

Trout Unlimited  
Returned at Counter

2019-005586

Klamath County, Oregon



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05/17/2019 03:39:04 PM

Fee: \$112.00

**Recording Requested By and  
When Recorded Return to:**

State Coastal Conservancy  
1515 Clay St, 10<sup>th</sup> Floor  
Oakland, CA 94612

Attn: Legal Counsel: JG

**EXEMPT FROM RECORDING FEES – GOVERNMENT CODE SECTION 6103**

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**AGREEMENT PROTECTING THE PUBLIC INTEREST  
IN CERTAIN IMPROVEMENTS AND DEVELOPMENT  
*Wood River Water Quality Improvement Project, Klamath County*  
(Public Resources Code § 31116(c))**

This agreement is entered into by the California State Coastal Conservancy (“the Conservancy”), Trout Unlimited, a nonprofit organization (“TU”) and John von Schlegell (“Landowner”).

**PERTINENT FACTS**

- A. California Public Resources Code §§ 31116 authorizes the Conservancy to award grants to nonprofit organizations for the purposes of Division 21 of the Public Resources Code.
- B. TU is a nonprofit organization exempt from taxation under Section 501(c)(3) of the United States Internal Revenue Code and whose purposes are consistent with Division 21.
- C. Landowner owns certain real property (“the Property”), in Klamath County, Oregon in Township 33S, Range 7.5E, Section 31 in Taxlot 3100
- D. On January 29, 2015, the Conservancy authorized a grant to KBRT (which was acquired by TU in 2016), subsequently awarded under Conservancy Grant Agreement No. 14-072, to install a series of diffuse source treatment wetlands in Klamath County, Oregon. These constructed and implemented improvements, collectively, are referred to in this agreement as “the Improvements.” The scope of work in the agreement includes the construction of 2 diffuse source treatment wetlands in Township 33S, Range 7.5E, Section 31 in Taxlot 3100 within Klamath County Oregon in order to improve water quality in the Klamath River watershed.
- E. Public Resources Code § 31116(c) requires that the Conservancy execute an agreement sufficient to protect the public interest in any improvements or development constructed under its grant; this agreement must be recorded in the county in which the real Property is located.

***PUBLIC INTEREST AGREEMENT (Pub. Res. Code § 31116(c))  
Klamath River Water Quality Improvement Project, Klamath County, Oregon***

- F. The grant referred to above was conditioned on TU and the Conservancy executing and recording an agreement to protect the public interest in all improvements or developments constructed with Conservancy funds, in accordance with Public Resources Code § 31116(c), and additionally to protect and enhance water quality.

**TU, THE CONSERVANCY AND LANDOWNER AGREE AS FOLLOWS**, in order to carry out the purposes of Public Resources Code § 31116(c), and in light of the Pertinent Facts, above:

1. **DURATION.** The term of this agreement shall begin upon execution by all parties, and shall expire on November 11, 2030, provided that the parties may shorten the term of this agreement by consent of all the parties to this agreement. TU will evaluate project five years after construction (on or around October 2023) and determine (based on monitoring results) if nutrient removal objectives are being met. If it is determined that nutrient removal objectives are not being met, TU, the Conservancy, and Landowner agree to terminate the agreement. If this agreement is terminated before November 11, 2030, TU and the Conservancy will record notice of termination of this agreement with the Klamath County Recorder.
2. **CONSTRUCTION AND MAINTENANCE.** Landowner agrees to provide access to the Property. TU assumes all responsibility for constructing and implementing the Improvements. During the term of this agreement, TU shall regularly monitor and, as needed, maintain the Improvements in good condition and shall be solely responsible for such monitoring and maintenance.
3. **USE OF THE PROPERTY AND IMPROVEMENTS.** Throughout the term of this agreement, TU and Landowner shall use the Property and Improvements in a manner consistent with the purposes of the Conservancy's grant to TU including, but not limited to running irrigation tailwater through constructed and vegetated treatment wetlands and monitoring flows to determine treatment efficacy. Landowner agrees that neither he nor his employees, agents or contractors will materially impair, alter or damage the Improvements for the term of this agreement.
4. **COVENANTS RUNNING WITH THE LAND.** The obligations of this agreement are agreed to be covenants running with the land within the meaning of California Civil Code § 1468. The covenants shall run with the Property and be binding upon and inure to the benefit of TU, its assigns and successors in interest, and the people of the State of California.
5. **ACCESS BY TU.** TU shall have and Landowner shall permit reasonable access to the Property to design, construct, maintain and monitor the Improvements.
6. **INSPECTION.** TU and Landowner shall permit the Conservancy, its agents or employees, to visit the project site at reasonable intervals to monitor the project.

