

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

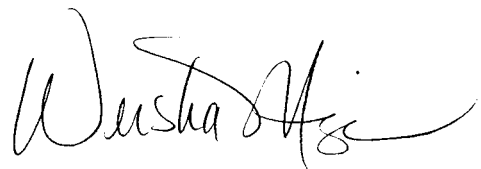
| | | |
|--|---|-----------|
| IN THE MATTER OF THE PROPOSED |) | PC 93-4 |
| CANCELLATION OF THE WATER RIGHTS |) | |
| EVIDENCED BY CERTIFICATES 16530, 16533 |) | ORDER ON |
| AND GR 151 AND THE PROPOSED PARTIAL |) | DISMISSAL |
| CANCELLATION OF THE WATER RIGHT |) | |
| EVIDENCED BY CERTIFICATE 15608, FOR USE |) | |
| OF WATER FROM GRAVE CREEK, MACKIN GULCH |) | |
| AND A WELL OR INFILTRATION TRENCH FOR |) | |
| <u>IRRIGATION OF LANDS IN JOSEPHINE COUNTY</u> |) | |

The above-captioned matter having come on for contested case hearing in the above-entitled matter on Tuesday, June 14, 1994 in Room 157 of the Josephine County Courthouse in Grants Pass, Oregon before Weisha Mize, Administrative Law Judge; and

The parties to this matter having now entered into a stipulated settlement agreement, a copy of which is attached and incorporated herein by reference, through which the allegations of forfeiture for nonuse of the above water rights have been withdrawn;

It is ORDERED that the contested case proceeding in this matter is DISMISSED.

August 18, 1994



WEISHA MIZE
Administrative Law Judge

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WATER RESOURCES DIVISION
SALEM, OREGON

SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into between the YVONNE M.

BIENCOURT TRUST, dated October 1, 1990, by and through its Trustee, PIERRE J.

BIENCOURT, hereafter referred to as BIENCOURT, and CONROY ZIPPEL,

JAMES and BETTY WARD, THEO HICKS, DENNIS and ROBIN PERRY, LARRY

and TINA WILLIAMS, CARL and DOROTHY EHLIG, JOE and SHARON

SWALLOW, PETER STORM, BROOK (EDWARD) HAYNES and RAELENE

THOMAS, hereafter referred to as PROPONENTS.

RECITALS:

A. BIENCOURT is the owner of real property situated in sections 3, 4, 9 and 10 of Township 34 South, Range 6 West, Willamette Meridian, in Josephine County, Oregon, more particularly described in Exhibit "A" attached hereto. Certain water rights of record are appurtenant to the Biencourt property, namely those rights represented by certificates 16530, 16533, 15608 and GR 151 issued by the Oregon Department of Water Resources (Department). These certificates are attached as Exhibits "B", "C", "D" and "E" and are incorporated herein. Pierre J. Biencourt, as Trustee of the Yvonne M. Biencourt Trust, has the power and authority under the terms of the Trust to bind the Trust as herein set forth.

B. PROPONENTS James Ward, Larry Williams, Conroy Zippel, Dennis Perry and Carl Ehlig filed affidavits of non-use with the Department on May 5, 1993, contending that BIENCOURT had failed to make beneficial use of its water rights represented by certificates 16530, 16533, GR 151 and a portion of the rights under certificate 15608 (the water rights) during the period June 10, 1986 through August 3,

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1993 (the period of time in which there was agreement among at least three of the affiants). Thereafter, a Notice of Proposed Cancellation was issued by the Department to BIENCOURT on August 3, 1993, in case number PC 93-4, entitled "Before the Oregon Water Resources Department", "In the Matter of the Proposed Cancellation of the Water Rights Evidenced by Certificates 16530, 16533 and GR 151 and the Proposed Partial Cancellation of the Water Right Evidenced by Certificate 15608, for use of Water From Grave Creek, Mackin Gulch and a Well or Infiltration Trench for Irrigation of Lands in Josephine County".

C. BIENCOURT filed a Protest against the proposed cancellation on the basis that any alleged non-use was due to an unavailability of water caused by severe, continuing drought during the periods of alleged non-use and thus their water rights were not subject to cancellation. A contested case hearing was scheduled June 14, 1994, in Grants Pass, Oregon. PROPONENTS are the affiants, witnesses who were scheduled to testify in support of cancellation, and spouses of either the affiants or witness who were in support of cancellation.

