oregon Water Resources Department

STATE OF OREGON  
COUNTY OF KLAMATH  
CERTIFICATE OF WATER RIGHT

RECEIVED BY OWRD

OCT 15 2014

SALEM, OR

THIS CERTIFICATE ISSUED TO

STATE OF OREGON  
WATER RESOURCES DEPARTMENT

confirms the right to use the waters of SEVENMILE CREEK, tributary to Agency Lake, for instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.

This right was confirmed by decree of the Circuit Court of the State of Oregon for Klamath County. The date of priority is 1898. The amount of water to which this right is entitled is limited to an amount actually beneficially used, and shall not exceed:

Instream Reach No.	Instream Rate	Instream Period
Reach No. 1	2.27 Cubic Feet per Second (CFS)	April 1 through July 19
	1.948 CFS	July 20 through September 30
Reach No. 2	2.08 CFS	April 1 through July 19
	1.78 CFS	July 20 through September 30

or its equivalent in case of rotation, measured at the point of diversion (for Reach No. 1).

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

Instream Reach No. 1: At the location of the diversion authorized previously under Certificate 10901, located approximately at:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	6 E	WM	24	SW NW	1875 FEET SOUTH AND 390 FEET EAST FROM THE NW CORNER OF SECTION 24

Instream Reach No. 2: From immediately below the diversion authorized previously under Certificate 10901 to the mouth of Sevenmile Creek

Water rights upstream of the original point of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original point of diversion.

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion.

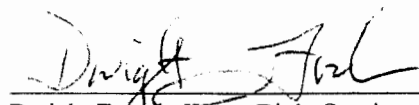
The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and shall be in addition to instream water rights established pursuant to ORS 537.348 or 537.470, unless otherwise specified by a subsequent order establishing a new instream water right.

The right is subject to all other terms and conditions of Certificate 10901, and any related decree.

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

This certificate is issued to confirm a change in use and place of use approved by an order of the Water Resources Director recorded in Special Order Volume 93, Page 422, approving Transfer T-11375, and along with Certificate 89518 supersedes Certificate 10901, State Record of Water Right Certificates.

WITNESS the signature of the Water Resources Director, affixed Sept 18 2014.



\_\_\_\_\_  
Dwight French, Water Right Services Division Administrator, for  
Director, Oregon Water Resources Department

STATE OF OREGON  
 COUNTY OF KLAMATH  
 CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

JAMES T. DIXON  
 FORT KLAMATH, OREGON

confirms the right to use the waters of SEVENMILE CREEK for Irrigation of 11.9 acres, Domestic and Stock.

This right was confirmed by decree of the Circuit Court of the State of Oregon for Klamath County. The decree is of record at Salem, in the Order Record of the Water Resources Director in 12, at Page 269. The date of priority is 1898.

The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used, and shall not exceed 1/50<sup>th</sup> of one cubic foot per second per acre irrigated prior to July 20<sup>th</sup> and 1/80<sup>th</sup> of one cubic foot per second per acre irrigated thereafter, and shall not exceed 5.0 acre-feet per acre during irrigation season from April 1<sup>st</sup> to October 1<sup>st</sup> of each year.

A description of the lands irrigated under such right, and to which water is appurtenant, or, if used for other purposes, the place where such water is put to beneficial use, is as follows:

IRRIGATION, DOMESTIC AND STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	24	SW SW	4.00
33 S	6 E	WM	24	SE SW	2.20
33 S	6 E	WM	24	SE SE	5.70

DOMESTIC AND STOCK USE ONLY DURING THE NON IRRIGATION SEASON					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	24	SW NW	17.30
33 S	6 E	WM	24	NE SW	20.00
33 S	6 E	WM	24	NW SW	20.00
33 S	6 E	WM	24	SW SW	11.00
33 S	6 E	WM	24	SE SW	37.80
33 S	6 E	WM	24	NW SE	5.00
33 S	6 E	WM	24	SW SE	35.00
33 S	6 E	WM	24	SE SE	9.30

RECEIVED BY OWRD

OCT 15 2014

SALEM, OR

This certificate describes that portion of the water right confirmed by Certificate 10901, State Record of Water Right Certificates, NOT modified by the provisions of an order of the Water Resources Director entered Sept 18, 2014, approving Transfer Application T-11375.

The issuance of this superseding certificate does not confirm the status of the water right in regard to the provisions of ORS 540.610 pertaining to forfeiture or abandonment.

