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Klamath County, Oregon

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Pages 8 Fee: \$56.00

RECORDING COVER SHEET

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After Recording Return To:

Mike Ratliff, Attorney at Law
Attention: Kay
905 Main Street, Suite 200
Klamath Falls, OR 97601

1. Name(s) of the Transaction(s):

Shared Water and Power Agreement

2. Direct Party (Grantor):

Klamath Basin Storage, LLC, an Oregon limited liability company

3. Indirect Party (Grantee):

James L. Moore and Cheryl L. Moore

4. True and Actual Consideration Paid:

none given

5. Legal Description:

See attached for legal description

56.00

SHARED WATER AND POWER AGREEMENT

THIS AGREEMENT, made and entered into this 30th day of November, 2005, between KLAMATH BASIN STORAGE, LLC, an Oregon Limited Liability Company (hereinafter referred to as "First Party"), and JAMES L. MOORE and CHERYL L. MOORE (hereinafter referred to as "Second Party").

RECITALS

1. Whereas First party is the owner of that certain real property located in the Count of Klamath, State of Oregon, more particularly described as follows, to-wit:

PARCEL A:

A parcel of land situated in the SE $\frac{1}{4}$ of Section 3, Township 41 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Commencing at an axle marking the Southwest corner of said SE $\frac{1}{4}$; thence North 00°17'30" East along the centerline of Merrill Pit Road, a county road 30.00 feet; thence South 89°04'13" East, 30.00 feet to the Easterly right of way line of said Merrill Pit Road and the point of beginning for this description; thence North 00°17'30" East along said right of way line, 2609.75 feet; thence South 89°40'30" East, 258.42 feet; thence South 09°06'53" East, 2652.97 feet to the Northerly right of way line of Falvey Road, a county road; thence North 89°04'13" West along said Northerly right of way line, 692.06 feet to the point of beginning.

PARCEL B:

A parcel of land being that portion of the SE $\frac{1}{4}$ of Section 3, Township 41 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon, situated West of the Westerly right-of-way line of the Central Pacific Railway Company's ownership (described in Deed Book 85, Page 145, recorded January 14, 1929, in the office of the County Clerk of Klamath County), located in Township 41 South, Range 10 East, W.M., Klamath County, Oregon;

EXCEPTING THEREFROM a parcel of land, situated in said SE $\frac{1}{4}$, described as follows:

COMMENCING at an axle marking the Southwest Corner of said SE¼ (the ¼ corner between Sections 3 and 10); thence N. 00°17'30" E. along the center line of Merrill Pit Road, a county road, 30.00 feet; thence South 89°04'13" E., 30 feet to the Easterly right-of-way line of said Merrill Pit Road and the POINT OF BEGINNING for this description; thence N. 00°17'30" E. along said right of way line, 2606.75 feet; thence S. 89°40'30" E., 258.42 feet; thence S. 89°06'53" E., 2652.97 feet to the Northerly right-of-way line of Falvey Road, a county road; thence N. 89°04'13" W., along said Northerly right-of-way line 692.06 feet to the point of beginning, containing 28.49 acres, more or less.

SUBJECT PARCEL CONTAINS 93.32 ACRES, MORE OR LESS, after the county road rights-of-way have been excluded; and

WHEREAS the total acres irrigated under the Van Brimmer Ditch within Parcels A and B above described is 105.36 acres ; and

WHEREAS, Second Party is the owner of that certain real property also located in the County of Klamath, State of Oregon, and more particularly described as follows, to-wit:

PARCEL C:

The portion of land situated in the SE¼ of Section 3, Township 41 South, Range 10 East of the Willamette Meridian lying Easterly of the Central Pacific Railway Company land (railway land is described in Deed Book 85, Page 145, recorded January 14, 1929), and Government Lots 6 and 7 of Section 2, Township 41 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon,