D. Prior to the scheduled hearing, the parties through their respective attorneys, Ben Lombard, Jr. for BIENCOURT, and David C. Moon for PROPONENTS, reached tentative agreement for settlement of their controversies, the terms of which agreement are now set forth and subscribed to by the parties in this instrument.

AGREEMENT:

IN CONSIDERATION of the mutual covenants and agreements described hereafter, the parties agree as follows:

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1. BIENCOURT will execute and record in the deed records of Josephine County, Oregon, an instrument in the nature of an equitable servitude, a copy of which is attached hereto as Exhibit "F", to run with and bind its real property (see Exhibit A), whereby BIENCOURT agrees for itself, its successors and assigns, that it will not transfer or change any irrigation water rights which are appurtenant to its lands to any use other than for agricultural, horticultural, viticultural or grazing uses, and, in particular, will not transfer any such rights to commercial or industrial or other non-agricultural or non-irrigation uses. The foregoing restriction shall not apply to any transfer of point of diversion or place of use, which shall be subject only to the laws and procedures of the state governing such transfers.

2. PROPONENTS agree to withdraw their affidavits of non-use upon the recording of BIENCOURT's equitable servitude, the payment of attorney fees and costs and the filing of the rotation agreements as set forth below in paragraphs 4 and 5, respectively, and further agree that they will not file affidavits of non-use or otherwise initiate or participate in cancellation proceedings of BIENCOURT's water rights based upon alleged non-use of those water rights for any period of alleged non-use occurring before June 14, 1994.

3. The parties agree to request that the Department dismiss the pending cancellation proceeding on the basis that BIENCOURT's (or their agents' or lessees') non-use of its water rights during the period June 10, 1986 through August 3, 1993, was due to a lack of available water as a consequence of drought conditions in a sufficient number of years so as to legally excuse the non-use and result in a probable denial of

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cancellation by the Department.

4. BIENCOURT agrees to pay the attorney fees and costs of PROPONENT's attorney David C. Moon, not to exceed the sum of \$5,100.00.

5. BIENCOURT and PROPONENTS Ehlig, Swallow and Storm agree to execute and file with the Department water use rotation agreements which are not made a part of this agreement, but which are part of the consideration for the execution of this agreement by Ehlig, Swallow and Storm.

IN WITNESS WHEREOF, this agreement is executed by BIENCOURT and PROPONENTS on the dates set opposite their respective signatures and is effective on that date which is the date of the last party to sign.

YVONNE M. BIENCOURT TRUST

BY: Pierre J. Biencourt AUG 8, 1994
PIERRE J. BIENCOURT, TRUSTEE DATE

Conroy Zipfel August 8th, 1994
CONROY ZIPPEL DATE

James Ward 8/8, 1994
JAMES WARD DATE

Betty Ward 8/8, 1994
BETTY WARD DATE


Theo Hicks Aug 8, 1994
THEO HICKS DATE

Dennis Perry 8 8, 1994
DENNIS PERRY DATE

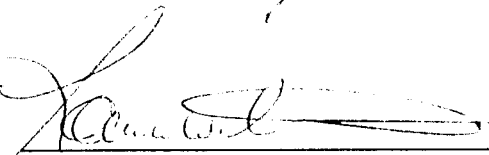
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ROBIN PERRY


8-8, 1994
DATE


LARRY WILLIAMS

8-8, 1994
DATE


TINA WILLIAMS


8-8-, 1994
DATE


CARL EHLIG

8 AUG, 1994
DATE


DOROTHY EHLIG


Aug 8, 1994
DATE


JOE SWALLOW

8/8, 1994
DATE


SHARON SWALLOW

8-8, 1994
DATE


PETER STORM

Aug 8, 1994
DATE


BROOK HAYNES (EDWARD)

Aug 11,, 1994
DATE


RAELENE THOMAS

Aug 8, 1994
DATE

EXHIBIT "A"

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WATER RESOURCES DIV.
SALEM, OREGON

