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EXCAVATION  
382-8287

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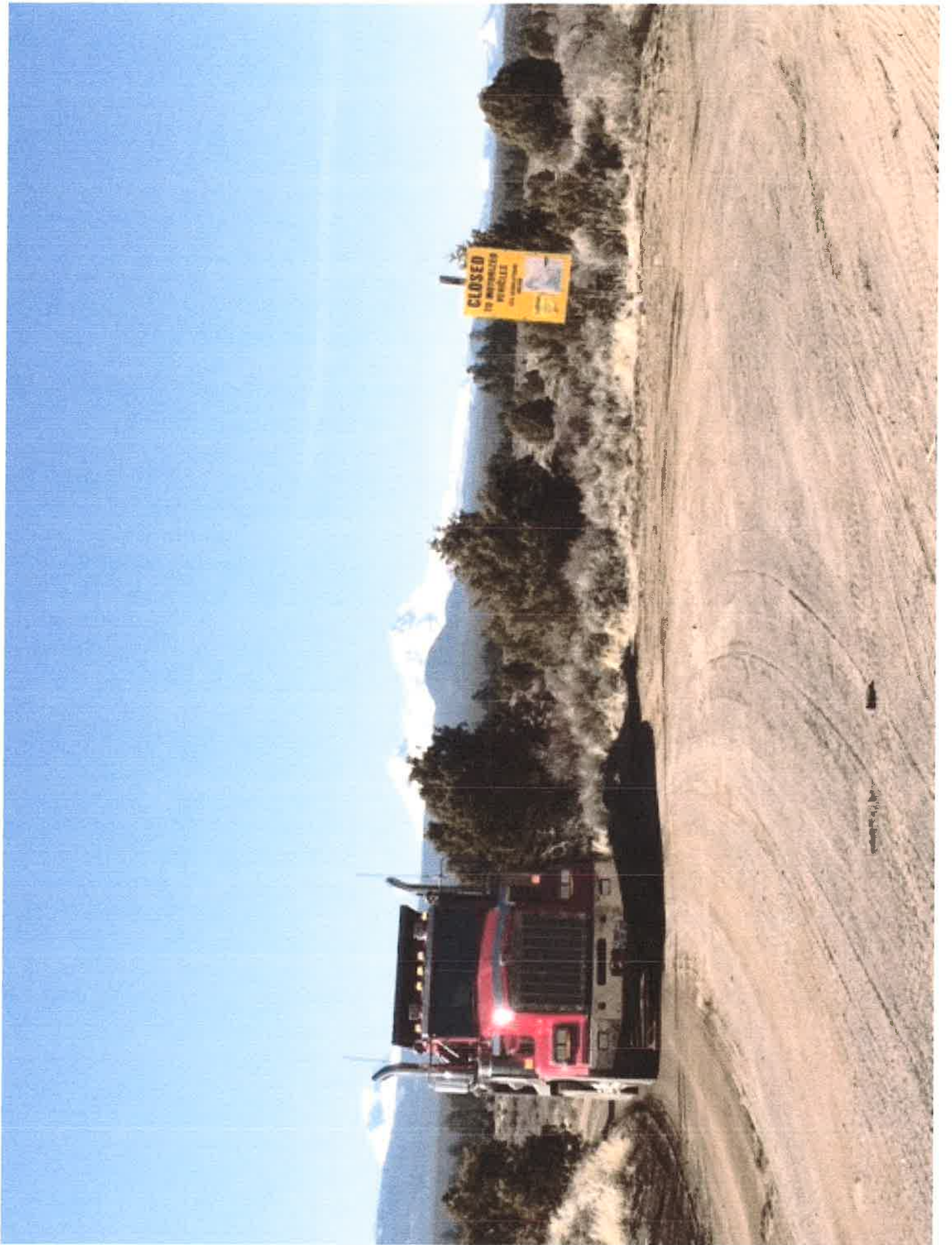


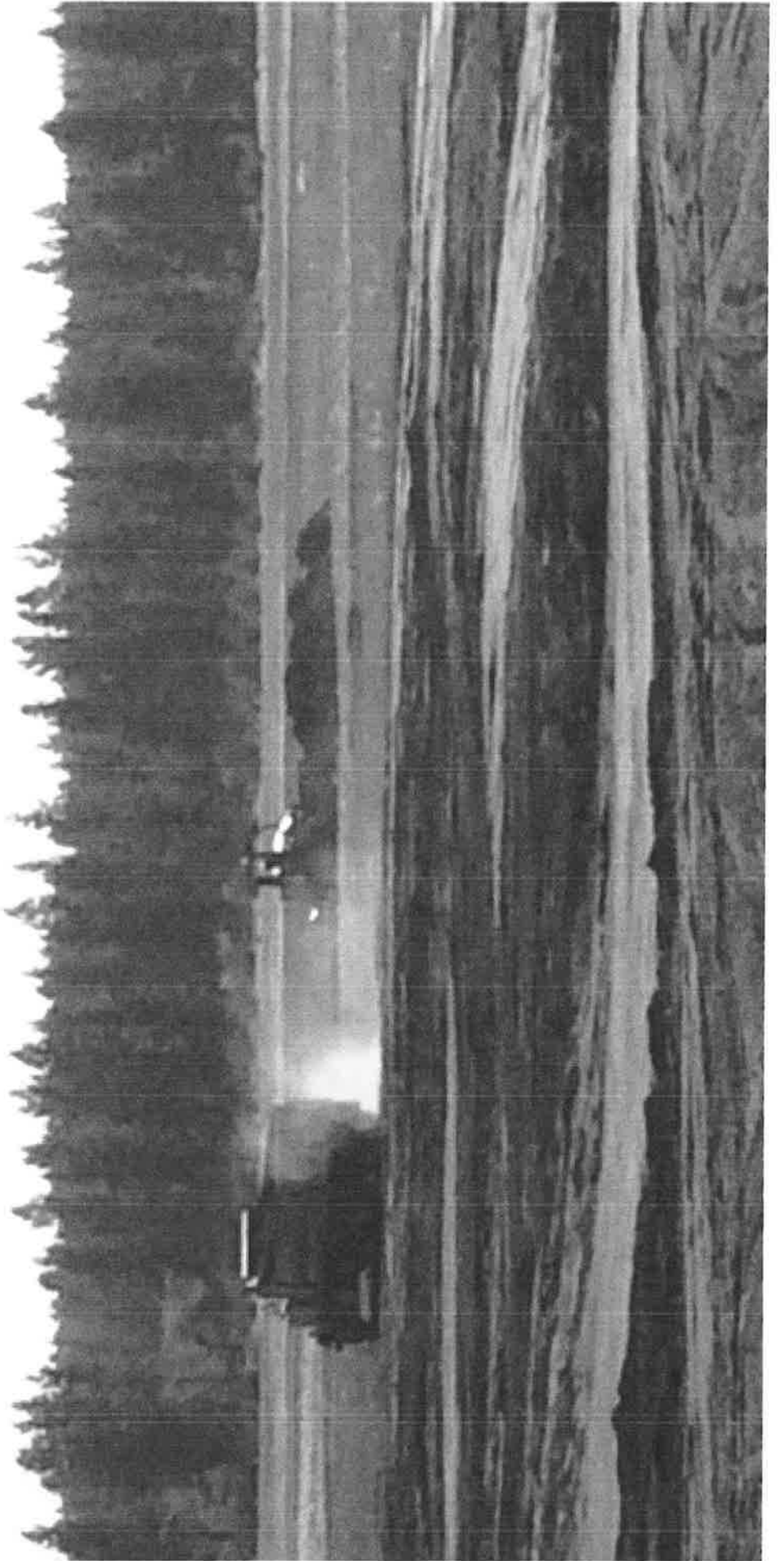


















Reservoir users also have been target-practicing in the area and throwing bottles and cans into the reservoir and then shooting at them.

Garbage in and around the reservoir also has become a problem. "We realize that you, as part of the community, probably enjoyed using the reservoir," McNulty wrote to the district's 544 water users. "For those of you that did not vandalize the property, we can only say that we hope you understand."

The district fills the reservoir in the spring when water is abundant. Then it uses the reserves for about one month during the summer when stream flows stop in Tumalo Creek, one of the district's sources of water.

This year the district has been draining the 1,100-acre-foot reservoir to make it less attractive as a recreation area. Unfortunately the technique didn't work, McNulty said.

McNulty said some people who use the reservoir water for their homes during the summer have complained about its poor quality.

"The thing is there's no sanitary facilities at the reservoir," McNulty said.

## 25 YEARS AGO

For the week ending  
Aug. 25, 1987

### Tumalo Reservoir recreation to end

Windsurfers who frequent Tumalo Reservoir will be left high and dry starting Wednesday. The Tumalo Irrigation District has decided to close the popular recreation area because of vandalism.

Ralph McNulty, director of the district, said increasing destruction by four-wheel-drive trucks, motorcycles and all-terrain vehicles, plus garbage dumping, has forced the district to close the reservoir to the public.

"Our main concern is the quality of water," said McNulty. "We want to keep the water as clean as possible."

"No trespassing" signs will go up and people caught on the reservoir after that will be cited.

McNulty hopes to meet next spring with windsurfing groups and others who use the reservoir to explain the problem. If all goes well the district may re-open the reservoir to the public.

McNulty stressed that windsurfers are not the problem, but rather people who use the reservoir area as a four-wheel-drive race track.

2013

Irrigation District, an Oregon Irrigation District, Grantee, all rights, title and interest in and to the following described real property:

- ✓ **Tax Lot 2100:** Government Lot 2, and the southwest 1/4 of Section 5, together being the West 1/2 of said northeast 1/4 of Section 5, Township 17 South, Range 11 East of the Willamette Meridian, Deschutes County, Oregon.
- ✓ **Tax Lot 400:** The Northwest 1/4 of the Southwest 1/4 of Section 33, in Township 16 South, Range 11 East of the Willamette Meridian, Deschutes County, Oregon.
- ✓ **Tax Lot 600:** The southwest 1/4 of Section 4, in Township 17 South, Range 11 East of the Willamette Meridian, Deschutes County, Oregon.
- ✓ **Tax Lot 8400:** The north 1/2 of the southeast 1/4, and the southwest 1/4 of the southeast 1/4 of Section 31, in Township 16 South and Range 11 East of the Willamette Meridian, Deschutes County, Oregon as shown on the attached map;

TOGETHER WITH, that portion of Section 32 of said Township 16 South and Range 11 East as shown on the attached map and fully described as follows:

Beginning at the southwest corner of said Section 32; thence along the west line of said Section 32, North 2540.2 feet, per Statutory Quitclaim Deed from the State of Oregon to Tumalo Irrigation District, recorded September 12, 1988 in Volume 170, Page 531 of the Deschutes County Official Records; thence leaving said west line and following said Quitclaim Deed boundary, South 76°49' East 199.3 feet; thence North 76°05' East 72.5 feet; thence North 54°19' East 175.0 feet; thence North 84°45' East 212.0 feet; thence South 71°49' East 224.0 feet; thence North 87°45' East 399.0 feet; thence South 15°16' East 612.0 feet; thence North 37°42' East 395.0 feet; thence North 36°38' East 338.0 feet; thence North 43°20' East 274.0 feet; thence South 89°56' East 649.0 feet; thence North 44°22' East 454.0 feet; thence North 73°54' East 305.0 feet; thence North 82°54' East 175.0 feet; thence North 64°07' East 242.0 feet; thence South 20°39' East 193.4 feet; thence South 3°20' East 85.8 feet; thence South 11°15' West 290.1 feet; thence South 14°56' East 475.7 feet; thence South 3°22' West 262.0 feet; thence South 15°06' West 431.6 feet; thence North 81°43' East 251.8 feet; thence South 86°59' East 281.0 feet; thence South 72°09' East 251.9 feet; thence South 41°31' East 226.8 feet; thence South 38°09' East 277.7 feet; thence South 71°23' West 220.9 feet; thence South 83°47' West 300.5 feet; thence South 71°51' West 331.1 feet; thence South 52°31' West 173.1 feet; thence South 69°01' East 206.0 feet; thence South 62°01' East 367.0 feet; thence South 45°09' East 153.2 feet; thence South 29°23' West 243.9 feet; thence South 47°23' West 436.4 feet to a point on the south line of said Section 32; thence Westerly along said south line 4,000 feet, more or less, to the point of beginning.

provided that said property is held in public ownership and use as a Winter feeding area for wildlife satisfactory to the Oregon Department of Fish and Wildlife. When said property is no longer owned by Tumalo Irrigation District or another public body, or is no longer used for public purpose including use as a Winter feeding area for wildlife satisfactory to the Oregon Department of Fish and Wildlife, then Grantor may reenter and terminate the interest of the Grantee or Grantee's assigns.

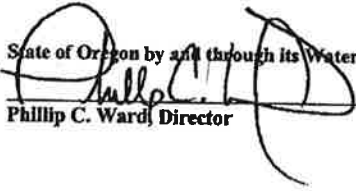
The true consideration of this conveyance is other good and valuable consideration promised, including a commitment by Tumalo Irrigation District to involve local residents and the community before making decisions on use and management of the land or granting easements.

Excepting and reserving to itself, its successors, and assigns all minerals as defined in ORS 273.775(1), including soil, clay, stone, sand, and gravel, and all geothermal resources, as defined in ORS 273.775(2), together with the right to make such use of the surface as may be reasonably necessary for prospecting for, exploring for, mining, extracting, reinjecting, storing, drilling for, and removing, such minerals, materials, and geothermal resources. In the event use of the premises by a surface rights owner would be damaged by one or more of the activities described above, then such owner shall be entitled to compensation from state's lessee to the extent of the diminution in value of the real property, based on the actual use by the surface rights owner at the time the state's lessee conducts any of the above activities.

In the event use of the premises by a surface rights owner would be damaged by one or more of the activities described above, then such owner shall be entitled to the extent of the diminution in value of the real property, based on the actual use by the surface rights owner at the time the state's lessee conducts any of the above activities.

In Witness Whereof, the grantor has executed this instrument this 12<sup>th</sup> day of May, 2008; if a corporate grantor, it has caused its name to be signed and its seal, if any, affixed by an officer or other person duly authorized to do so by order of its board of directors.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 197.352. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 197.352.

State of Oregon by and through its Water Resources Department  
  
Phillip C. Ward, Director

Personally appeared the above-named Phillip C. Ward, who being duly sworn, did say that he is the Director of the Oregon Water Resources Department of the State of Oregon, and the said instrument was signed on its behalf and by its authority; and he acknowledged said instrument to be its voluntary act and deed.

STATE OF OREGON, County of Marion )

65.

This instrument was acknowledged before me on May 12, 2008  
By Phillip C. Ward



# Oregon

Heidi R. Kufongaski, Governor

Water Resources Department  
North Mall Office Building  
725 Summer Street NE, Suite A  
Salem, OR 97301-1271  
503-986-0900  
FAX 503-986-0904

## MEMORANDUM

**TO:** Water Resources Commission

**FROM:** Phillip C. Ward, Director

**SUBJECT:** Agenda Item J, November 30, 2007  
Water Resources Commission Meeting

### Request by Tumalo Irrigation District for Expanded Quit Claim Deed

#### I. Issue Statement

In 1988, the Water Resources Commission authorized conditional conveyance of 930 acres of former Tumalo Reservoir Project property to the Tumalo Irrigation District (TID) through recorded statutory Quit Claim Deed to be held under public ownership and used as a winter feeding area for wildlife. TID is requesting an additional 533 acres of contiguous property be added to the 930 acres; also to be used as a winter feeding area for wildlife.

