

2011-011961

Klamath County, Oregon



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10/26/2011 02:18:34 PM

Fee: \$87.00

After recording, return to:

Justin E. Throne, Esq.

280 Main Street

Klamath Falls, Oregon 97601

**A G R E E M E N T
FOR WELL SHARING, EASEMENTS,
AND PROPERTY LINE ADJUSTMENT**

This Agreement is made and entered into on the last date as subscribed between Darrell and Alice Lorenzen, husband and wife, herein referred together as "Lorenzen", and Dorthy Slaton, herein referred to as "Slaton", collectively known as "the Parties".

RECITALS

WHEREAS, Lorenzen owns a parcel of real property in Klamath County, Oregon, which is referred to herein as the "Lorenzen Parcel" and is legally described as follows:

**E ½ NE ¼ NE ¼ of Section 6 Township 40 South, Range 9 East of the
Willamette Meridian**

WHEREAS, Slaton owns a parcel of real property in Klamath County, Oregon, which is referred to herein as the "Slaton Parcel" and is legally described as follows:

**W ½ NE ¼ NE ¼ of Section 6, Township 40 South, Range 9 East of the
Willamette Meridian**

WHEREAS, the Lorenzen Parcel and the Slaton Parcel are adjacent;

WHEREAS, in the NW corner of the Slaton Parcel is located a common well known as the Dillon Well referred to herein as the "Well" from which the water is used beneficially on both the parcels for domestic uses and for irrigation uses under Certificate of Water Right & Final Proof Survey, attached hereto as Exhibit "A", recorded in the State Record of Water Right Certificates, Volume 39, page 46976, Application No. G-6272, Permit No. G-5905; herein "Water Rights Certificate". The Well is defined as the physical hole, well cap and casing.

WHEREAS, on previous occasion, the predecessors in-interest of Lorenzen and Slaton entered into a Well Use Agreement duly recorded August 7, 1985, in Vol. M85 of Deeds on Page 12444, in the office of the clerk of Klamath County Records, in Klamath County, Oregon.

WHEREAS, controversies have arisen regarding the Well and its use, as well as certain easements, and the legal boundary between the Lorenzen Parcel and the Slaton Parcel;

WHEREAS, The Parties wish to reduce to writing the terms of a settlement that was entered into on or about August 30, 2011, in Klamath Falls, Oregon, and in response to controversies that existed as of that date between The Parties concerning the real property owned by each, including any and all claims either party had, whether known or unknown, which could have been made in the case between The Parties filed in Klamath County Circuit Court Case No. 11-00576CV. By execution of this agreement, the parties release all claims, whether known or unknown, that each had against the other as of the date of this agreement. The Parties shall set aside the previous civil judgment rendered in that matter and submit a judgment of dismissal based upon this agreement prior to recordation in the real property records of Klamath County;

NOW THEREFORE, in consideration of the mutual terms, covenants, and conditions contained herein, The Parties agree as follows:

The Parties adopt the previous recitals as terms of this Agreement.

SHARED WELL AGREEMENT

- A. Both parties shall have the right to use water from the Well on their respective parcels.
- B. The Parties shall use the water from the well in accordance with the terms of this Agreement and of the Water Rights Certificate, and according to all federal, state and local laws and regulations, both as existing and amended in the future.
- C. The Parties shall pay promptly one-half of all expenses for the mutually beneficial operation and maintenance of the Well that may become necessary. Shared expenses include the cost of mutually beneficial repairs, testing, and maintenance of the Well.
- D. Each party shall be solely responsible for costs of maintenance, repairs or replacement of their own pumps, lines, electrical service and other non-shared equipment (collectively "pump system"), and testing of water delivered to their property. Each party shall be solely responsible for any damage caused by that Party's pump system to the other Party's pump system. Upon the occurrence of a pump system failure(s) the other party will be promptly notified. If a domestic system fails all irrigation pumps may be turned off temporarily for a period of time adequate to attempt to restore pump function. Parties will ensure equipment is fully operational before conducting any official test. Each party will promptly act to minimize loss of water.
- E. Domestic water use shall be superior to Irrigation water use. No user shall make use of the well in a way that violates the limitations of the Water Rights Certificate or this agreement.

Each year the Parties agree to adopt a rotating irrigation schedule based upon their annual agricultural need. The purpose of this schedule shall be to ensure compliance

with the Water Rights Certificate and to ensure sufficient irrigation water for each party.