Commencing at the Southwest corner of Section 9, Township 34 South, Range 6 West, of the Willamette Meridian, Josephine County, Oregon; thence East 20 chains to the Southwest corner of the Southeast Quarter of the Southwest Quarter of said Section 9 for the point of beginning of premises to be described; thence North along the West line of the East Half of the West Half of said Section 9 to the Northwest corner of the Northeast Quarter of the Northwest Quarter of said Section; thence East along the North line of Section 9, 20 chains to the Southwest corner of the Southwest Quarter of the Southeast Quarter of Section 4, said Township and Range; thence North along the centerline of said Section 4, 40 chains to the center of said Section; thence East along the North line of the Northwest Quarter of the Southeast Quarter of said Section, 20 chains to the Southwest corner of the Southeast Quarter of the Northeast Quarter of said Section; thence North along the West line of the Southeast Quarter of the Northeast Quarter of said Section, 20 chains to the Northwest corner thereof; thence East along the North line of the Southeast Quarter of the Northeast Quarter of said Section, 20 chains to the East line of Section 4; thence South along the East line of Section 4, 40 chains to the Northwest corner of Government Lot 4, Section 3, said Township and Range; thence East along the North line of Government Lot 4 and Government Lot 3, Section 3, 40 chains to the Northeast corner of said Government Lot 3, being also the North and South centerline of said Section 3; thence South along the North and South centerline of said Section 3, 20 chains to the South line of Section 3; thence West along the South line of Section 3, 15.04 chains; thence South 60 chains; thence West parallel to the South lines of Sections 10 and 9, said Township and Range, 64.91 chains to the Northeast corner of the Southeast Quarter of the Southwest Quarter of Section 9; thence South along the East line of said Southeast Quarter of the Southwest Quarter 20 chains to the South line of said Section 9; thence West along the South line of said Section 9, 20 chains to the point of beginning. LESS AND EXCEPT the following: Beginning at a point on the North side of a county road which is located 2310 feet West and 1070 feet North of the Southeast corner of Section 3, Township 34 South, Range 6 West, of the Willamette Meridian, Josephine County, Oregon; thence North $1^{\circ}30'00''$ East 157 feet; thence North 89° West 198 feet; thence South $2^{\circ}30'00''$ East 130 feet to the county road; thence Southeasterly along the North right of way of the county road 192 feet to the point of beginning. ALSO LESS AND EXCEPT the following: A tract of land situated in the West Half of Section 10, Township 34 South, Range 6 West, of the Willamette Meridian, Josephine County, Oregon, described as follows: Beginning at the West Quarter corner of said Section; thence North 8.23 chains; thence North $51^{\circ}30'00''$ East, 1.07 chains; thence South $77^{\circ}30'00''$ East, 2 chains; thence South $75^{\circ}00'00''$ East, 4.5 chains; thence South $65^{\circ}00'00''$ East 1.6 chains; thence South $87^{\circ}30'00''$ East 2 chains; thence South $79^{\circ}00'00''$ East, 1.98 chains; thence North $78^{\circ}00'00''$ East, 1 chain; thence North $71^{\circ}30'00''$ East 1.95 chains; thence North $59^{\circ}00'00''$ East, 1.15 chains; thence South $85^{\circ}30'00''$ East, 2 chains; thence North $89^{\circ}00'00''$ East, 2.5 chains; thence North $84^{\circ}30'00''$ East to the East line of a tract described in Volume 170, Page 167, Josephine County Deed Records, said point being 15.04 chains West of North and South centerline of said Section; thence South to the North line of the Southeast Quarter of the Southwest Quarter of said Section; thence West 24.91 chains to the West line of said Section; thence North along said West line 20 chains to the point of beginning. ALSO LESS AND EXCEPT: A tract of land situated in Section 9, Township 34 South, Range 6 West, of the Willamette Meridian, Josephine County, Oregon, described as follows: Beginning at the East Quarter corner of said Section; thence North 8.23 chains; thence South $75^{\circ}30'00''$ West, 1.46 chains; thence South 78° West, 2.5 chains; thence South $80^{\circ}30'00''$ West, 2 chains; thence South $64^{\circ}30'00''$ West, 2.5 chains; thence South $55^{\circ}30'00''$ West, 2.3 chains; thence South 25° West, 2.5 chains; thence South $36^{\circ}30'00''$ West, 2.5 chains; thence South 36° West, 1.5 chains; thence South $35^{\circ}30'00''$ West, 1.39 chains; thence South 84° West, 2.5 chains; thence South 85° West, 2.33 chains; thence North 7° West, 2.5 chains; thence North 13° West, 1.51 chains; thence North 6° West, 1.45 chains; thence North 3° West, 1 chain; thence North 17° East, .40 chains; thence North $26^{\circ}30'00''$ West, 2.64 chains; thence North 86° West, 2.5 chains; thence North 23° West, 2.5 chains; thence North 15° West, 2.5 chains; thence North $18^{\circ}30'00''$ West, 2.5 chains; thence North 18° West, 2.5 chains; thence North $18^{\circ}30'00''$ West, 2.5 chains; thence North 20° West, 1.44 chains; thence North $89^{\circ}30'00''$ West, 2.5 chains; thence South 89° West, 1.63 chains; thence North $71^{\circ}30'00''$ West 2.5 chains; thence North 73° West, 2.5 chains; thence North $71^{\circ}30'00''$ West, .81 chains; thence South $73^{\circ}30'00''$ West, 2.5 chains; thence South $68^{\circ}30'00''$ West, .46 chains; thence South 15° West, 2.73 chains; thence North 84° West, 2.5 chains; thence North