#### II. Background

Under the Carey Act of 1894, the federal government entered into contracts with state governments for the irrigation and reclamation of desert lands. In 1901, Oregon officially accepted the conditions of the Act. The 1901 state Carey Act program and implementing statutes were repealed in their entirety with the 1909 enactment of a revised state Carey Act program, now codified at ORS 555.010 to 555.190.

Under the Carey Act, the federal government granted certain desert lands to Oregon. Under the Oregon statute, the state was authorized to contract for construction of irrigation projects to reclaim those desert lands granted by the federal government. Once an irrigation project could ensure a reliable water supply, the law allowed entry by settlers on the reclaimed lands and conveyance of title to the settlers following settlement and cultivation. In some cases, the land reverted back to the State of Oregon if the settler could not "prove up their claim".

The Tumalo Reservoir project was authorized by the 1913 State Legislature to build a reservoir at Wimer Flat and to improve and enlarge the canal system to irrigate 22,500 acres. The dam is structurally sound, but Tumalo Reservoir fails to hold water. This is a case where land reverted back to the State of Oregon.



Department continued to own the remainder of the land in the Tumalo area until 1988 when the Commission authorized a conditional conveyance of 930 acres to Tumalo Irrigation District through a recorded statutory quitclaim deed. The conditions quitclaimed and released the State's rights, title and interest in the property as long as TID holds the property under public ownership and allows its use as winter grazing for wildlife but excludes any form of transfer, mining, drilling or any form of exploration. Ann Cobb party is proposing to give up .58 acres of her land in exchange for the needed access that amounts to about .28 acres of the land Deeded to TID.

### **III. Discussion**

The Commission is asked to approve a land exchange between the land deeded to TID and Ann Cobb. Ann Cobb requests to give up 0.58 acres of her parcel of land in exchange for 0.28 acres of the land deed to TID. The land swap would provide public access to her land as necessary for her to obtain county approval to partition her land.

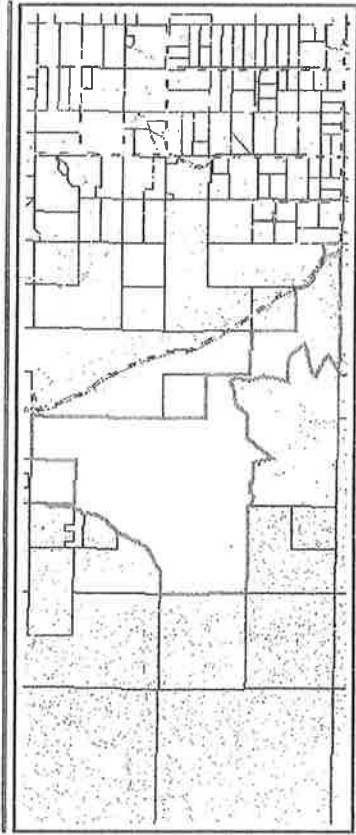
The Department understands that the Tumalo Project has been developed to the full extent of the physical limitations the reservoir area will allow. In deeding the original property Lot 7891 to TID, the Department saw no foreseeable use for the subject land. The Department has consulted with the Department of Justice, Oregon Department of Fish and Wildlife, and TID in reviewing the request.

### **IV. Recommendation**

Staff recommends that the Commission approve the exchange by authorizing the Department to proceed with necessary steps needed to submit the Lot Line Adjustment Applications to the Deschutes County Planning Division without any guaranty of the County's decision on the application.

Mike Auman  
503-986-0920

Date: May 04, 2012



**General Information**

Account No: 161100007891

Owner: TUMALO IRRIGATION DISTRICT  
TUMALO IRRIGATION DISTRICT  
TUMALO IRRIGATION DISTRICT  
TUMALO IRRIGATION DISTRICT

Situs Address: 18194 TUMALO RESERVOIR RD  
Mailing Address: 64697 COOK AV  
BEND OR, 97701

Prop Class:           Subdivision: N/A  
Maint Area: 6       Block: N/A  
Study Area: 18     Lot: N/A

Zoning:	Description:
EFUTRB	EXCLUSIVE FARM USE - TUMALO/REDMOND/BEND SUBZONE
F1	FOREST USE 1
F2	FOREST USE 2
FP	FLOOD PLAIN
OS&C	OPEN SPACE & CONSERVATION
SBMH	SENSITIVE BIRD & MAMMAL HABITAT COMBINING ZONE
WA	WILDLIFE AREA COMBINING ZONE
HS	HISTORIC SITE
LM	LANDSCAPE MANAGEMENT COMBINING ZONE

**IMPORTANT: This land may also contain wetlands or high ground water. Please check with a private consultant or CDD staff to verify information.**

88-205'72

## STATUTORY QUITCLAIM DEED

The State of Oregon, by and through William H. Young, Director of Water Resources Department, Grantor, releases and quitclaims to Tumalo Irrigation District, an Oregon Irrigation District, Grantee, all right and title and interest in and to the following described real property:

Set forth in Exhibit A, attached hereto and by this reference included herein,

so long as said property is held in public ownership and used as a Winter feeding area for wildlife satisfactory to the Oregon Department of Fish and Wildlife. When said property is no longer owned by Tumalo Irrigation District or another public body, or is no longer used for public purpose including use as a Winter feeding area for wildlife satisfactory to the Oregon Department of Fish and Wildlife, the interest of the Grantee, or its assigns, shall automatically terminate and revert to the Grantor.

The true consideration of this conveyance is other good and valuable consideration promised, including a commitment by Tumalo Irrigation District to involve local residents and the community before making decisions on use and management of the land or granting easements.

This instrument will not allow use of the property described in this instrument in violation of applicable land use laws and regulations. Before signing and accepting this instrument, the

person acquiring fee title to the property should check with the appropriate city or county planning department to verify approved uses.

Dated this 8 day of September, 1988.

THE STATE OF OREGON  
Water Resources Commission

By William H. Young  
WILLIAM H. YOUNG, Director

STATE OF OREGON        )  
                              ) ss.  
County of Marion        )

September 8, 1988.

Personally appeared the above-named William H. Young, who, being duly sworn, did say that he is the Director of the Water Resources Department of the State of Oregon, and that said instrument was signed on its behalf and by its authority; and he acknowledged said instrument to be its voluntary act and deed.  
Before me:

Janeth Shaw  
Notary Public for Oregon  
My Commission Expires: 1-29-90



## EXHIBIT A (1 of 3)

## 1. Location

a. County: Deschutes

b. City: Bend

## 2. Size

a. Number of acres: 930

## 3. Legal description

a. Indicate how land is recorded: Several separate metes and bounds descriptions now described as follows:

(1) Beginning at the E $\frac{1}{2}$  corner of Sec. 30, T. 16 S., R. 11 E., W.M. thence N. 0° 07' W. 998'; thence S. 22° 49' W. 260.5'; thence S. 0° 36' E. 175.3'; thence S. 3° 56' W. 173.2'; thence S. 9° 04' W. 157.5'; thence S. 4° 53' E. 170.2'; thence S. 19° 45' W. 110.9'; thence S. 28° 45' W. 165.4'; thence S. 54° 20' W. 194.1'; thence S. 24° 10' E. 171.1'; thence S. 13° 03' W. 350.3'; thence S. 23° 58' W. 169.4'; thence S. 39° 40' W. 119.9'; thence S. 59° 36' W. 139.7'; thence S. 20° 33' W. 140.0'; thence S. 40° 40' W. 145.5'; thence S. 73° 09' W. 94.8'; thence S. 21° 31' W. 197.3'; thence S. 34° 04' W. 220.7'; thence S. 20° 12' W. 224.2'; thence S. 34° 26' W. 213.9'; thence S. 46° 03' W. 164.9'; thence S. 55° 53' W. 213.0'; thence S. 63° 26' W. 356.5'; thence S. 50° 27' W. 227.5'; thence S. 89° 57' W. 547.3' more or less to the S $\frac{1}{2}$  cor. Sec. 30, T. 16S., R. 11 E.W.M. thence S. along the West line of the NE $\frac{1}{4}$  to the center of Sec. 31, T. 16 S., R. 11 E.W.M.; thence east along the South line of said NE $\frac{1}{4}$  to the E $\frac{1}{2}$  cor. of said Sec. 31; thence S. on the west line of Sec. 32, T. 16 S., R. 11 E.W.M. to a point 2540.2' N. of the SW cor. of said section; thence S. 76° 49' E. 199.3'; thence N. 76° 5' E. 72.5'; thence N. 54° 19' E. 175.0'; thence N. 84° 45' E. 212.0'; thence S. 71° 49' E. 224.0'; thence N. 87° 45' E. 399.0'; thence S. 15° 16' E. 612.0'; thence N. 37° 42' E. 395.0'; thence N. 36° 38' E. 338.0'; thence N. 43° 20' E. 274.0'; thence S. 89° 56' E. 649.0'; thence N. 44° 22' E. 454.0'; thence N. 73° 54' E. 305.0'; thence N. 82° 54' E. 175.0'; thence N. 64° 07' E. 242.0'; thence S. 20° 39' E. 193.4'; thence S. 3° 20' E. 85.8'; thence S. 11° 15' W. 290.1'; thence S. 14° 56' E. 475.7'; thence S. 3° 22' W. 262.0'; thence S. 15° 06' W. 431.6'; thence N. 81° 43' E. 251.8'; thence S. 86° 59' E. 281.0'; thence S. 72° 09' E. 251.9'; thence S. 41° 31' E. 226.8'; thence S. 38° 09' E. 277.7'; thence S. 71° 23' W. 220.9'; thence S. 83° 47' W. 300.5'; thence S. 71° 51' W. 331.1'; thence S. 52° 31' W. 173.1'

## EXHIBIT A (3 of 3)

Excepting and reserving to itself, its successors, and assigns all minerals as defined in ORS 273.775(1), including soil, clay, stone, sand, and gravel, and all geothermal resources, as defined in ORS 273.775(2), together with the right to make such use of the surface as may be reasonably necessary for prospecting for, exploring for, mining, extracting, reinjecting, storing, drilling for, and removing, such minerals, materials, and geothermal resources.

In the event use of the premises by a surface rights owner would be damaged by one or more of the activities described above, then such owner shall be entitled to compensation from state's lessee to the extent of the diminution in value of the real property, based on the actual use by the surface rights owner at the time the state's lessee conducts any of the above activities.

STATE OF OREGON )  
COUNTY OF DESCHUTES ) SS.

I, MARY SUE PENHOLLOW, COUNTY CLERK AND RECORDER OF CONVEYANCES, IN AND FOR SAID COUNTY, DO HEREBY CERTIFY THAT THE WITHIN INSTRUMENT WAS RECORDED THIS DAY:

88 SEP 12 PM 2:15

MARY SUE PENHOLLOW  
COUNTY CLERK

BY B. Buck DEPUTY

NO. 88-20572 FEE 30-

DESCHUTES COUNTY OFFICIAL RECORDS

✓  
PSSS

**Ralph McNulty, Bend, Oregon**  
**Jamie Hildebrandt, Bend, Oregon**

## **Summary of an Oral History on the 'closure' of Tumalo Reservoir**

April 16, 2013

Ralph McNulty was manager of the Tumalo Irrigation District (TID) from January 1985 to September 1990. Ralph and his wife still reside right by the Tumalo Reservoir and are very active in the community.

Jamie Hildebrandt has lived in Bend for most of his adult life. He was an active participant in the meeting that closed Tumalo Reservoir in 1987 and has been involved in the development of the BLM, TID and National Forest Service consultative processes pertaining to this area, to date.

### **Tumalo Reservoir Ownership Issue:**

Soon after Mr. McNulty became manager of the TID and, in this context was responsible for the stewardship of Tumalo Reservoir, it became evident that certain elements in the community and / or from outside the community were behaving irresponsibly around and on the reservoir. Over several years - at least the 1960s - there had been little or no 'policing' of the reservoir and windsurfers, motorcyclists and other groups had started to use the reservoir and surrounding areas for recreation. Parties were held at the reservoir: this included a lot of alcohol and motor vehicles in addition to motor cycles were being driven around and even into the reservoir. The ditch riders spent at least one day a week, typically Mondays, clearing up the trash left in and around the reservoir after the weekend of abusive behavior: their tasks included collection of empty beverage bottles, broken glass, and used diapers. The latter was particularly disturbing from a public health perspective as in those days many TID clients used the irrigation water to fill their cisterns which provided their domestic water supply. Also, at that time, there was a legal obligation on the TID to supply clean water.

Firearms were often discharged around the reservoir, initially to shoot at targets such as glass bottles: this was a safety concern given the numbers of people present and the fact that a number of the shooters were also drinking alcohol. It also exacerbated the trash problems.

On one occasion an off duty state police officer was showing his son the reservoir from the dam. While he and his son were standing on the side of the reservoir, they narrowly missed being shot when bullets passed close to where they were standing from individuals engaged in target practice and random shooting. The police officer mentioned this event to Mr. McNulty who asked the officer why he didn't arrest the shooter(s) on the spot. The officer stated that he did not believe he could do so as he was off duty.

Soon after this, Mr. McNulty was called by his staff one Sunday to inform him that a fight had broken out between the bikers and the windsurfers – and some of the combatants were carrying firearms. At this point Mr. McNulty decided that something had to be done to end this dangerous behavior on publically owned land and he decided that the best

course would be to close the reservoir to the public. The windsurfers' group told him he couldn't do this because TID were not owners of record of the Tumalo Reservoir property.

Further research showed that there was no owner of record for the 960 acres occupied by the reservoir and surrounding area. With the help of several colleagues, including Attorney Bill Hopp, Mr. McNulty consulted with the full committee of the Oregon Water Board and sought jurisdiction and ownership over the Reservoir property. This was granted by the Committee and confirmed in a deed of ownership.

**Tumalo Reservoir Closure:**

Having thus established ownership of the land for TID, Mr. McNulty and his colleagues organized a public meeting in Tumalo which was attended by several hundred people, including many TID clients. The need to close the Tumalo Reservoir to certain groups of recreational users was presented and discussed. After extensive discussion, a decision was taken to ban motorized vehicles, stop boating and windsurfing, and to prohibit activities that would continue to produce trash and cause pollution. A final overwhelming consensus was reached when a participant in the meeting pointed out that, given all the shooting, combined with excessive alcohol consumption, someone was likely to be killed. This realization helped coalesce the opinion of the meeting - estimated by Mr. McNulty and Mr. Hildebrandt as 85% to 90% of those in attendance at the meeting - in favor of closing the reservoir. The police agreed to enforce the closure by ticketing those caught trespassing onto this land and, most importantly, caught driving a motorized vehicle on any of the roads going into / out of the reservoir area. It was never intended to close the area to hiking, horse riding, dog walking etc.