EXCEPTING THEREFROM Falvey Road
and

WHEREAS, First party has, contemporaneously with this agreement, executed a Grant of Irrigation Easement to Second party, whereby irrigation water from the Van Brimmer Ditch will be carried in a pipeline under Parcels A and B to Parcel C; and

WHEREAS, the pump by which water is diverted from the Van Brimmer Ditch into the pipeline that is subject of said Grant of Irrigation Easement is located on

Parcel A, which parcel, pump and the appurtenant pump house are owned by First Party;
and

WHEREAS, Second Party is currently the owners and holders of 135 shares of
the issued and outstanding stock of Van Brimmer Ditch Company, an Oregon
corporation;

WHEREAS the parties hereto desire to enter into an agreement relative to the
shared costs of power, maintenance and repair of said pump, together with the structure
in which it is housed; now, therefore,

WITNESSETH:

That for and in consideration of the mutual covenants contained herein, the parties
hereto hereby agree as follows:

1. VAN BRIMMER DITCH COMPANY STOCK: Second party shall surrender
the certificates they hold evidencing ownership of the 135 shares of stock owned by them
in Van Brimmer Ditch Company (the "Company"). Such shares shall then be re-issued
by the Company as follows:

Klamath Basin Storage, LLC, an Oregon Limited Liability Company; (appurtenant to Parcel A):.....	17.0 Shares
Klamath Basin Storage, LLC, an Oregon Limited Liability Company; (appurtenant to Parcel B)	88.0 Shares
James L. Moore and Cheryl L. Moore, Husband and Wife; (appurtenant to Parcel C):	30.0 Shares
	135.0 Shares

It is understood by the parties that First Party and Second Party shall be assessed
separately by the Company and an annual assessment billing shall be sent to each of the
parties, who shall then be independently responsible for payment of the same.

2. USE OF PUMP AND PUMP HOUSE: While the pump and pump house located on Parcel A are owned by First Party, it hereby agreed by and between the parties that said pump and pump house shall be used by both parties to irrigate lands owned by them and described hereinabove.

3. SHARED COSTS. Each party shall bear a pro rata share of the costs of electrical power to operate the pump, as well as the costs of maintenance and repairs of both the pump itself and the structure in which it is housed. The pro rata share to be borne by each party shall be based upon its percentage ownership of each party of shares of stock in the Van Brimmer Ditch Company.

4. REPAIRS AND MAINTENANCE: As owner of said pump and pump house. First Party shall have full discretion in determining when and to what extent repairs and/or maintenance need to be performed on said pump and pump house. However, it is hereby agreed by the parties that, before any such repairs and/or maintenance are performed, First Party shall provide Second Party, in writing, with a detailed schedule of the needed repairs and/or maintenance, together with an estimate of the costs of any such repairs and/or maintenance.

5. PAYMENT OF SHARED COSTS: The shared costs described in paragraphs 3 and 4 above shall be paid by First Party as they are incurred, including, but not limited to, the costs of power, the billing for which shall be in the named of First Party and paid by First Party as incurred. At the end of each growing season, but in no case earlier than September 10th or later than November 15th of each year, First Party shall provide Second Party with an itemized statement of any and all costs incurred by First Party pursuant to

paragraph 4 above. Second Party shall have a period of thirty (30) days from the date of such itemized statement within which to pay the same.

6. DEFAULT: In the event Second Party fails to perform any of the terms of this agreement, and, specifically, to pay the itemized billing provided to them by First Party in accordance with paragraph 5 above, then and in that event this agreement shall terminate and First Party shall have the right to refuse delivery of water by means of the pumping mechanism that is the subject of this agreement.

Second Party shall not be deemed in default for failure to perform any covenant or condition of this agreement until notice of said default has been given by First Party to Second Party, and Second Party shall have failed to remedy said default within thirty (30) days after the giving of the notice. Notice for this purpose shall be deemed to have been given by the deposit in the U.S. Mail of a certified letter containing said notice and addressed to Second Party at the address contained herein.

7. TERMINATION: This agreement may be terminated at such time as Second Party has established an alternative source of diverting water from the Van Brimmer Ditch to the property owned by them and described as Parcel C above. Such termination shall take effect as follows:

- (a) Second Party shall provide First Party with written notice of their intention to terminate this agreement; and
- (b) Second Party shall have paid to First Party any and all shared costs of power, repairs and maintenance as set forth in paragraph 3 above; and

8. NOTICE: Any notices to be given under the terms of this agreement shall be given to the parties as follows:

FIRST PARTY:

KLAMATH BASIN STORAGE, LLC
5537 Homer Drive
Klamath Falls, Oregon 97603

SECOND PARTY:

JAMES L. MOORE and
CHERYL L. MOORE
P. O. Box 449
Bandon, Oregon 97411

9. ATTORNEY FEES: Should any suit or action be brought to enforce any of the terms of this agreement, the prevailing party in such suit or action shall be entitled to a reasonable sum as attorney fees, in addition to costs and disbursements as provided by law; and if any appeal is taken from any decision of the trial court, such further sum as may be fixed by the appellate court, as reasonable attorney fees in the appellate court, in addition to costs and disbursements as provided by law.

10. BINDING EFFECT: This agreement is binding on and will inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors, and assigns.

11. ATTORNEY REPRESENTATION: The parties hereto acknowledge that this agreement has been prepared by Michael Ratliff, of Ratliff & Ratliff, P.C., attorneys at law, who are representing Second Party herein. Further, First Party acknowledges that said law firm has not counseled them regarding the agreements contained herein, and that First Party has had ample opportunity to seek its own counsel relative thereto.

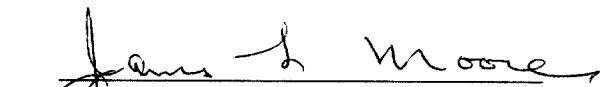

12. ENTIRE AGREEMENT: This agreement sets forth the entire understanding of the parties with respect to the cost of power, as well as the costs incurred in the maintenance and repair of the pump and pump house which are the subject of this agreement. This agreement supersedes any and all prior negotiations, discussions,

agreements, and understandings between the parties. This agreement may not be modified or amended except by a written agreement executed by all parties.

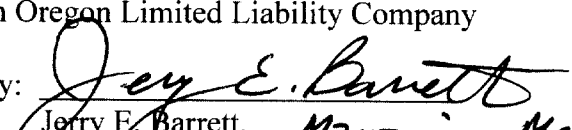
13. APPLICABLE LAW: This agreement shall be constructed, applied, and enforced in accordance with the laws of the state of Oregon.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this

30th day of November, 2005.


James L. Moore

Cheryl L. Moore

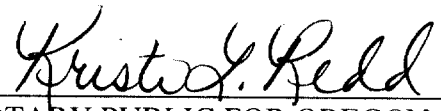
KLAMATH BASIN STORAGE, LLC.
an Oregon Limited Liability Company

By: 
Jerry E. Barrett, *Managing Member*
Managing Member

STATE OF OREGON; County of Klamath) ss.

SUBSCRIBED AND SWORN TO BEFORE ME this 30th day of November, 2005, by Jerry E. Barrett, as Managing Member of Klamath Basin Storage, LLC, an Oregon Limited Liability Company.

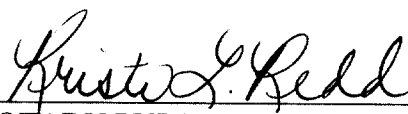



NOTARY PUBLIC FOR OREGON
My Commission expires: 11/16/2007

STATE OF OREGON; County of Klamath) ss.

SUBSCRIBED AND SWORN TO BEFORE ME this 30th day of November, 2005, by James L. Moore and Cheryl L. Moore.




NOTARY PUBLIC FOR OREGON
My Commission expires: 11/16/2007