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84°30'00" West, 2.73 chains; thence West to the West line of the East Half of the West Half of said Section; thence South 60 chains to the Southwest corner of the Southeast Quarter of the Southwest Quarter of said Section; thence East 20 chains to the South Quarter corner of said Section; thence North 20 chains to the Northeast corner of the Southeast Quarter of the Southwest Quarter of said Section; thence East 40 chains to the Southeast corner of the Northeast Quarter of the Southeast Quarter of said Section; thence North 20 chains to the point of beginning. ALSO LESS AND EXCEPT: A parcel of real property, lying in the Southeast Quarter of Section 4, Township 34 South, Range 6 West, of the Willamette Meridian, Josephine County, Oregon, being more particularly described as follows: Commencing at the South Quarter corner of said Section 4; thence North 0°11'22" West along the North-South centerline of said Section, 223.04 feet to the center of Leland Road, the true point of beginning; thence North 82°24'29" East 137.21 feet; thence North 69°36'53" East 120.11 feet; thence North 52°32'35" East 177.03 feet; thence North 62°52'18" East 224.87 feet; thence North 25°11'18" East 236.33 feet; thence North 56°10'42" East 174.13 feet; thence following the centerline of a private roadway; thence South 58°57'24" West 200.07 feet; thence South 52°03'18" West 142.63 feet; thence North 79°34'00" West 68.90 feet; thence North 20°12'06" West 227.34 feet; thence North 19°44'48" East 177.74 feet; thence North 46°19'35" East 120.85 feet; thence North 27°57'36" East 115.0 feet; thence West 622.10 feet to the North-South centerline of said Section 4; thence following said centerline South 0°11'22" East 996.07 feet to the true point of beginning. ALSO LESS AND EXCEPT: Commencing at the Southwest corner of the Northwest Quarter of the Southwest Quarter of Section 10, Township 34 South, Range 6 West, of the Willamette Meridian, Josephine County, Oregon; thence South 87°39'40" East 1644.06 feet to a 5/8 inch iron rod at the Southeast corner of tract described in Volume 285, Page 458, Josephine County Deed Records; thence North 0°07'10" West along the East line of said tract 1589.40 feet to a 5/8 inch iron rod on the Northerly right of way line of Sunnyslon Way; thence continue North 0°07'10" West 266.48 feet to a 5/8 inch iron rod at the Northeast corner of said tract described in Volume 285, Page 458, said Deed Records for the true point of beginning. ALSO LESS AND EXCEPT all that portion lying within public roads.

ALSO: Commencing at the West Quarter corner of Section 10, Township 34 South, Range 6 West, of the Willamette Meridian, Josephine County, Oregon; thence South 69°36'00" East 329.88 feet; thence North 0°07'10" East 119.49 feet; thence South 78° East 202.02 feet to a 5/8 inch iron rod set per Survey No. 293-72; thence South 74°21'00" East 184.02 feet to a 5/8 inch iron rod; thence North 87°46'00" East 270.40 feet to a 5/8 inch iron rod; thence North 87°58'30" East 69.41 feet to a 5/8 inch iron rod, said rod being set on the Northerly right of way line of Sunnyslon Way; thence Easterly along said right of way line, 150 feet for the true point of beginning; thence Westerly along said right of way line 150 feet to a 5/8 inch iron rod; thence North 04°00'00" East 472.05 feet to a 5/8 inch iron rod; thence South 85°30'00" East 700.0 feet; thence Southerly in a straight line that when extended, would intersect the true point of beginning, to a point 50 Northerly along said line from the true point of beginning; thence Southeasterly in a straight line, to a point on the Northerly right of way line of Sunnyslon Way, 50 feet Easterly of the true point of beginning; thence Westerly, along said right of way line to the true point of beginning.