And said right shall be subject to all other conditions and limitations contained in said decree.

The right to the use of the water for irrigation purposes is restricted to the lands or place of use herein described.

WITNESS the signature of the Water Resources Director, affixed Sept 18, 2014.

  
 \_\_\_\_\_  
 Dwight French, Water Right Services Division Administrator, for  
 Director, Oregon Water Resources Department

G-17942

STATE OF OREGON  
COUNTY OF KLAMATH  
CERTIFICATE OF WATER RIGHT

RECEIVED BY OWRD

OCT 15 2014

SALEM, OR

THIS CERTIFICATE ISSUED TO

STATE OF OREGON  
WATER RESOURCES DEPARTMENT

confirms the right to use the waters of Sevenmile Creek, tributary to Agency Lake, for instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.

This right was perfected under Permit S-35790. The date of priority is September 24, 1971. The amount of water to which this right is entitled is limited to an amount actually beneficially used, and shall not exceed 0.98 cubic foot per second, or its equivalent in case of rotation, measured at the point of diversion, from May 11 through September 30.

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

From the location of the diversion authorized previously under Certificate 42822, located approximately at:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	6 E	WM	11	SE SE	150 FEET NORTH AND 960 FEET WEST FROM THE SE CORNER OF SECTION 11

To the mouth of Sevenmile Creek

Water rights upstream of the original point of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original point of diversion.

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion.

The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and shall be in addition to instream water rights established pursuant to ORS 537.348 or 537.470, unless otherwise specified by a subsequent order establishing a new instream water right.

The right is subject to all other terms and conditions of Certificate 42822, and any related decree.

This certificate is issued to confirm a change in use and place of use approved by an order of the Water Resources Director recorded in Special Order Volume 93, Page 422, approving Transfer T-11375, and together with Certificate 89520 supersedes Certificate 42822, State Record of Water Right Certificates.

WITNESS the signature of the Water Resources Director, affixed Sept 18, 2014



Dwight French, Water Right Services Division Administrator, for  
Director, Oregon Water Resources Department

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

STATE OF OREGON  
 COUNTY OF KLAMATH  
 CERTIFICATE OF WATER RIGHT

RECEIVED BY OWRD

OCT 15 2014

SALEM, OR

THIS CERTIFICATE ISSUED TO

ANDREW AND DOROTHY POPSON  
 PO BOX 435  
 FORT KLAMATH, OR 97626

confirms the right to use the waters of drainage collected in ditch along West Boundary of SE NW, NE SW, SE SW, Section 13 and Sevenmile Creek, a tributary of Agency Lake, for IRRIGATION of 0.9 ACRE.

This right was perfected under Permit S-35790. The date of priority is SEPTEMBER 24, 1971. The amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.02 cubic foot per second, with any deficiency in the available supply from drainage to be made up by appropriation from Sevenmile Creek providing that the total quantity diverted from both sources shall not exceed 0.02 cubic foot per second, or its equivalent in case of rotation, measured at the points of diversion from the stream.

The points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	6 E	WM	13	SE NW NE SW SE SW	DITCH: DRAINAGE COLLECTED IN DITCH BETWEEN POINTS 3320 FEET NORTH AND 20 FEET NORTH BOTH FROM SOUTHWEST CORNER SE SW, SECTION 13
33 S	6 E	WM	11	SE SE	CREEK: 150 FEET NORTH AND 960 FEET WEST FROM SE CORNER OF SECTION 11

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-FIFTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 5.0 acre-feet per acre for each acre irrigated during the irrigation season of each year; and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

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

Twp	Rng	Mer	Sec	Q-Q	Acre
33 S	6 E	WM	13	SE SW	0.90

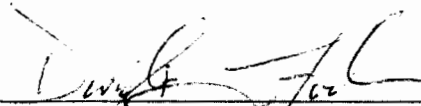


This certificate describes that portion of the water right confirmed by Certificate 42822, State Record of Water Right Certificates, NOT modified by the provisions of an order of the Water Resources Director entered Sept. 18 2014, approving Transfer Application T-11375.

The issuance of this superseding certificate does not confirm the status of the water right in regard to the provisions of ORS 540.610 pertaining to forfeiture or abandonment.

The right to the use of the water for the purposes aforesaid is restricted to the lands or place of use herein described.

WITNESS the signature of the Water Resources Director, affixed Sept. 18 2014.

