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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SISKIYOU
MAY - 3 2017
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BY: _____
DEPUTY CLERK

6 Attorneys for Plaintiff The Nature Conservancy
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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SISKIYOU

11 THE NATURE CONSERVANCY,
12 Plaintiff,
13 v.
14 IRENE BUSK, and also as Trustee of the
RODNEY BUSK TRUST,
15 Defendant.
16

CASE NO. SCCVCV14-01175

STIPULATED JUDGMENT

17
18 **INTRODUCTION**

19 1. On September 26, 2014, Plaintiff, The Nature Conservancy (“TNC”), filed its Complaint
20 in this case against Defendant Irene Busk, individually and as Trustee of the Rodney Busk Trust
21 (“Busk”). On February 16, 2016, Defendant Irene Busk, individually and as Trustee of the
22 Rodney Busk Trust (“Busk”), filed an Answer to the Complaint. Settlement discussions
23 proceeded, and no further pleadings were filed.

24 2. The Court has not addressed the merits of the underlying dispute in this litigation, which
25 involves certain water rights, water uses, agreements and decrees, referenced chronologically
26 below for purposes of historical context.

27 3. On or about December 29, 1932, the Superior Court in and for the County of Siskiyou,
28 California, entered a Judgment and Decree, in Case No. 7035 (“1932 Decree”), adjudicating the

1 waters of the Shasta River and its tributaries. The Decree stated in paragraph 234 that John
2 Louie, Manuel Louie and Frank Louie, jointly, were “entitled to divert from the natural or
3 developed flow of Big Springs, through the Louie-Rose Ditch and/or the Coonrod Ditch” and
4 apply to beneficial use a total of up to 10.00 cubic feet per second (cfs). Paragraph 234 identifies
5 Diversion 241 as a point of diversion through the Louie-Rose Ditch (aka Main Ditch) and
6 Diversion 242 as a point of diversion through the Coonrod Ditch.

7
8 4. On or about February 27, 2008, TNC and Busk entered into an Option Agreement
9 concerning the purchase of certain lands and associated rights.

10 5. On or about March 5, 2009, Busk executed a Grant Deed in favor of TNC, conveying to
11 TNC certain lands, water and water rights, and retaining or reserving to Busk certain lands, water
12 and water rights.

13 6. Contemporaneous with the Grant Deed, Busk executed a Conservation Easement Deed in
14 favor of TNC concerning the lands and associated rights retained by Busk.

15 7. On or about July 17, 2014, the Hon. Judge Laura Masunaga signed and filed a
16 Supplemental Decree in Case/Decree No. 7035, the Shasta River water rights adjudication. The
17 Supplemental Decree provided in paragraph 1.e. that the 1932 Decree was hereby amended to
18 include certain rights of TNC to make instream use of a portion of the water right recognized in
19 the 1932 Decree for Point of Diversion 241.

20 8. The above-captioned case, initiated by TNC’s filing of its Complaint on September 26,
21 2014, involves differences between the parties concerning water use, water rights, and the
22 conveyances and reservations discussed above. Both TNC and Busk desire to resolve the
23 disputes underlying this litigation, and to work in a cooperative fashion in the future with respect
24 to use of water on their respective properties. The parties have met in an effort to settle this
25 action, and have reached agreement on the terms of a Stipulated Judgment.

26 **STIPULATION FOR JUDGMENT**

27 Accordingly, the parties HEREBY STIPULATE that judgment be entered in the above-
28 captioned case in accordance with the following terms:

1
2 Management and Division of Water and Water Rights

3 Management and division of water and water rights associated with Diversions 241 and 242
4 from Big Springs Lake (including the Main Ditch [(Louie-Rose Ditch], Coonrod Ditch, and Dam
5 Outlet into Big Springs Creek) shall be accomplished as follows:

6 1. When 9 to 10 cfs Available – When there is sufficient water in Big Springs Lake to
7 deliver 9 to 10 cfs from Diversion 241, Diversion 242, or some combination of both, the parties
8 will share the water as follows:

9 a. There will be a nine (9) day rotation of water, occurring over three successive periods,
10 before the rotation commences again. After three (3) rotations of nine (9) days, the 28th day is a
11 Sunday, after which the rotation cycle will recommence on Monday. During this rotation of
12 water, there will be periods of Busk exclusive use, TNC exclusive use, and shared use of the
13 water, as described below.

14 b. During each nine (9) day rotation of water, Busk will have a 16-18 hour period of
15 exclusive use, occurring over two consecutive days, to flood irrigate out of the Main Ditch. The
16 first day, Busk will irrigate with exclusive use of the water from approximately 6:00 a.m. until
17 approximately 4:00 p.m. At that time, Busk will turn the water in the Main Ditch over to TNC,
18 which will have exclusive use of the entire head of water until approximately 6:00 a.m. the
19 following morning. At approximately 6:00 a.m. the following morning, Busk will again have
20 exclusive use of the entire head of water in the Main Ditch from 6:00 a.m. until 2:00 pm.

21 c. Under the nine (9) day rotation, Busk will irrigate out of the Main Ditch on
22 Monday/Tuesday of week one, irrigate out of the Main Ditch on Wednesday/Thursday of week
23 two, and irrigate out of the Main Ditch on Friday/Saturday of week three. Busk does not and will
24 not irrigate on Sundays, and TNC shall have exclusive use of available water in the Main Ditch
25 on Sundays.

26 d. When neither Busk nor TNC is making exclusive use of the water under the nine (9)
27 day rotation described above, Busk and TNC will share the water, with TNC receiving two-thirds
28 (2/3) and Busk receiving one-third (1/3) of the available supply.

1
2 2. When 3 to <9 cfs Available – When there is only sufficient water in Big Springs Lake to
3 deliver 3 to <9 (less than 9) cfs from Diversion 241, Diversion 242, or some combination of both,
4 Busk shall receive 3 cfs and TNC shall receive the remainder. The nine (9) day rotation and use
5 of the entire head of the ditch for 16 hours per nine (9) day rotation shall remain the same as in
6 paragraph 1 above.

7 3. When 0 to <3 Available – When there is only sufficient water in Big Springs Lake to
8 deliver 0 to <3 (less than 3) cfs from Diversion 241, Diversion 242, or some combination of both,
9 Busk shall stop diverting from Diversion 241 and Diversion 242, and TNC may use the water
10 available at Diversion 241 for instream uses in Big Springs Creek under the Supplemental Decree
11 issued on or about July 17, 2014 by the Superior Court for the County of Siskiyou in the Shasta
12 River Adjudication, Case/Decree No. 7035.

13 4. Subject to the herein described operations, the parties agree and acknowledge that the
14 water right provided for in paragraph 234 of the Decree is owned one-third (1/3) by Busk and
15 two-thirds (2/3) by TNC.

16 5. Busk does not object to TNC diverting its share of the water, other than the time period
17 Busk has exclusive use, directly into Big Springs Creek, so long as there are accurate measuring
18 devices to ensure that each party receives its respective share of water.

19 6. TNC agrees to install at its own expense a measuring device at the Big Springs Lake
20 outlet that will, to the satisfaction of the water master, measure and record the controlled releases
21 from Big Springs Lake pursuant to the decreed instream flow right in the Supplemental Decree
22 referenced above. TNC shall use its best efforts to complete the installation of the measuring
23 device expeditiously and within a reasonable time, taking into account any permitting
24 requirements and physical flow conditions that will affect such installation.

25 7. TNC may install at its own expense a measuring device or sensor at the headgate or in the
26 Coonrod Ditch for Diversion 242.

27 Additional Provisions

28 8. The parties agree that the Complaint, the Answer, and this entire litigation shall be

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dismissed without prejudice, and with each party bearing its own costs and attorney's fees.

9. This Stipulated Judgment shall run with ownership of the lands presently owned by TNC and Busk, and shall be recorded in the Office of the Siskiyou County Recorder.

10. The provisions of the Stipulated Judgment are applicable to, binding upon and inure to the benefit of not only the parties to this action, but also to their respective heirs, executors, administrators, successors, assigns, lessees, licensees and to the agents, employees and attorneys in fact of any such persons.

11. Nothing herein is intended to, nor shall, preclude the application of other applicable laws or regulations associated with the actions and activities set forth in and otherwise governed by the provisions of this Stipulated Judgment.

12. This Stipulated Judgment may be signed in counterparts, and the counterparts together shall form a single instrument. The counterparts shall be binding on the signatories as if fully executed all on one copy.

IN WITNESS WHEREOF, the undersigned hereby execute this proposed Stipulated Judgment on the dates set forth opposite their signatures.

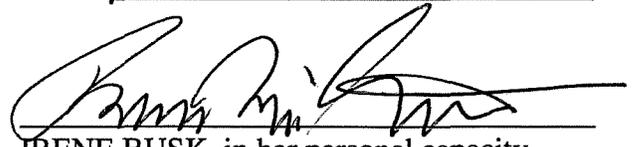
Dated: April 19, 2017

THE NATURE CONSERVANCY

By: 

Title: Assoc. Dir. Conservation Investments

Dated: April 13, 2017



IRENE BUSK, in her personal capacity,
and as Trustee of the Rodney Busk Trust,
by HANS KAI CHRISTENSEN,
her Attorney in Fact

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APPROVED AS TO FORM AND CONTENT.

SOMACH SIMMONS & DUNN
A Professional Corporation

Dated: April 24, 2017

By: Michael A. Gheleta
Stuart L. Somach
Michael A. Gheleta
Attorneys for Plaintiff
The Nature Conservancy

LAW OFFICE OF DARRIN W. MERCIER

Dated: April 13, 2017

By: Darrin W. Mercier
Darrin W. Mercier
Attorney for Defendant
Irene Busk

ORDER/JUDGMENT

Based on a review of the Stipulation of the parties, and the files and records in this matter, and good cause appearing, IT IS HEREBY ORDERED that Judgment in the above referenced action be entered in accordance with the above Stipulation of the parties.

Dated: _____

LAURA MASUNAGA

Judge of the Superior Court