STATE OF OREGON

COUNTY OF JOSEPHINE

CERTIFICATE OF WATER RIGHT

This Is to Certify, That V. E. Farleigh

of Leland, State of Oregon ⁹⁷⁴⁹⁵, has a right to the use of
the waters of Grave Creek, a tributary of Rogue River
for the purpose of irrigation of 65 acres

and that said right has been confirmed by decree of the Circuit Court of the State of Oregon for
Jackson County, and the said decree entered of record at Salem, in the Order Record of
the STATE ENGINEER, in Volume 4, at page 1; that the priority of the right thereby
confirmed dates from 1891;

that the amount of water to which such right is entitled, for the purposes aforesaid, is limited to an
amount actually beneficially used for said purposes, and shall not exceed 1.09 cubic feet per
second.

A description of the lands irrigated under such right, and to which the water is appurtenant (or,
if for other purposes, the place where such water is put to beneficial use), is as follows:

40 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$
20 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$
5 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$
Section 10,
T. 34 S., R. 6 W., W. M.

And said right shall be subject to all other conditions and limitations contained in said decree.

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 State Engineer, affixed

this 30 day of September, 1949.

CHAS. E. STRICKLIN

State Engineer

Recorded in State Record of Water Right Certificates, Volume 13, page 16530

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Exhibit B Page 1 of 1

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STATE OF OREGON

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COUNTY OF JOSEPHINE

WATER RESOURCES DEPT.
SALEM, OREGON

CERTIFICATE OF WATER RIGHT

This Is to Certify, That T. J. Mackin, J. R. Mackin and Margaret McCaslin of Leland, State of Oregon, has a right to the use of the waters of Grave Creek, a tributary of Rogue River

for the purpose of irrigation of 117 acres in Tract No. 1, and irrigation of 34 acres in Tract No. 2,

and that said right has been confirmed by decree of the Circuit Court of the State of Oregon for Jackson County, and the said decree entered of record at Salem, in the Order Record of the STATE ENGINEER, in Volume 4, at page 1; that the priority of the right thereby confirmed dates from 1891 for Tract No. 1, and June, 1873 for Tract No. 2;

that the amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1.82 cubic feet per second for Tract No. 1, and 0.57 cubic foot per second for Tract No. 2.

A description of the lands irrigated under such right, and to which the water is appurtenant (or, if for other purposes, the place where such water is put to beneficial use), is as follows:

Tract No. 127 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ 26 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ 8 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ 23 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ 31 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ 2 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$

Section 9,

T. 34 S., R. 6 W., W. M.

Tract No. 2* 17 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ * 12 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$

Section 4,

* 5 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$

Section 9,

T. 34 S., R. 6 W., W. M.

* Ch. in pt. of div.
Sp. Or. Vol. 9, p. 35

And said right shall be subject to all other conditions and limitations contained in said decree. 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 State Engineer, affixed

this 30 day of September, 1949.

CHAS. E. STRICKLIN

State Engineer

Exhibit

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STATE OF OREGON
COUNTY OF JOSEPHINE

CERTIFICATE OF WATER RIGHT

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WATER DIVISION
SALEM, OREGON

This Is to Certify, That CHARLES G. GUTH, JR. and C. W. JOHNSTON

of Sunny Valley, State of Oregon, has made proof to the satisfaction of the STATE ENGINEER of Oregon, of a right to the use of the waters of Mackin Gulch and Grave Creek a tributary of Grave Creek, a tributary of Rogue River for the purpose of irrigation under Permit No. 15550 of the State Engineer, 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 July 21, 1943

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 0.27 cubic foot per second, being 0.05 c.f.s. from Mackin Gulch and 0.22 c.f.s. from Grave Creek

or its equivalent in case of rotation, measured at the point of diversion from the stream. The point of diversion is located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 3 from Grave Creek and NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 4 from Mackin Gulch, Township 34 South, Range 6 West, W. M.

