

MTCA 8098 KR

RECORDING REQUESTED BY:

Ronald S. Yockim
P.O. Box 2456
Roseburg, OR 97470

2013-010590

Klamath County, Oregon

09/17/2013 12:41:36 PM

Fee: \$72.00

WHEN RECORDED MAIL TO:

Nick & Theresa Temple
Care of Richard Fairclo
409 Pine Street Suite 209
Klamath Falls, OR 97601

WHITELINE RESERVOIR EASEMENT

THIS EASEMENT made and entered into this 12th day of September, 2013, by and between RLF Klamath Properties, LLC, a Colorado Limited Liability Company, hereinafter referenced as "Grantor;" and, Nicholas B. Temple and Theresa J. Temple, herein after referenced as "Grantee", collectively herein the Grantor and Grantee are referenced as the "Parties".

Recitals:

- A. Grantor is the owner of the lands within Sections 15, 22, 23 and 24 of Township 37 South, Range 9 East, W.M. located in Klamath County, Oregon upon which is currently located Whiteline Reservoir and the diversion works and canals that divert water from Anderson Creek into Whiteline Reservoir and in turn release water from Whiteline Reservoir into Anderson Creek as is depicted on the Attached Exhibit A.
- B. Grantee is the owner of lands within Sections 19, 20, 29 and 30 of Township 37 South, Range 10 East, W. M. that currently have appurtenant water rights to utilize the waters of Whiteline Reservoir for irrigation purposes under State of Oregon Water Right Certificates 33175 and 33176.
- C. Whiteline Reservoir was constructed under the provisions of the August 29, 1950 Decree Modifying the Findings and Order of Determination of the State Engineer and Affirming Same as Modified, as issued by the Circuit Court of the State Oregon in "The Matter of the Determination of the Relative Rights to the Use of the Waters of Swan Lake and its Tributaries," and under the provisions of Reservoir Permit R-801 as was certificated by State of Oregon Water Right Certificate 33173.
- D. The Parties desire to set forth the terms and conditions upon which Whiteline Reservoir will be maintained, operated and accessed.

NOW THEREFORE AND IN CONSIDERATION OF mutual promises and covenants contained herein, the Parties agree as follows:

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amt.

1. **GRANT OF EASEMENT.** Grantor hereby grants to Grantee, its successors and assigns, the following non-exclusive easement to maintain, repair and operate Whiteline Reservoir, the diversion works on Anderson Creek and the outlet from Whiteline Reservoir to Anderson Creek, and to use Anderson Creek to convey or otherwise carry water stored in Whiteline Reservoir to the Grantee's property¹ all as generally depicted on the attached Exhibit A and as presently existing. The easement includes a perpetual non-exclusive easement to utilize any existing roadways or other lands of Grantor as necessary to access the Whiteline Reservoir for the above described purposes (the "Easement Area").
2. **EXISTING WATER RIGHTS.** Grantor is the owner of Whiteline Reservoir and holds an appurtenant water right to store water in the reservoir as set forth in State of Oregon Water Right Certificate 33173. Grantor and Grantee each hold appurtenant water rights to use stored water from Whiteline Reservoir. Neither Party shall utilize, manage or operate Whiteline Reservoir in a manner that unreasonably interferes with the other Party's rights to use stored water from the reservoir. The Parties' use of water from Whiteline Reservoir shall not exceed the rate, duty and acreage limitations described in the Parties' State of Oregon water rights.
3. **MEASUREMENT AND REPORTING.** Grantor may, in Grantor's sole discretion, install a weir to measure water released from the Whiteline Reservoir. Neither Party shall be required to measure the amount of stored water diverted from Whiteline Reservoir, unless the other Party objects in writing to the amount diverted based upon a reasonable belief that such diversion exceeds the amount authorized under existing water rights. In the event that one Party objects to the other Party's use of stored water under this paragraph, both Parties shall install appropriate measuring devices to measure the amount of stored water diverted by each Party from the reservoir. The Parties shall negotiate in good faith to determine the type and location of the required measuring device(s); provided that if the Parties cannot reach agreement, then the Parties shall request and abide by the recommendation of the Oregon Water Resources Department regarding the type and location of the required device(s). Upon installation of any measuring devices, each Party shall measure and record its own diversions from the reservoir and shall make any such records available to the other Party upon request. The costs of installing, operating and maintaining the required measuring device(s) shall be shared by the Parties in proportion to each Party's respective share of the irrigated acres entitled to receive water from the reservoir.
4. **OPERATION AND MAINTENANCE COSTS.** Each party shall be responsible for its proportionate share of the cost of operating, maintaining and repairing Whiteline Reservoir and its dam, diversion and outlet facilities. Each Party's proportionate share shall be determined by dividing the number of acres the Party owns with certificated or permitted irrigation rights from Whiteline Reservoir by the total number of acres the Parties' collectively own with certificated or permitted irrigation rights from the reservoir. As of the effective date of this Easement, Grantor holds water rights for irrigation of 250.2 acres from Whiteline Reservoir and Grantee holds water rights for irrigation and supplemental irrigation of 182.9 acres. Until the Parties' respective acreage changes, Grantor shall pay 58 percent and Grantee shall pay 42 percent of the costs. No Party shall be required to pay more than \$500.00 toward costs that were

¹ Any discharge of water into Anderson Creek will not be considered a release or an abandonment of the right of Grantee to the use of the water.

incurred without the Party's consent, provided that such consent shall not be unreasonably withheld.

5. **BILLING.** A Party who pays for operation, maintenance and repair costs, for which the other Party is required to pay a proportionate share, may bill the other Party for its share of the costs. The bill shall be in writing and shall be accompanied by a copy of a paid receipt or other documentation showing the nature of the expense in reasonable detail. The billed Party shall pay such bill within 30 days of receipt. The Party receiving such payment shall apply it to the expense to which the bill relates to the extent not already paid in full. Parties submitting bills shall keep accurate and complete records, including original receipts, and shall make the same available to the other Party for inspection for a period of three years.

6. **ADDITIONAL STORAGE.** The Parties recognize that additional storage may be authorized from time to time by application to the Oregon Water Resources Department and agree that neither party shall apply to increase the storage without the consent of the other and that any additional storage shall be consistent with state-issued water rights, provided that a Party may not withhold its consent to additional storage unless (1) the additional storage would result in that Party no longer receiving previously available water to which the Party is legally entitled under existing water rights; or (2) the additional storage would negatively impact the use or value of the Party's real property. All costs associated with additional storage (including application fees, reasonable consultant and attorney fees and construction work) shall be shared by the Parties in proportion to each Party's respective share of the irrigated acres to be benefited by the additional storage.

7. **WATER SHORTAGES.** The Parties acknowledge that Anderson Creek is dry throughout much of the year and that Whiteline Reservoir may not have sufficient water to satisfy the Parties' water rights of record in any given year. During such times of shortage, the Parties shall be entitled to a proportionate share of water in the reservoir, such share to be determined in the same manner as operation and maintenance costs.

8. **WARRANTY OF TITLE.** The easement and rights hereinabove granted are made without warranty and are conveyed subject to all matters of public record, and subject to all matters which a prudent inspection of the lands subject hereof would disclose, all as of the date and year first above written.

9. **GRANTOR'S USE.** Grantor reserves the right to use the Easement Area for any and all purposes which do not unreasonably interfere with the exercise by Grantee of its rights under this easement.

10. **NO WARRANTY OR REPRESENTATIONS.** Grantee accepts the easement premises, water rights and stored water "As Is". Grantor makes no warranty or guarantee of water quantity, quality, or fitness for any purpose, or of the stability or condition of any portion of the easement or the facilities thereon. No Party has made any representations or warranties to the other Party regarding the validity of any of the water rights.

11. APPURTENANT EASEMENT. The easement herein is appurtenant to the lands of Grantee and shall be binding upon the Parties and their successors and assigns and shall run with the land.

12. WATER RIGHT TRANSFERS. Each Party may apply to OWRD to change its water rights through a water right transfer application without the other Party's consent, except to the extent such consent may be required by OWRD. A Party applying for a water right transfer shall provide a copy of the application to the other Party at the time the application is submitted to OWRD.

13. INDEMNITY. Each Party hereby covenants and agrees to protect, defend, indemnify, save and hold the other Party, its officers, directors, partners, managers, members, employees, agents and property free, clear and harmless from any and all liability, loss, cost, charge, penalty, obligation, expense, reasonable attorney's fee, litigation, judgment, damage, claim and demand of any kind whatsoever in connection with or arising out of or by reason of the Party's possession or use of the Easement area or the Party's conduct with respect to the rights granted in this agreement, except for liability arising out of the other Party's sole negligence, intentional misconduct, or wrongful omission.

14. ENFORCEMENT.

14.1 If any Party fails to pay a bill or otherwise contribute its share of any cost or expense due under this agreement as and when due, then the billing Party shall be entitled to recover from the delinquent Party such sum, together with interest at the rate of 12% per annum calculated from the date billed until the date paid, by any means available at law or in equity.

14.2 Notwithstanding Section 10 above, if a Party takes more than the Party's share of water from the reservoir or causes the water stored therein to become unsuitable (by contamination or otherwise) or unavailable for uses authorized by water rights, that Party shall be liable for all resulting damages to the other Party.

14.3 If an action or arbitration proceeding is brought to enforce or construe this agreement, the Party prevailing in such action or proceeding shall be entitled to recover from the other Party all fees and expenses incurred in arbitration, at trial or on appeal, including reasonable attorney fees.

14.4 Before initiating any formal enforcement action in law or equity, a Party shall first seek to informally resolve the dispute by providing written notice of any alleged breach or default to the other Party and specifying a reasonable time period of at least 30 days in which to cure the breach or default or otherwise resolve the dispute.

14.5 The failure by a Party at any time to require strict performance of any provision of this agreement shall not be a waiver of or prejudice the right to subsequently enforce that provision or any other provision of this agreement.

15. **ENTIRE AGREEMENT.** This document is the entire, final and complete agreement of the parties with respect to the subject matter hereof.

16. **EFFECTIVE DATE.** The effective date of this Easement is September 17, 2013.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, in duplicate, as of the day and year first above written.

RLF KLAMATH PROPERTIES, LLC
A Colorado Limited Liability Company

NICHOLAS B. TEMPLE

X By: [Signature]

[Signature]

Print Name: B. Joseph Leininger

THERESA J. TEMPLE

Title: Authorized Representative

[Signature]

STATE OF OREGON)

) ss.

County of Klamath)

Personally appeared the above named NICHOLAS B. TEMPLE and THERESA J. TEMPLE and acknowledged the foregoing instrument to be their voluntary act and deed.

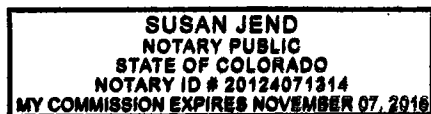
[Signature]
Notary Public for Oregon
My Commission Expires: 11/16/2015

* STATE OF COLORADO)

) ss.

County of Denver)

Personally appeared the above named B. Joseph Leininger as Authorized Representative of RLF KLAMATH PROPERTIES, LLC, Colorado Limited Liability Company and acknowledged the foregoing instrument to be his voluntary act and deed.



[Signature]
Notary Public for ~~Oregon~~ Colorado
My Commission Expires NOV. 7, 2016

Joinder of Lender

The undersigned ("Lender"), as the holder of the indebtedness secured by Deed of Trust, Security Agreement, Fixture Filing, Loan Security Agreement and Assignment of funds recorded at Volumes 2011-013676 and 2011-013677 Loan No. 074826-441-999-99 and Loan No. 074826-442-999-99 in the Official Records of Klamath County, Oregon, encumbering, among other rights and interests, the real property described in and covered by the Whiteline Reservoir Easement (the "Easement") to which this Joinder is attached, joins in the execution of the Easement solely for the purposes of consenting to the creation of the Easement and agreeing that the Easement will not be disturbed or extinguished by any foreclosure, legal action, or deed in lieu of foreclosure undertaken or accepted with respect to such Deed of Trust and related obligations.

NORTHWEST FARM CREDIT SERVICES, FLCA

By: 

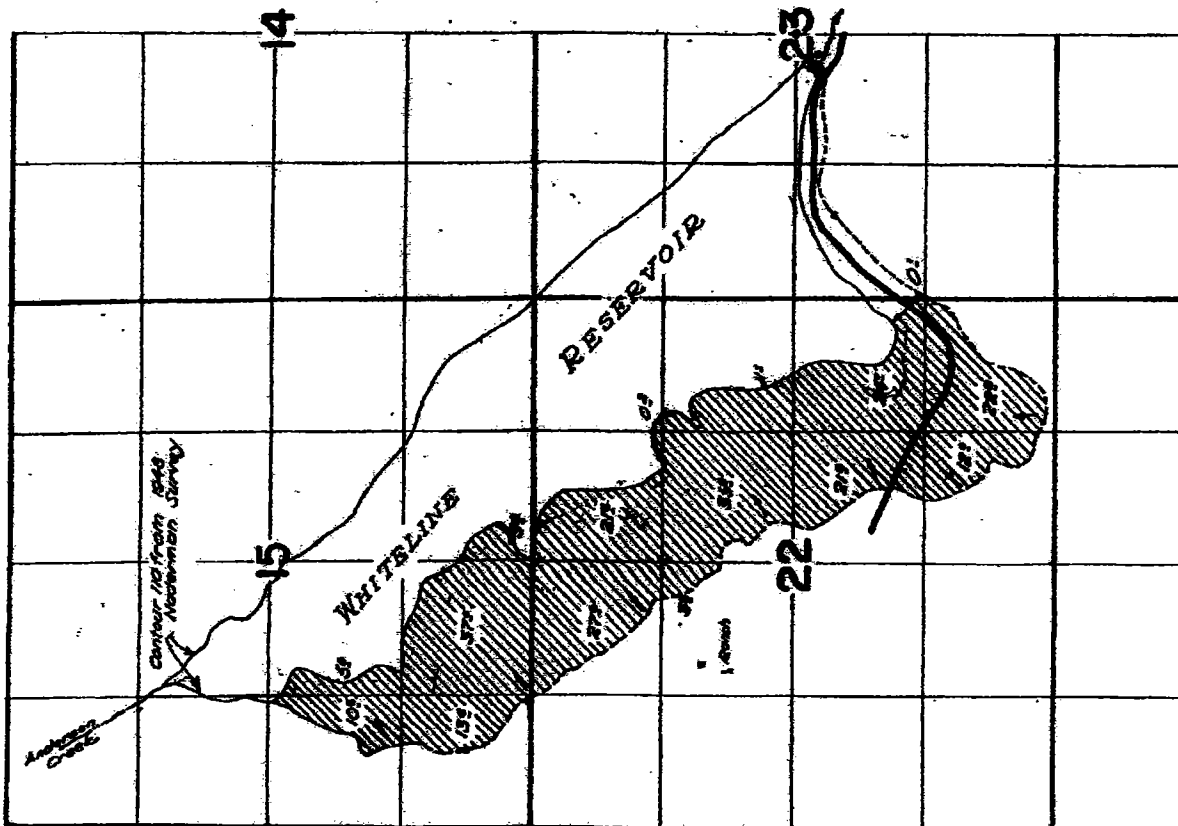
Name: Mitchell K Stokes

Title: Relationship Manager / Avp

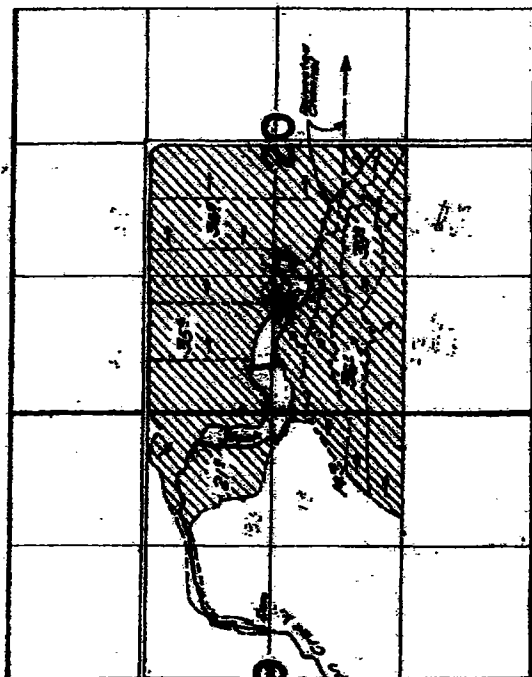


EXHIBIT A
PAGE 1052

T.37S.R.9E.W.M.



T.37S.R.10E.W.M.



FINAL PROOF SURVEY UNDER

Application No. 19705 Permit No. 15316
R-20321 R-201
20322 18023
24201 18023
27322 21482

IN NAME OF

H. Douglas Whiteline

Surveyed June 15 1961 by *H. Douglas Whiteline*

SNB-875-01
SNB-875-49

EXHIBIT A
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