Signage was installed to indicate what was and was not allowed.

The community helped TID by collecting the enormous amounts of trash that, despite the best efforts of the ditch riders, had accumulated around the reservoir.

Jamie Hildebrandt again asked Ralph McNulty whether or not it was intended to close the reservoir to everyone in perpetuity. Mr. McNulty replied that it was only intended to close the reservoir to motorized vehicles and non-permitted shooting. Horse-back riders and pedestrians were to be allowed to use the area provided they behaved responsibly and did not trash the area.

Oral testimony:           Ralph McNulty .....  
                                  Jamie Hildebrandt .....

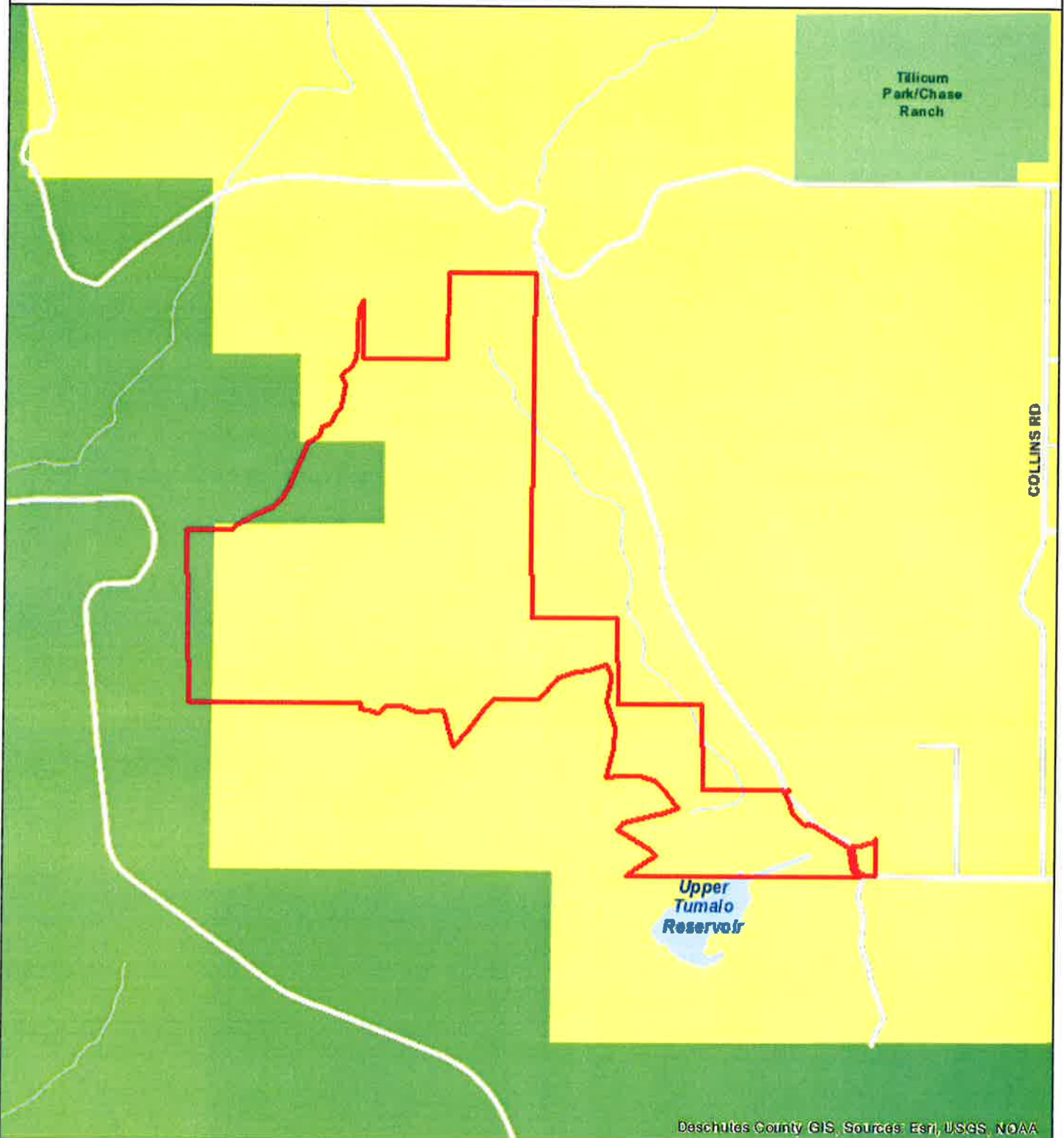
Recorders and witnesses:  
                                  Leslie Hudson .....  
                                  Veronica Newton Hudson .....

Dated: April 16, 2013.

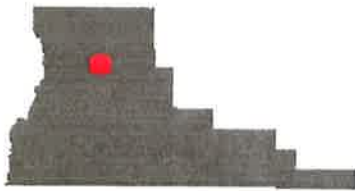


# Deschutes County Property Information - Dial

## Overview Map



Map and Taxlot: 1611000007891



# MEMORANDUM OF AGREEMENT

Between

**THE OREGON DEPARTMENT OF STATE LANDS**

and

**TUMALO IRRIGATION DISTRICT**

pertaining to

## **LAND EXCHANGE AT TUMALO RESERVOIR**

May \_\_ • 2012

The Oregon Department of State Lands (DSL) owns and manages a 256 acre parcel [T16S-R11E-32; TL 8400] adjacent to Tumalo Reservoir in Deschutes County, Oregon. This DSL property is also referenced as LAS Parcel # 426 and is zoned Open Space and Conservation (OS&C) by the county. The Tumalo Irrigation District (TID), an Oregon Utility District established to convey irrigation water, owns and manages Tumalo Reservoir which is located adjacent to the DSL site. This 733 acre parcel [T16S-R11E-32, TL 07891] that includes Tumalo Reservoir abuts the DSL property to the northwest, north, northeast and east. TID also owns the "exchange land site" which is a 120.55 acre parcel (T16S-R11E-31, TL 8401) located directly west of and adjacent to the DSL property. Both TID properties are also zoned OS&C. Because Tumalo Reservoir periodically floods and partially inundates part of the DSL property, TID has proposed a land exchange. The proposed land exchange focuses on the periodically inundated property on the east side of the DSL site. The final acreage of the land exchange will be determined according to appraisal outcomes; it will involve the easternmost part of the DSL property, closest to the reservoir, and the adjacent TL 8401 (the exchange land site) abutting the DSL property to the west. No funds are intended to be a part of the compensation for this land exchange and thus the final acreage of traded lands will reflect appraised land values in this "like kind" exchange of property of equal value. Different land values of the two ownerships being exchanged may result in unequal acreage exchange as part of this equal land value exchange.

### **PURPOSE**

TID has submitted an application to exchange land with DSL. Because TID is the proponent and advocate of this proposed land exchange, TID will have the responsibility to provide acceptable appraisals for both exchange properties. TID proposes to grow the existing TID Tumalo Reservoir parcel [TL 07891] through this land exchange by offering exchange acreage abutting the DSL property to the west, currently owned by TID [TL 8401]. The land exchange will occur, in part, via a property line adjustment that incorporates part of the DSL property into the TID Tumalo Reservoir property. The reciprocating exchange will occur as a parcel transfer of the TID land exchange site [TL 8401] to DSL. Given that TID aspires to acquire as much of the DSL parcel as the

exchange values permit, it is assumed that all of TL 8401 will be exchanged. If so, DSL aspires to receive the exchange land in its current configuration as a free standing, legal parcel. No new parcels will be created; dimensions and boundaries of Tax Lots 8400 and 7891 will be amended. TL 8401 will be conveyed to DSL as is.