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 $\frac{1}{2}$ acre foot per acre for each acre irrigated during the irrigation season from April 2, to October 31, 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:

MACKIN GULCH

2.0 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$
2.0 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$
Section 4,
T. 34 S., R. 6 W., W. M.

GRAVE CREEK

* 6.0 acres in Lot 4 (SW $\frac{1}{4}$ SW $\frac{1}{4}$) - apparently
Section 3, w/DLC 39 w/1/4 SW $\frac{1}{4}$ SW $\frac{1}{4}$
* 12.0 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 3, not in
Section 4, Lot 4 (SW $\frac{1}{4}$ SW $\frac{1}{4}$)
T. 34 S., R. 6 W., W. M. sec. 3 map
Part in Lot 4, Part in
DLC 39

Land on which water is to be used is a part of that more explicitly described by appropriator as follows: Beginning at the North one-quarter corner of Section 9, in Township 34 South Range 6 West of the Willamette Meridian Oregon thence running East on the North line of Section 9 2537 feet to the Northwest corner of the Farleigh property thence South 854.8 feet; thence South 89° 42' West 2537 feet to the West line of the Northeast one-quarter of Section 9 thence North 854.8 feet to the point of beginning. Containing 49 acres more or less.

Lots 3 and 4 and 54.88 rods off of the South side of the Southwest one-quarter of Section 3 in Township 34 South Range 6 West of the Willamette Meridian, Oregon. Containing 80 acres more or less.

All of the Southeast one-quarter of the Northeast one-quarter and the Southeast one-quarter of Section 4 in Township 34 South Range 6 West of the Willamette Meridian, Oregon.

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STATE ENGINEER
SALEM, OREGON

Registration Statement

OF CLAIMANT OF RIGHT TO APPROPRIATE GROUND WATER

(Under Chapter 708, Oregon Laws 1955.)

REGISTRATION NO. -158

CERTIFICATE NO. GR-157

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WATER RESOURCES DIV.
SALEM, OREGON

TO THE STATE ENGINEER OF OREGON:

I, John M. Biencourt

of Sunny Valley County of Josephine

State of Oregon, do hereby make application for a certificate of registration as evidence of a right to appropriate ground water.

1. Source from which water is withdrawn is Infiltration Trench

(Flowing well, pump well, infiltration trench, or tunnel)

2. Location is: 2 miles East of Leland, Oregon.

(Approximate distance and direction from nearest city or town)

and is more particularly described as follows:

(a) 300 feet South and 200 feet West from the NE Corner of Section 9

(Give distance and bearing to corner of section or other legal subdivision)

being within NE¹ NE¹ of Sec. 9, Twp. 34 S., Rge. 6 W.

(Smallest legal subdivision)

(N. or S.)

(E. or W.)

or (b) within limits of recorded platted property, town or city:

in Lot _____, Block _____ of _____

(Name of plat or addition)

County of Josephine

(If within city or town, give name)

3. Construction Work was begun on December, 1945; was completed on September, 1946

(Date)

(Date)

and the ground water claimed was first used for the purposes set out below on September 1, 1946

(Date)

since which time the water has been used intermittently

(Continuously or Intermittently)

from September, 1946 to April, 1956

(Date)

(Date)

4. Quantity of water claimed and used is 450 gallons per minute; 36.0 acre feet per year.

5. Purpose or Purposes for which water is used irrigation.

(Domestic, irrigation, municipal, manufacturing, industrial, etc.)

6. Description of Well: Depth _____ feet. Type _____

(Dug or drilled)

diameter _____ inches. Elevation of ground at well site 1170' feet, mean sea level.

(As near as known)

Depth to water table 10 feet.

7. Capacity of Well: _____ g.p.m. with _____ feet drawdown.

_____ g.p.m. with _____ feet drawdown.

Date of test _____

If Flowing Well: Measured discharge _____ g.p.m. on _____

(Date)

Shut-in pressure at ground surface _____ lbs. per sq. in. on _____

(Date)

Water is controlled by _____

(Cap, valve, etc.)

Exhibit E Page 1 of 4

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WALTER S. JORGENSEN
SALEM, OREGON

..... inch diameter None from to feet

..... inch diameter from to feet

..... inch diameter from to feet

..... inch diameter from to feet

Describe and show depth of shoe, plug, adapter, liner or other details:

None from to
(Number per foot and size of perforations, or describe screen)

from to
from to
from to
from to

10. **Log of Well:** (Describe each stratum or formation clearly, indicate if water bearing, and give thickness and depth as indicated.)