  
\_\_\_\_\_  
Dwight French, Water Right Services Division Administrator, for  
Director, Oregon Water Resources Department

STATE OF OREGON  
COUNTY OF KLAMATH  
CERTIFICATE OF WATER RIGHT

RECEIVED BY OWRD

OCT 15 2014

SALEM, OR

THIS CERTIFICATE ISSUED TO

STATE OF OREGON  
WATER RESOURCES DEPARTMENT

confirms the right to use the waters of Blue Springs, tributary to Sevenmile Creek, for supplemental instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.

This right was perfected under Permit S-9571. The date of priority is September 25, 1928. The amount of water to which this right is entitled is limited to an amount actually beneficially used, and shall not exceed:

Instream Reach No.	Instream Rate	Instream Period
Reach No. 1	1.19 Cubic Feet per Second (CFS)	May 11 through September 30
Reach No. 2	1.12 CFS	

or its equivalent in case of rotation, measured at the point of diversion (for Reach No. 1).

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

Instream Reach No. 1: From the location of the diversion authorized previously under Certificate 8679, located approximately at:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	6 E	WM	24	NW SW	1545 FEET NORTH AND 95 FEET EAST FROM THE SW CORNER OF SECTION 24

To the mouth of Blue Springs and into Sevenmile Creek to River Mile 14.62.

Instream Reach No. 2: From River Mile 14.62 the mouth of Sevenmile Creek

Water shall only be protected instream if the full rate and duty is not available under the primary instream use for Certificate 89517.

Water rights upstream of the original point of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original point of diversion.

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion.


The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and shall be in addition to instream water rights established pursuant to ORS 537.348 or 537.470, unless otherwise specified by a subsequent order establishing a new instream water right.

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

The right is subject to all other terms and conditions of Certificate 8679, and any related decree.

This certificate is issued to confirm a change in use and place of use approved by an order of the Water Resources Director recorded in Special Order Volume 93, Page 422 approving Transfer T-, and together with Certificate 89522 supersedes Certificate 8679, State Record of Water Right Certificates.

WITNESS the signature of the Water Resources Director, affixed Sept 18 2014.

  
\_\_\_\_\_  
Dwight French, Water Right Services Division Administrator, for  
Director, Oregon Water Resources Department

STATE OF OREGON

COUNTY OF KLAMATH

RECEIVED BY OWRD

CERTIFICATE OF WATER RIGHT

OCT 15 2014

THIS CERTIFICATE ISSUED TO

SALEM, OR

JAS. T. DIXON  
FORT KLAMATH, OREGON

confirms the right to use the waters of BLUE SPRINGS, a tributary of SEVENMILE CREEK, for Irrigation of 11.9 acres, Domestic and Stock purposes.

This right was perfected under Permit S-9371. The date of priority is SEPTEMBER 25, 1928. The amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.16 cubic foot per second. The use hereunder for irrigation shall conform to such reasonable rotation system as may be ordered by the proper state officer.

The points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q
33 S	6 E	WM	23	NE SE
33 S	6 E	WM	24	NW SW

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent in case of rotation.

A description of the lands irrigated under the right hereby confirmed, and to which such right is appurtenant (if for irrigation or any other purpose) is as follows:

IRRIGATION USE ONLY					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	24	SW SW	4.00
33 S	6 E	WM	24	SE SW	2.20
33 S	6 E	WM	24	SE SE	5.70

DOMESTIC AND STOCK USE ONLY					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	24	SW SW	15.00
33 S	6 E	WM	24	SE SW	40.00
33 S	6 E	WM	24	SW SE	30.00
33 S	6 E	WM	24	SE SE	15.00

This right is specifically limited to a period of use extending from May 11<sup>th</sup> to October 1<sup>st</sup> of each year unless permission is given by the Oregon State Game Commission (now known as the Oregon

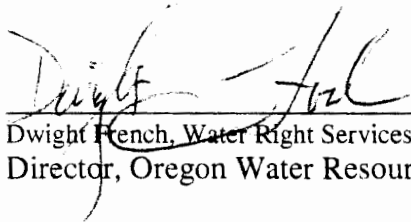
Department of Fish and Wildlife) or the State Engineer to divert water for irrigation earlier than May 11<sup>th</sup>, and such permission shall not be given by the State Engineer in any case unless it is found by him that the diversion before May 11<sup>th</sup> will not deprive the Oregon State Game Commission of sufficient water for the proper maintenance and operation of its present egg-taking station on Sevenmile Creek.