- F. Subject to a determination of feasibility, a copy of which will be provided to Lorenzen 2 weeks prior to any work being commenced, Slaton may hire Klamath Pump or a similarly licensed firm to lower her domestic pump to be the lowest pump in the Well. Also, subject to a determination of feasibility, a copy of which will be provided to Lorenzen 2 weeks prior to commencement, Slaton may replace her domestic pump with a combination irrigation and domestic pump, which may also be the lowest pump in the Well. Slaton may place a separate irrigation pump in the Well above the Lorenzen domestic pump, subject to availability of space as determined by Klamath Pump or a similarly licensed firm. Neither party will be required to permanently alter their existing lines and pumps in order to accommodate any modifications. Any party that seeks to maintain, repair, modify, or replace the Well or associated equipment shall notify the other party before work begins, or as soon as practical in the event of emergency. Slaton agrees to indemnify Lorenzen for any damage to his pump system caused during said modifications.
- G. Each party shall have the right to act to correct an emergency situation and shall have access to the pertinent parcel in the absence of the other. The other party must be notified of the problem & actions taken, as soon as possible and must make every effort to contact the other in the event of an emergency. An emergency situation shall be defined as the failure of any portion of the systems to operate as designed.
- H. Only those parcels of real estate described shall be permitted to receive water from the Well. No user shall make use of well water inconsistent with current practices, the Water Rights Certificate or the Exempt Uses of Ground Water, as defined by ORS 537.545 or its successor statute.

EASEMENTS

A. Northerly

- 1. Slaton grants to Lorenzen a perpetual easement, as supported by property title and prior legal descriptions, for existing utility lines in their current location that run from the well in an easterly direction, near the northern boundary of the Slaton Parcel, and connect with lines on the Lorenzen Parcel.
- 2. This grant of easement includes incidental rights of vehicular access, only if and when necessary, both above and below-ground, to maintain, repair, or replace, said utility lines. When possible, access shall be made from Lorenzen's parcel or public rights of way. Lorenzen shall promptly repair any breaks and be responsible for any damage caused by his utility lines. Slaton will make every effort possible to protect the Lorenzen utilities in the easement area when she or third parties perform work on her property. The Parties shall prominently mark and

cover if possible, and notify the other Party as soon as possible of any work area left open overnight.

3. Access shall be made from Old Midland Road to the Well using the entry located approximately 50' west of the Well. Every effort will be made to not leave vehicles left unattended.
4. Lorenzen will give at least 2 weeks notice for planned projects.
5. Under no circumstances shall the approach to Dillon Field Airport be obstructed at any time, so long as such runway is recognized by the applicable federal, state, or local agency.
6. Line location by instrument will be used prior to any digging. Care will be taken during any work to avoid tree and root damage, which shall be repaired at the time, if possible.
7. Slaton's driveway will not be blocked unnecessarily during work projects and driveway will be kept accessible during work projects to the maximum extent possible.
8. Lorenzen will promptly repair any broken or leaking utility and shall repair any damage to grounds and driveway, returning them to original condition. In the event of repair or replacement of the portion of the currently existing irrigation line that is under Slaton's driveway, a culvert will be installed at that time.
9. Slaton will be held harmless from costs of repairs to utility lines in the Northerly easement that are caused by natural root growth of the three (3) existing, mature Ponderosa Pine trees on the immediate west side of the driveway, within fifteen feet (15') of the Lorenzen's existing utility lines.

B. Easterly

1. Slaton grants to Lorenzen a utility easement for existing underground utility lines that run along the easterly portion of the Slaton Parcel to connect with lines on the Lorenzen Parcel. This easement shall exist until September 1, 2012 when the parties shall execute and record a written termination of this Easterly Easement. In relocation, maintenance or repair of any utilities in the Easterly easement, Lorenzen shall use his best efforts to not damage any trees or roots.
2. In no event later than 30 days from the execution of this Agreement, Slaton shall pay to Lorenzen the sum of \$2,000. In exchange, on or before September 1, 2012, Lorenzen shall physically disconnect and permanently disable any portion of the old line that traverses the common boundary of the Slaton/Lorenzen parcels.