TID will have exclusive responsibility to pay all surveying and county application and recording fees for this property line adjustment and property transfer. All elements of this property line adjustment and property transfer must comply with Deschutes County regulations, standards and Code requirements.

## SCOPE

This MOA outlines the roles and responsibilities, project sequencing and cost responsibility regarding the proposed Tumalo Reservoir land exchange:

### a.) Property Appraisal

- The applicant, TID, has been provided with a list of DSL pre-approved appraisers and a DSL acceptable appraisal scope of work. TID agrees to conduct the appraisal according to the DSL provided scope of work using a DSL pre-approved appraiser. TID agrees to pay all appraisal related costs.

### b.) Land Acreage Exchange Negotiation

- Based upon the appraisal findings, the amount or acreage of land to be exchanged will be decided to arrive at an equal value land exchange. The specific exchange land area will be identified, and, if agreed upon, preliminarily mapped for property line adjustment purposes.
- It is probable that all of the land exchange site [TL 8401] will be transferred in entirety, as is, to DSL as part of this equal value land exchange. If so, this proposed land exchange will be accomplished via a property line adjustment between Tax Lots 8400 [DSL] and 7891 [TID Reservoir] and a title transfer of Tax Lot 8401 [TID land exchange site] to DSL.

### c.) Land Exchange Area Due Diligence

- Prior DSL field and records investigations regarding the DSL Tumalo Reservoir property have revealed the presence of Peck's Milk Vetch, an Oregon listed Threatened and Endangered (T&E) plant species, in the vicinity of and on the DSL site. If such species are found to be located within the proposed land exchange areas to be transferred to TID, a long-term agreement protecting this T&E species within the land exchange area may be required. If a T&E species management plan is found to be necessary, the Oregon Department of Agriculture [ODA] will be the regulatory agency to review and approve such plan.

d.) Approval of Equal Value Land Exchange and Record with Deschutes County

- State Land Board approval is required for all land exchanges and such approval shall be obtained prior to a final exchange area agreement.
- Once the exchange area due diligence has been completed and final exchange area agreed upon, TID will be responsible for submitting the property line adjustment application [including fees] to the county.
- Upon receiving tentative approval from the county, TID will be responsible for preparing and submitting the property line adjustment survey and final property descriptions for final approval and recording according to Deschutes County standards and requirements including county determined conditions of approval.
- Once both parties have approved and signed the property line adjustment survey instrument, TID will record such document with Deschutes County assuming any and all final application, filing and recording fees. TID will also be responsible for transferring title of TL 8401 to DSL.

Modification or Termination

This Agreement may be modified with agreement of both parties or terminated by either party with 30 days written notice to the other party.

Expenditure of Funds

Nothing in this Memorandum of Agreement shall be construed as obligating TID or DSL to expend funds or involve either party in contract or other obligation for the future payment of money in excess of appropriations authorized by law and administratively available for this work.

Legal Expenses

Any legal expenses will be borne by the individual party incurring such expense.

OREGON DEPARTMENT OF  
STATE LANDS

TUMALO IRRIGATION DISTRICT

-----  
Louise Solliday, Director  
DSL & TID

date  
Memorandum of Agreement

-----  
Carl W. Hopp, TID Legal Counsel  
Page 3 of 3

date

**Peck's milkvetch (*Astragalus peckii*) Management Agreement**  
**Tumalo Irrigation District, Deschutes County, Oregon**

---

**Commented [rc1]:** Doug – changed the word “plan” to “agreement” since a plan would typically contain a lot more management info, but I don’t feel strongly about this if you want to change it back...

In order to better manage the Tumalo Reservoir functions, the Tumalo Irrigation District [TID] proposes to acquire land from the Oregon Department of State Lands [DSL] that is adjacent to Tumalo Reservoir in Deschutes County. The land acquisition area is known to contain Peck's milkvetch [*Astragalus peckii*], a state-listed plant species (see attached map for the results of the August 2012 listed plant survey of this parcel).

**Commented [rc2]:** Attach the map of the parcel, add outline of the portion of the parcel being transferred to TID.

Because TID is a non-federal public entity, it is currently required by state law (ORS 564, OAR 603-073-0900) to protect (i.e. not incur “take” of) any state-listed plant species (including Peck's milkvetch) found on lands owned or managed by TID. The plant protection responsibilities currently required of TID will likewise apply to any identified special management lands acquired from DSL. Consequently, in order to comply with the relevant laws in this matter, TID agrees to:

1. Accept the DSL August, 2012 Bull Flats parcel map that delineates the known locations of Peck's milkvetch and acknowledge that these lands will require special management.
2. Within the identified T&E species special management lands, TID agrees to take steps to protect the Peck's milkvetch population located therein.
3. Within the identified T&E species special management lands, TID will not conduct ground- or vegetative-disturbing activities (including disposing of silt dredgings or any other materials that would cause harm to Peck's milkvetch) without consulting with the Oregon Department of Agriculture (ODA) prior to initiating the land action.
4. TID will continue to dredge silt accumulations within the reservoir inundation areas provided such areas do not contain T&E species.
5. If TID is conducting reservoir management actions in the near vicinity of the Peck's milkvetch population, the following steps will be taken to ensure that no impacts occur:
  - The project manager will be provided with a map showing the location of the Peck's milkvetch population.

- A “no work” zone will be established around the Peck’s milkvetch population (with at least a 10 meter buffer) using construction fencing, flagging, or some other clearly visible marker.
  - Either the project manager or a designee will be present on site and assume responsibility for ensuring that the “no work” zone is enforced.
  - Care will be taken to minimize the introduction of weeds to the site (i.e. clean machinery tires and equipment before entering site).
6. If there is a real or potential conflict between TID reservoir operations (including silt removal operations) and protection of T&E species, TID agrees to consult with ODA’s Native Plant Conservation Program staff\* prior to initiating ground- or vegetation-disturbing actions that might result in a “take” of T&E protected native plant species.

TID Chairman:

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

TID Operations Manager:

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature







\_\_\_\_\_  
Date

\*For more information about Oregon’s threatened and endangered species laws, please go to the ODA website <http://cms.oregon.gov/ODA/PLANT/CONSERVATION/Pages/responsibilities.aspx> or contact Rebecca Currin (541-737-4135, [currinr@science.oregonstate.edu](mailto:currinr@science.oregonstate.edu)).



Note: BLM contests ownership of lands deeded to Tumalo Irrigation by the State of Oregon in 2010.

 Currently Posted

-  BLM as in relation to East Boundray
-  Deeded to TID by State of Oregon 1989
-  Deeded to TID by State of Oregon 2010
-  State of Oregon
-  Tumalo Reservoir
-  Private Ownership



## Tumalo Reservoir

### Tumalo Irrigation District

64697 COOK AVE, BEND, OREGON 97701  
 PH-541-382-3053 www.tumalo.org

Layout4Master

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1/1600

*Laurie E. Craghead*  
*Assistant Legal Counsel*  
*Deschutes County*  
*(541) 388-6623*

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---

**From:** Bill at CW Hopp Attorney [<mailto:bill@cwhopp.com>]  
**Sent:** Monday, June 11, 2012 10:14 AM  
**To:** Laurie Craghead  
**Cc:** [elmerg@tumalo.org](mailto:elmerg@tumalo.org); [ken@tumalo.org](mailto:ken@tumalo.org)  
**Subject:** RE: TID reservoir & need to get permit

Laurie

Does Knife River and other dirt, gravel, etc. supply entities have a special use permit to move dirt from all of their storage sites? I will look into the matter and have suggested submitting the matter to the DBBC as this is an issue for all irrigation districts.