This certificate describes that portion of the water right confirmed by Certificate 8679, State Record of Water Right Certificates, NOT modified by the provisions of an order of the Water Resources Director entered Sept. 18 2014, approving Transfer Application T-11375.

The issuance of this superseding certificate does not confirm the status of the water right in regard to the provisions of ORS 540.610 pertaining to forfeiture or abandonment.

The right to the use of the water for any purpose is restricted to the lands or place of use herein described.

WITNESS the signature of the Water Resources Director, affixed Sept 18 2014.

  
\_\_\_\_\_  
Dwight French, Water Right Services Division Administrator, for  
Director, Oregon Water Resources Department

STATE OF OREGON  
COUNTY OF KLAMATH  
CERTIFICATE OF WATER RIGHT

RECEIVED BY OWRD

OCT 15 2014

SALEM, OR

THIS CERTIFICATE ISSUED TO

JAMES T. DIXON  
FORT KLAMATH, OR 97626

confirms the right to use the waters of ANNA CREEK (also known as Annie Creek), a tributary of the WOOD RIVER, for IRRIGATION of 42.8 acres.

This right was perfected under Permit S-8029. The date of priority is JUNE 25, 1927. The amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually used beneficially for said purposes, and shall not exceed 0.54 CUBIC FOOT PER SECOND.

The point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q
32 S	7.5 E	WM	31	NE SW

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent in case of rotation.

The use hereunder for irrigation shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the lands irrigated under the right hereby confirmed and to which such right is appurtenant (if for irrigation or any other purpose) is as follows:

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	7.5 E	WM	18	NE SW	30.80
33 S	7.5 E	WM	18	NW SW	12.00

This certificate describes that portion of the water right confirmed by Certificate 7641, State Record of Water Right Certificates, NOT cancelled by the provisions of an order of the Water Resources Director entered Sept 18 2014, approving Transfer Application T-11375.

The issuance of this superseding certificate does not confirm the status of the water right in regard to the provisions of ORS 540.610 pertaining to forfeiture or abandonment.

The right to the use of the water for any purpose is restricted to the lands or place of use herein described.

WITNESS the signature of the Water Resources Director, affixed Sept 18 2014

  
Dwight French, Water Right Services Division Administrator, for  
Director, Oregon Water Resources Department

STATE OF OREGON  
 COUNTY OF KLAMATH  
 CERTIFICATE OF WATER RIGHT

RECEIVED BY OWRD

OCT 15 2014

SALEM, OR

THIS CERTIFICATE ISSUED TO

R. S. DIXON  
 FORT KLAMATH, OR 97626

confirms the right to use the waters of Anna Creek (also known as Annie Creek), a tributary of the Wood River, for IRRIGATION of 200.74 ACRES.

This right was perfected under Permit S-8028. The date of priority is JUNE 25, 1927. The amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 2.51 cubic feet per second, or its equivalent in case of rotation, measured at the point of diversion from the stream.

The point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q
32 S	7.5 E	WM	31	SW NW

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

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

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	1	NE NE	20.00
33 S	6 E	WM	1	SE NE	20.00
33 S	6 E	WM	1	NE SE	20.00
33 S	6 E	WM	1	SW SE	31.00
33 S	6 E	WM	1	SE SE	4.50
33 S	6 E	WM	12	NW SW	10.00
33 S	6 E	WM	12	SW SW	20.00
33 S	6 E	WM	13	SE NE	11.24
33 S	6 E	WM	13	NW NW	40.00
33 S	6 E	WM	13	SE NW	12.00
33 S	7.5 E	WM	6	SW NW	12.00

This certificate describes that portion of the water right confirmed by Certificate 45299, State Record of Water Right Certificates, NOT cancelled by the provisions of an order of the Water Resources Director entered Sept. 18 2014, approving Transfer Application T-11375.

The issuance of this superseding certificate does not confirm the status of the water right in regard to the provisions of ORS 540.610 pertaining to forfeiture or abandonment.

The right to the use of the water for the purposes aforesaid is restricted the lands or place of use herein described. And is subject to the existing minimum flow policies established by the Water Policy Review Board.

WITNESS the signature of the Water Resources Director, affixed Sept 18, 2014.



Dwight French, Water Right Services Division Administrator, for  
Director, Oregon Water Resources Department