PROPERTY LINE ADJUSTMENT

- A. Upon execution of this Agreement, Slaton shall pursue and apply for a Property Line Adjustment through the Klamath County Planning Department that shall adjust the boundary line between the Slaton Parcel and the Lorenzen Parcel, according to the terms stated below.
- B. The adjusted common property line, shall run approximately north-to-south, shall be surveyed, or drawn by a surveyor, and shall be located at its northern point of beginning, along the northern boundary of the Lorenzen Parcel at twenty-two feet to twenty three feet (22'-23') East of the Mag Nail with washer stamped #LS58985, and shall proceed in a straight line, intersecting the common property line described on Survey #7749 at its MIDPOINT which is approximately 655.5 – 670.5 feet north of the southern boundaries of both parcels running along the pre-adjusted common property line and continue to its southern point of termination, along the southern boundary of the Slaton Parcel, as illustrated in the rendition shown on Exhibit "B", attached hereto and incorporated herein by reference.
- C. The total acreage of each parcel will not change. The adjusted property line shall be a straight line that maximizes the set back for Slaton's shop and contains the physical tree line and Slaton's shop on the Slaton parcel.
- D. All of the expense of prosecution of said Property Line Adjustment, including any incidental fees, shall be paid by Slaton.
- E. Lorenzen shall cooperate in said application and prosecution of the Property Line Adjustment, including any submission, approval, and any appeal, but shall in no way be financially obligated for the same.
- F. Any easements created by this Agreement, upon completion of the Property Line Adjustment and any subsequent deeding in conformity therewith, shall be automatically modified in order to account for the adjusted property lines.
- G. Time is of the essence of this Agreement.

OTHER TERMS

- A. This Agreement shall supersede the Well Use Agreement previously recorded at Vol. M85, page 12444. This Agreement shall run with the land, which means that the right to use the water from the well shall be available to any purchasers or future owners of the properties described above.
- B. This Agreement is appurtenant to and runs with the land, burdening and benefiting the respective parcels, and shall bind and inure to the benefit of the respective parties, their heirs, successors, and assigns.

- C. Any dispute under this Agreement shall be required to be resolved by binding arbitration of The Parties hereto. If The Parties cannot agree on an arbitrator, each party shall select one arbitrator and both arbitrators shall then select a third. The third arbitrator so selected shall arbitrate said dispute. The arbitration shall be governed by the rules of the American Arbitration Association then in force and effect.
- D. In construing this agreement, where the context so requires, the singular includes the plural and all grammatical changes shall be made so that this agreement shall apply to a married couple, or other co-owners, as it does to an individual owner.
- E. Any notices required under this Agreement shall be delivered to the following physical addresses or by first-class mail:
1. Lorenzen to 750 Old Midland Road, Klamath Falls, Oregon 97603
 2. Slaton
Mailing Address: P.O. Box 303, Midland, OR 97634
Physical Address: 730 Old Midland Road, Klamath Falls, OR 97603.
- E. This agreement may be executed in counterpart as if in the original.

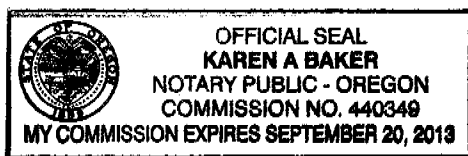
IN WITNESS WHEREOF, The Parties enter into this agreement by the execution of the signatures below.

****INTENTIONALLY LEFT BLANK****
NOTARIZED SIGNATURES TO FOLLOW

Dorothy Slaton
Dorothy Slaton

STATE OF OREGON)
) ss.
County of Klamath)

SUBSCRIBED AND ACKNOWLEDGED before me this 13 day of October, 2011, by Dorothy Slaton, who personally appeared.




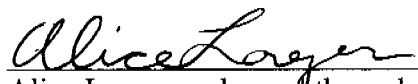
Karen A. Baker
Notary Public for Oregon
My Commission Expires: 9-20-2013

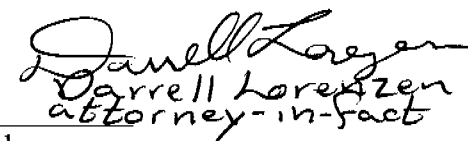
****INTENTIONALLY LEFT BLANK****
NOTARIZED SIGNATURES TO FOLLOW

IN WITNESS WHEREOF, the parties enter into this agreement by the execution of the signatures below.