Carl W. Hopp, Jr.  
Attorney at Law, LLC  
168 NW Greenwood Avenue  
Bend, OR 97701  
(541) 388-3606 (PHONE)  
(541) 330-1519 (FAX)  
[bill@cwhopp.com](mailto:bill@cwhopp.com)

---

**From:** Laurie Craghead [<mailto:Laurie.Craghead@deschutes.org>]  
**Sent:** Monday, June 11, 2012 9:03 AM  
**To:** 'bill@cwhopp.com'  
**Subject:** TID reservoir & need to get permit

Good morning, Bill.

As I said in our phone conversation, I did quite a bit of research on the Carey Act. Since our phone conversation, I corresponded to Deschutes County Community Development Department staff about the issue of the removal of the silt from the reservoir, its placement in piles on site and the subsequent removal of those piles for maintenance work on the irrigation canals elsewhere in the County.

I definitely see that the Carey Act covers the act of removing silt from the reservoir as part of the maintenance of the reservoir and, thus, the County cannot require a permit for that activity. After reviewing all the information, however, I still have a concern about removing the piled up earthen material from the site and placing it elsewhere. 43 USC Sec. 663 says:

“Reservoir sites located or selected and to be located and selected shall be restricted to and shall contain only so much land as is actually necessary for the construction and maintenance of reservoirs; excluding so far as practicable lands occupied by actual settlers at the date of the location of said reservoirs.”



That provision does not say that the land to be used for the location and maintenance of the reservoir includes land for the maintenance of the canals. Given that, under DCC 18.04.030, just about any earthen material meets the definition of "mineral," removal from the site of more than 1000 cubic yards of earthen material, including the silt dug up from the bottom of the reservoir and piled on site, would meet the definition of surface mining per DCC 18.04.030. Thus, I think that a Conditional Use Permit to remove that silt from the site is required by County Code and that the Carey Act doesn't cover that portion of the district's activities.

As I said on the phone, however, I am absolutely open to being proved wrong in this matter. If you can provide me with specific Carey Act provisions and/or case law that demonstrate that the Carey Act preempts the County's ability to regulate the removal of the silt from the reservoir site, I will review those provisions and/or case law.

*Laurie E. Craghead*  
*Assistant Legal Counsel*  
*Deschutes County*  
*(541) 388-6623*

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**From:** John Griley  
**Sent:** Thursday, June 07, 2012 9:30 AM  
**To:** William Groves  
**Cc:** Tom Anderson  
**Subject:** Tumalo Reservoir

Will:

I contacted Ken Rieck (Operations Manager) with TID on Wednesday. I explained the complaint we received, then followed up with some e-mail questions (e-mail format by his request). His responses are below.

Ken's response on nature of work is vague. Latham excavation was more specific informing that off-site loads were utilized for backfill on *Phase III* of the regional canal piping project. My question for you: On the basis of Ken's response alone, is there a definitive code violation? Does the determination on violation change if one considers Latham's response?

Thanks for looking at this. I intend to discuss my investigation of the complaint with Tom in our meeting on Friday.

John

---

**From:** Kenneth B. Rieck [Ken@tumalo.org]  
**Sent:** Wednesday, June 06, 2012 11:13 AM  
**To:** John Griley  
**Subject:** RE: Code Enforcement Complaint

Questions:

Our best estimate of the area of activity is that it took place on Tax lot 7891. Is this the area of activity?

**Yes.**

What was the purpose of work at both the reservoir and offsite locations?

**Normal Irrigation District canal and reservoir maintenance, silt removal and canal maintenance.**

How much material was removed from the site?

**The exact figures are unknown at this time but I estimate at least 2000 yards of silt buildup was removed from the bottom of Tumalo Reservoir.**

And one question in return:

Is Deschutes County going to start exerting jurisdiction on the Irrigation Districts Canal and Reservoir maintenance?

Thanks,

Ken

**Kenneth B. Rieck**  
Assistant Manager  
Tumalo Irrigation District  
64697 Cook Ave  
Bend, Oregon 97701  
541-382-3053 office  
541-815-9201 cell

**To:** Tom Anderson  
**Subject:** Surface Mining at Tumalo Reservoir

Tom:

To update you on this investigation ...

It appears that TID's excavation work at the reservoir was related to "Phase III" of their regional canal piping project. I originally learned the project name from Latham Excavation, who was willing to provide this information, but referred me back to TID for project specifics.

Following your recommendation, I contacted OWRD. OWRD Salem referred me to local watermaster Jeremy Giffin, who confirmed knowledge of the TID work at reservoir. In conversation Giffin expressed surprise in mineral rights restrictions in the quitclaim deed and requested that I forward it to him. I included complaint specifics (see 1<sup>st</sup> e-mail tread below). Regarding specifics of the project, he referred me to Scott McCaulou with the Deschutes River Conservancy (DRC), indicating that DRC was integrally involved in this effort. (FYI: Knowing Peter Gutowsky's involvement in the regional watershed working group, I have checked with him. He has not been involved in a county land use compatibility review.)

I have yet to contact DRC . The picture is, however, becoming more vivid and I am wondering if it is time to reconnoiter.

It appears that the project at the reservoir is related to a long planned cooperative effort. Unfortunately, it appears there may have been an oversight which may be a code enforcement matter. Specifically, it appears that a CUP may have been required from the County (see 2<sup>nd</sup> e-mail thread below).

Before going deeper, thought I would check with you. I presently do not know exactly how much material was removed. The only way to confirm CP estimates would be to contact TID directly (again). Let me know if you would like to meet. (FYI: I do not sense a great urgency presently, because TID ceased work over a week ago.)

John

---

**From:** John Griley  
**Sent:** Tuesday, May 15, 2012 12:55 PM  
**To:** 'jeremy.t.giffin@wrld.state.or.us'  
**Subject:** Alleged Surface Mining

Hello Jeremy:

This is in follow up to our phone conversation this morning. As discussed CDD Code Enforcement received a complaint alleging that recent activity by Tumalo Irrigation District (TID) at Tumalo Reservoir was surface mining without required permits and approvals. My understanding is that the activity involved the excavation and offsite haul of soil for backfill purposes related to the TID phase III piping project. I am presently investigating the complaint to determine whether activities could have constituted a violation of county zoning code requirements. Specifically, I am investigating whether the activity required a conditional use approval from Deschutes County to meet zoning requirements.

The complaining party also attached and alleged violation of terms of a quitclaim deed (attached below). Because the County does not enforce deed requirements, I am informing you of their concern. The complaining party asserts that "the deed is straight forward with regards to surface rights and also involving local residents and the community in any decisions of use and management."

FYI: Our quick review of the deed indicates that the parcel of land where activity appears to have taken place is not covered by this deed (see attached map). My best estimate on the area of work is County tax account number 1611000007891 or tax lot 1611-7891 on map. We could not easily locate the deed on that parcel.

I have not contacted Scott McCaulou as of yet. My thoughts presently are to review preliminary research with the department director for input and recommendations, before proceeding further. I have no objections to you forwarding this message to Scott, however. It might serve as background for a future contact.

John Griley  
Code Enforcement Technician  
Community Development Department  
Deschutes County  
(541)617-4708

<< File: 2008-37462 State of OR to TID.PDF >> << File: Tumalo\_Reservoir\_Complaint.pdf >>

2<sup>nd</sup> Attached thread ...

-----Original Message-----

From: Kevin Harrison  
Sent: Monday, May 14, 2012 10:23 AM  
To: William Groves  
Subject: RE: Tumalo Reservoir

I think you have it right. Looks like a CUP is needed regardless of the zone of the excavation.

-----Original Message-----

From: William Groves  
Sent: Monday, May 14, 2012 10:20 AM  
To: Kevin Harrison  
Cc: John Griley  
Subject: Tumalo Reservoir

Kevin,

I talked with John and we have a little more information on the Tumalo Reservoir earthmoving project.