[illegible]

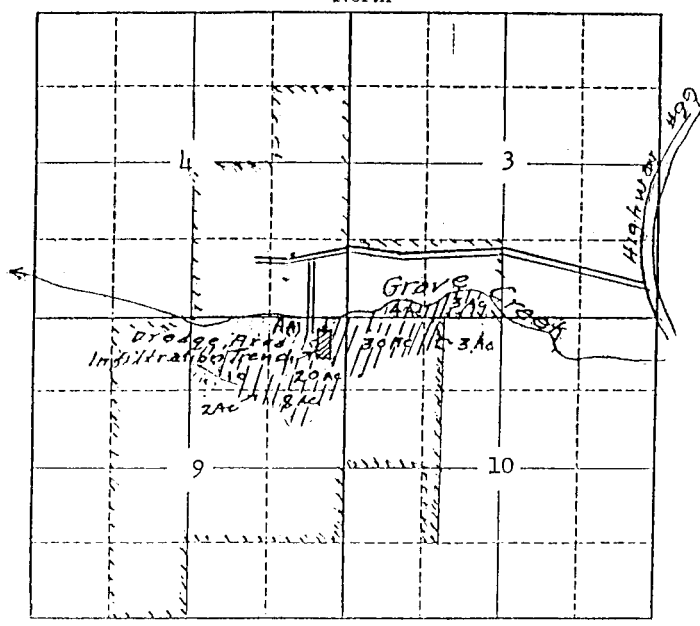
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Township 34 S. Range 6 W. W.M.

North



Locate well and acreage of irrigated land on plat.

Scale: 2" = 1 Mile

STATE OF OREGON

County of Josephine

I, John M. Biencourt, being first duly sworn, do hereby certify that I have read the foregoing Registration Statement and that all of the items therein contained are true to the best of my knowledge and belief.

John M. Biencourt
(Signature of Registrant)

Subscribed and sworn to before me this 30 day of March, 1956

My commission expires Dec 12 - 1958

Grace R. Robbins
(Notary Public)

(SEAL)

CERTIFICATE OF REGISTRATION

STATE OF OREGON

County of Marion

This is to certify that the foregoing Registration Statement was received in the office of the State Engineer on the 5th day of April, 1956, at 8 o'clock A.M. and has been duly recorded in said office in Book No. 1 of Registration Statements on page GR-151 C.

Construction shall be completed by 1958 and the water completely supplied to beneficial use by 1960

Witness my hand this 8th day of October, 1956

Leuro A. Stanley
(State Engineer)

Exhibit E Page 4 of 4

By (Deputy)

RECEIVED

AUG 17 1994

WATER RIGHTS
SALEM, OREGON

EQUITABLE SERVITUDE

PIERRE J. BIENCOURT, Trustee of the YVONNE M. BIENCOURT TRUST,

Dated October 1, 1990, (hereafter referred to as BIENCOURT) is the owner of real property situated in sections 3, 4, 9 and 10 of Township 34 South, Range 6 West, Willamette Meridian, in Josephine County, Oregon, more particularly described in Exhibit "A" attached hereto (the real property). Certain water rights of record are appurtenant to the Biencourt property, namely those rights represented by certificates 16530, 16533, 15608 and GR 151 issued by the Oregon Department of Water Resources (the water rights). The real property shall be subject to the following restrictions, covenants and conditions:

1. BIENCOURT, and the Trust's successors and assigns, will not transfer any of the irrigation water rights which are appurtenant to the real property to any use other than for agricultural, horticultural, viticultural or grazing uses, and, in particular, will not transfer any such rights to commercial or industrial or other non-agricultural or non-irrigation uses. This restriction shall not apply to a transfer of point of diversion or place of use which shall be subject only to the laws and procedures of the state governing such transfers.

2. This Equitable Servitude is made, executed and recorded in consideration of the settlement of that certain water rights cancellation proceeding before the Oregon Department of Water Resources, case number PC 93-4, entitled "Before the Oregon Water Resources Department", "In the Matter of the Proposed Cancellation of the Water Rights Evidenced by Certificates 16530, 16533 and GR 151 and the Proposed Partial Cancellation of the Water Right Evidenced by Certificate 15608, for use of Water