LORENZEN:

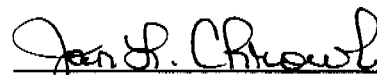

Darrell Lorenzen


Alice Lorenzen, by and through her
attorney-in-fact, Darrell Lorenzen


Darrell Lorenzen
attorney-in-fact

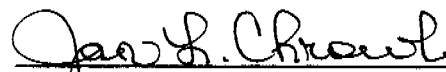
STATE OF OREGON)
) ss.
County of Klamath)

SUBSCRIBED AND ACKNOWLEDGED before me this 2 day of September, 2011, by
Darrell Lorenzen, who personally appeared.


Notary Public for Oregon
My Commission expires: 8-29-12

STATE OF OREGON)
) ss.
County of Klamath)

SUBSCRIBED AND ACKNOWLEDGED before me this 2 day of September, 2011, by
Darrell Lorenzen, as attorney-in-fact for Alice Lorenzen.


Notary Public for Oregon
My Commission expires: 8-29-12



STATE OF OREGON

EXHIBIT "A"

COUNTY OF

KLAMATH

CERTIFICATE OF WATER RIGHT

This Is to Certify, That

RAYMOND E. AND/OR BARBARA J. DILLON

of Rt. 1, Box 907-E, Klamath Falls, State of Oregon, 97601, has made proof to the satisfaction of the Water Resources Director, of a right to the use of the waters of Dillon Well

a tributary of Klamath River
irrigation of 14.5 acres

for the purpose of

under Permit No. 6-5905 and that said right to the use of said waters has been perfected in accordance with the laws of Oregon; that the priority of the right hereby confirmed dates from August 20, 1973 that 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 0.18 cubic foot per second

or its equivalent in case of rotation, measured at the point of diversion from the well. The well is located in the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 6, T. 40 S., R. 9 E., W. M., 60 feet South and 1240 feet West from the NE Corner, Section 6

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 for each acre irrigated and shall be further limited to a diversion of not to exceed 3 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:

14.5 acres NE $\frac{1}{4}$ NE $\frac{1}{4}$
Section 6
T. 40 S., R. 9 E., W. M.

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

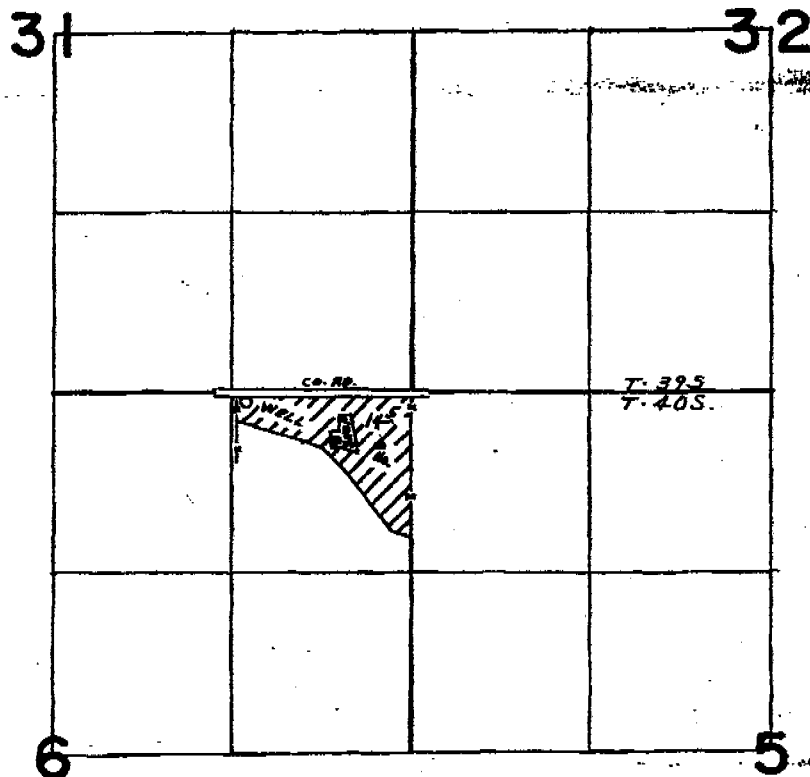
this date, November 30, 1978


Water Resources Director

G-5905

49676

T.39 & 40S. R.9E. W.M.



WELL LOC. 60'S & 1240' W. FROM NE COR. SEC. 6.

FINAL PROOF SURVEY
UNDER

Application No. G-6272... Permit No. G-5905..
IN NAME OF

RAYMOND E. & BARBARA J. DILLON

Surveyed APR. 21, 1976, by L.H. NUNN

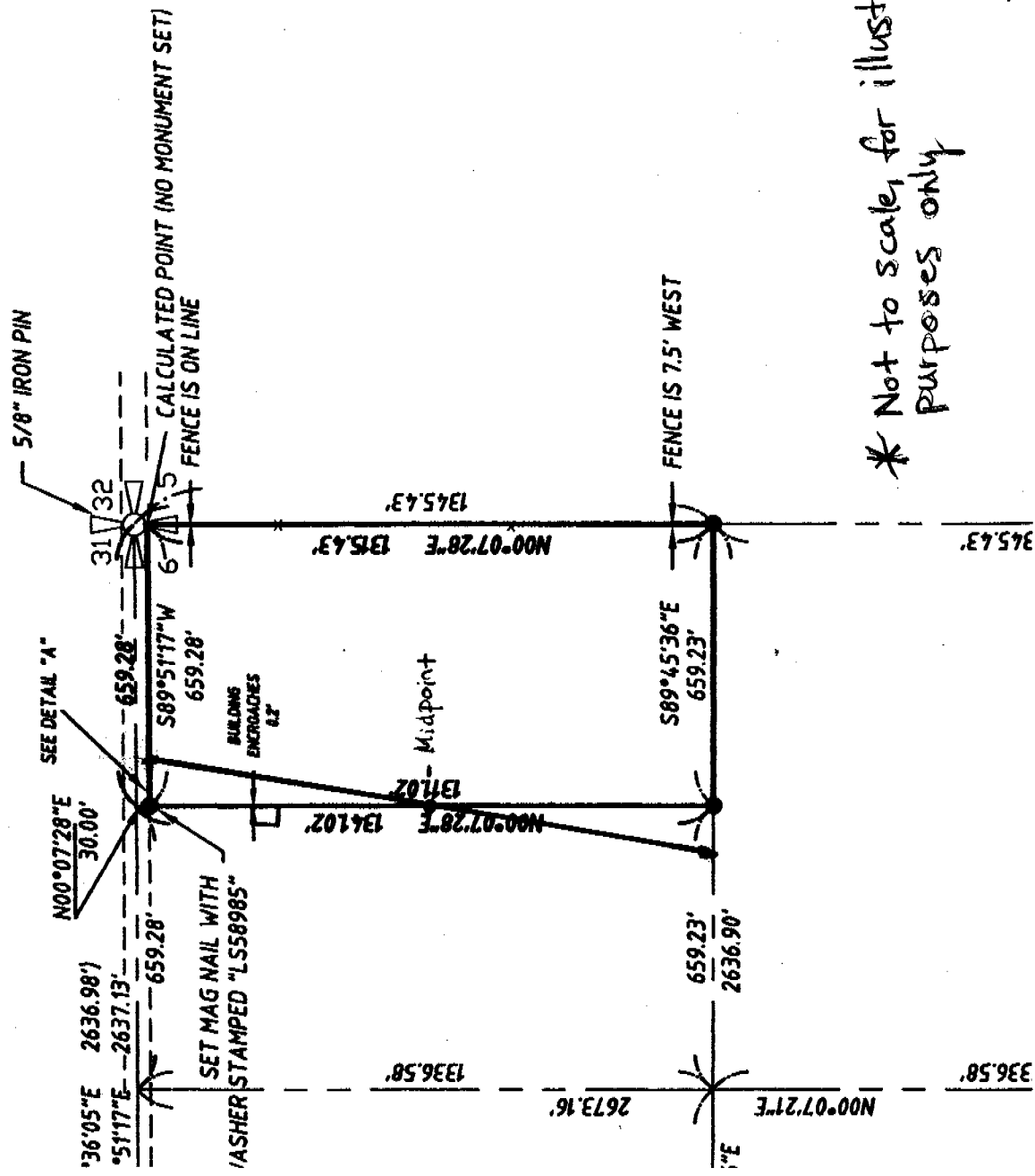
1976-P

1" = 1320 feet

RECORD OF SURVEY

SITUATED IN THE NE1/4 NE1/4 OF SECTION
T40S, R9E, W.M., KLAMATH COUNTY, OREGON

EXHIBIT " B "



* Not to scale, for illustrative purposes only

LEGEND:

MONUMENT AS NOTED