Based on Jon's discussions with Latham, several thousand CY of dirt was removed from the reservoir for fill on off-site canal projects. The exact location of the excavation is uncertain, but probably falls in FP and OS&C zoned lands.

We discussed outright provisions in both of these zones:

18.48.020. Uses Permitted Outright.

F. Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District except as provided in DCC 18.120.050.







DESCHUTES COUNTY  
 COMMUNITY DEVELOPMENT  
 117 NW Lafayette Avenue, Bend, OR 97701  
 Telephone (541)388-6575, Fax (541)385-1764

## CODE ENFORCEMENT COMPLAINT FORM

**Instructions:** In order for your complaint to be accepted, you must fill in all questions completely and sign on the back of this form. It is important that you supply as much detail as possible. If you have any questions, call code enforcement at 541-385-1707.

Date: FEBRUARY 22 2016

Address of Violation(s): TUMALO RESERVOIR SISIMORE ROAD  
 City: BEND State: OR Zip: 97703  
 Nearest Cross Street: TUMALO RESERVOIR ROAD  
 Subdivision: \_\_\_\_\_  
 Residents Name: TUMALO IRRIGATION DISTRICT Phone: 541 382 3053  
 Owner of Property: TUMALO IRRIGATION DISTRICT  
 Address: 64697 COOK AVENUE  
 City: BEND State: OR Zip: \_\_\_\_\_

**Details of Complaint (be specific):** STARTING THURSDAY FEB 18<sup>th</sup> 2016 TUMALO IRRIGATION DISTRICT (TID) HAS BEEN REMOVING DIRT FROM THE NORTHERN END OF TUMALO RESERVOIR AND TRANSPORTING IT IN LARGE TRUCKS TO ANOTHER SITE. ESTIMATE AT A MINIMUM 20 TRUCK LOADS OF DIRT PER DAY HAVE BEEN REMOVED. ACTIVITY RECOMMENCED MONDAY FEB 22<sup>ND</sup>. THIS ACTIVITY IS COINCIDENT WITH WORK BY TID ON PHASE IV OF THE PIPING OF IRRIGATION CANALS IN THE TID SYSTEM. IT IS KNOWN THAT TID NEEDS FILL DIRT TO ENCLOSE NEWLY PIPED CANALS. WE BELIEVE THAT TID DOES NOT HAVE THE REQUIRED PERMIT TO SURFACE MINE FILL DIRT FROM THE BED OF THE RESERVOIR. THE AMOUNT OF MATERIAL REMOVED IS GREATER THAN WOULD OCCUR FOR ROUTINE MAINTENANCE. ALSO TID DOES NOT ROUTINELY KEEP THIS SECTION OF THE RESERVOIR FULLY FLOODED DURING THE SEASON. WE BELIEVE THIS ACTIVITY IS INCONSISTENT WITH QUAL 5 REQUIREMENTS

**ARE THERE ANY KNOWN OR SUSPECTED HAZARDS AT THIS LOCATION?**

IE: Dangerous or unstable residents, dogs, criminal activity, etc.

( ) YES (X) NO ( ) UNKNOWN

If yes, please identify the hazard in detail: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\*\*\*\* Continue on reverse side \*\*\*\*

The top portion of this side is required and must be completed.

**Complainant: (Your Name)**

Name: VERONICA & LESLIE HUDSON  
Address: 18130 TUMALO RESERVOIR ROAD  
City: BEND State: OR Zip: 97703  
Daytime phone #: 541 312 5121

Can violation be seen from the road? ( ) Yes ( ) No <sup>PARTIALLY</sup> If not, what is the best inspection point?  
BEST SEEN FROM EDGE OF RESERVOIR

Is the Complainant a neighbor? (X) Yes ( ) No

The complainant gives the Code Enforcement Technician permission to use their property for viewing the violation: (X) Yes ( ) No If not, why: \_\_\_\_\_

Will you, the complainant, testify in court, should the need arise? (X) Yes ( ) No  
(Note: your complaint may not be accepted without your being available to testify.)

If you have photos, or other related information, that can be used as evidence of this violation, please submit them with this form. The submitted documentation will not be returned and will become part of the complaint file.

By signing below, I declare, under penalty of perjury, that all information submitted on and with this form is true and accurate to the best of my knowledge.

Veronica Hudson  
[Signature]  
COMPLAINANTS

Feb 22nd 2016  
DATE

Thank you for assisting in making Deschutes County a better place to live.

Your Code Enforcement Staff

\*\*\*\*\*  
\*\*\*\*\*

**FOR OFFICE USE ONLY**

Subdivision: \_\_\_\_\_ Lot: \_\_\_\_\_ Block: \_\_\_\_\_



not find any Peck's Milk Vetch on DSL Cline Buttes properties. 4) There is no access to Barr Road from these properties (draft COAMP site inventory information was incorrect). 5) A wildlife guzzler (a sheet of metal or impervious material that collects rain water and dew and drains it to a water trough) is located on DSL property, without permission of BLM or DSL, apparently placed there as a wildlife mitigation measure by Eagle Crest with the concurrence of ODFW – DSL considers this a very minor issue.

Public Comment Issues: A) Wildlife guzzler; B) No Access to Barr Rd. [3]; C) Peck's Milk Vetch [3]; D) [Re-] classify as Special Stewardship [4]; E) Only public use/no private development [2]; F) Manage for Juniper [forestry] uses; G) Conduct a competitive, open bid auction of land within a year; H) (Assign a) separate (DSL Land) class for each linked property; I) Change recommendation to hold/lease from lease/sell; J) Non-motorized recreational trail system; and K) Statements regarding development are speculative.

**28. RED BAND ROAD TRACT** Class: ICR Recommend: Sell Situation: Hilltop site; Cascades and many directions view. Access uncertain – must be resolved. *ORBIC Listing: Peck's Milk-vetch possibly located in southeast corner of site.*

Public Comment Issues: A) An adjacent property owner has expressed interest in purchasing this property; B) Withdraw sell (recommendation) and manage for wildlife.

**29. HIGHWAY 20 TRACT** Class: ICR Recommend: Hold for agricultural development. Situation: No irrigation/water rights; scenic property with Cascades view; next to Hwy. 20 rest stop/view area and model airplane park; Hwy. 20 splits site; adjacent properties to north, east and southeast grow irrigated forage crops. *ORBIC Listing: Peck's Milk-vetch possibly located throughout site. A recent DSL field staff conducted site inspection did find a minor amount of Peck's Milk Vetch on this site.*

Public Comment Issues: None

**30. TUMALO RESERVOIR** Class: Special Stewardship Recommend: Sell/trade Situation: Subject to partial inundation from Tumalo Reservoir high water; Tumalo Irrigation District proposed land trade on-hold until COAMP adoption; Open Space and Conservation zoned site; within the Bull Flat National Heritage site; Bull Flat Road crosses site. A recent DSL field staff conducted site inspection did find Peck's Milk Vetch on this site.

Public Comment Issues: A) Only trade to entity for public recreation use, open space and wildlife management [2]; B) Trade would create controversy if not to USFS or Deschutes Basin Land Trust; C) Classify as Special Stewardship [2] (this is the current status); and D) Conservation/recreational easement.

**31. ALFALFA MARKET ROAD** Class: ICR Recommend: Hold – range lease Situation: Current forage lease; scablands – rock outcrops and lava blisters; access uncertain; much trespass usage.

Public Comment Issues: None.

**Bull Flat Parcel  
ASPE Survey  
August 2012**

- Legend**
- DSL Lands
  - Cnty\_accessRD
  - ASPE\_Aug 2012
  - ASPE\_06-28-06