***PUBLIC INTEREST AGREEMENT (Pub. Res. Code § 31116(c))  
Klamath River Water Quality Improvement Project, Klamath County, Oregon***

7. **LANDOWNER'S USE OF THE PROPERTY.** Landowner reserves the right to use the Property in any manner, provided that its use does not unreasonably interfere with TU's rights under this agreement and does not materially impair, alter or damage the Improvements.
8. **LIABILITY.** TU and Landowner shall be responsible for, indemnify and save harmless the Conservancy, its officers, agents, and employees from any and all liabilities, claims, demands, damages or costs resulting from, growing out of, or in any way connected with or incident to the Property and the Improvements, except for active negligence of the Conservancy, its officers, agents or employees. The duty to indemnify and save harmless includes the duty to defend as set forth in Civil Code Section 2778. TU and LANDOWNER waive any and all rights to any type of express or implied indemnity or right of contribution from the Conservancy, its officers, agents or employees, for any liability resulting from, growing out of, or in any way connected with or incident to the Property and improvements on it.
9. **SUCCESSORS TO TU.** If, for any reason, including, but not limited to the dissolution and winding up of TU, TU is unwilling or unable to meet its obligations under this agreement, the Executive Officer of the Conservancy shall have the right to designate a public entity or nonprofit corporation to assume the responsibilities of TU under this agreement.
10. **SUCCESSORS IN INTEREST.** The terms of this agreement shall be binding on all successors and assigns of the parties to this agreement.
11. **FORBEARANCE NOT A WAIVER.** Any forbearance on the part of the Conservancy, or its successor in interest, to enforce the terms and provisions of this agreement in the event of a breach shall not be deemed a waiver of the Conservancy's right regarding any subsequent violation or breach.
12. **SEVERABILITY.** If any of the provisions of this agreement are found by a court of law to be of no force or effect, the validity of all other provisions shall be unaffected.
13. **NOTICES.** Notices issued pursuant to this agreement shall be sent to the following addresses (or to a subsequent address of which notice has been provided in writing):

**CONSERVANCY:**

State Coastal Conservancy  
Attn: Legal Staff or Executive Officer  
1515 Clay St, 10<sup>th</sup> Floor  
Oakland, CA 94612

**TU:**

Trout Unlimited  
Attn: Nell Scott, Klamath Restoration Director  
1453 Esplanade Avenue  
Klamath Falls, OR 97601

***PUBLIC INTEREST AGREEMENT (Pub. Res. Code § 31116(c))  
Klamath River Water Quality Improvement Project, Klamath County, Oregon***

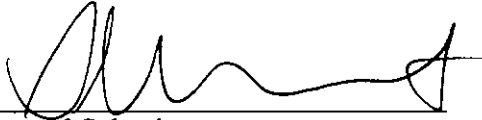
LANDOWNER  
John von Schlegell  
760 SW Ninth Avenue, Suite 2300  
Portland, OR 97205

14. **RECORDATION**. This agreement shall be recorded in the official records of the County of Klamath.

15. **LOCUS OF CONTRACT**. This agreement is entered into in the County of Alameda, California.

**PUBLIC INTEREST AGREEMENT (Pub. Res. Code § 31116(c))**  
**Klamath River Water Quality Improvement Project, Klamath County, Oregon**

**STATE COASTAL CONSERVANCY**

  
Samuel Schuchat  
Executive Officer

5/9/16  
Date

**CALIFORNIA NOTARY ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.


State of California

County of Alameda

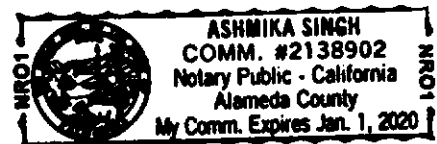
On May 9<sup>th</sup>, 2019 before me, Ashmika Singh Notary Public (name and title of officer), personally appeared Samuel Schuchat, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that she/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 

(Seal)



**PUBLIC INTEREST AGREEMENT (Pub. Res. Code § 31116(c))**  
**Klamath River Water Quality Improvement Project, Klamath County, Oregon**

**TROUT UNLIMITED**

Eleanor (Nell) Scott

Eleanor (Nell) Scott  
Klamath Restoration Director

4/18/19

Date

**OREGON NOTARY ACKNOWLEDGMENT**

State of Oregon

County of Klamath

This record was acknowledged before me on (date) April 18, 2019

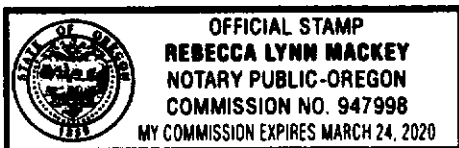
by (name(s) of individual(s)) Eleanor Scott

Rebecca Lynn Mackey  
Signature of Notarial Officer

Notary Public  
Title of Office

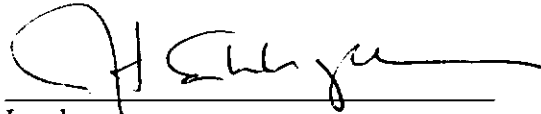
My commission expires: 03/24/2020

Stamp:



**PUBLIC INTEREST AGREEMENT (Pub. Res. Code § 31116(c))**  
**Klamath River Water Quality Improvement Project, Klamath County, Oregon**

**LANDOWNER**



Landowner  
John von Schlegell

4-22-2019  
Date

**OREGON NOTARY ACKNOWLEDGMENT**

State of Oregon

County of Multnomah

This record was acknowledged before me on (date) April 22<sup>nd</sup>, 2019  
by (name(s) of individual(s)) John von Schlegell

  
Signature of Notarial Officer

Notary Public  
Title of Office

My commission expires: September 29, 2019

Stamp:

