

Name E. F. Burlingham & Sons **ASSIGNED**

By

Address Forest Grove, Oregon

Date filed July 3, 1945

Priority July 3, 1945

Action suspended until OK Cert

Returned to applicant

Date of approval September 1, 1945

CONSTRUCTION

Date for beginning September 1, 1946

Date for completion October 1, 1947

Extended to

Date for application of water October 1, 1948

Extended to

PROSECUTION OF WORK

Form "A" filed - Begun -

Form "B" filed October 8, 1947

Form "C" filed October 7, 1948

FINAL PROOF

Blank mailed November 18, 1948

Proof received

Date certificate issued APRIL 5 1961

August 24, 2007

Application No. 20936

Permit No. 16393

Certificate No. 28484 ~~76631~~

Stream Index, Page No. 7-16

83483

FEEES PAID

Date	Amount	Receipt No.
<u>7/3/45</u>	<u>25.45</u>	<u>8</u>

<u>8/25/45</u>	<u>1/09 B. P. Fee</u>	<u>cf 88 trans.</u>
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<u>10/29/59</u>	<u>\$1 Cert. Fee</u>	<u>23292</u>
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FEEES REFUNDED

Date	Amount	Check No.
<u>8/25/45</u>	<u>0.10</u>	<u>cf 89 trans.</u>

ASSIGNMENTS

Date	To Whom	Address	Volume	Page
<u>7-2-59</u>	<u>Normal Alfalfa, Inc.</u>	<u>P.O. Box 217, Forest Grove, Oregon</u>	<u>4</u>	<u>124</u>
	<u>E.F. Burlingham & Sons</u>	<u>(formerly Normal Alfalfa, Inc.)</u>		

REMARKS

5.18 cfs from Umatilla River and McKay Reservoir for the irrigation of 206.9 acres.

OCT 1 1947 CARD FOR B

OCT 5 1948 CARD FOR C

Sp. Or. V. 53 p. 45-55 PART C&K
T8718 & 204 V 59 p 105

NOTICE OF COMPLETION OF CONSTRUCTION

910

I, E. F. Burlingham & Sons, the holder of Permit No. 16393 to appropriate the public waters of the state of Oregon, completed the construction of the works described therein on the 1st day of May, 1947

Remarks: Entire project changed from a flood system to a sprinkler system. (See letter)
If the works have less capacity than described in the permit or you have definitely abandoned part of the proposed development, you should so state in order that our records may not be unnecessarily encumbered.

RECEIVED
STATE ENGINEER
SALEM, OREGON

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of October, 1947

(Signature of Witness)

(Address)

E. F. Burlingham & Sons
(Signature of Applicant)

(Address)

Fill out, detach, and mail to the State Engineer, Salem, Oregon, when construction work is completed.

NOTICE OF COMPLETE APPLICATION OF WATER TO A BENEFICIAL USE

012

I, E. F. Burlingham & Sons, the holder of Permit No. 16393 to appropriate the public waters of the state of Oregon, completely applied the waters to a beneficial use in accordance with the terms of said permit, on the 1st day of September, 1948

Remarks: _____
If all of the water granted in the permit has not been fully applied to beneficial use, you should so state.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of October, 1948

Virginia Rich
(Signature of Witness)

(Address)

Forest Lane, Ore
(Address)

E. F. Burlingham & Sons
(Signature of Applicant)

(Address)

By Wm F. Cyrus Forest Dept
(Address)

NOTE: In the case of an irrigation permit, this Form C should not be mailed to the State Engineer until all of the land described in the permit, which it is intended to irrigate under this permit at any time, has actually been irrigated.

Fill out, detach, and mail to the State Engineer, Salem, Oregon, when all of the water has been applied.



Oregon

Kate Brown, Governor

S-20936

Water Resources Department
North Mall Office Building
725 Summer St NE, Suite A
Salem, OR 97301
Phone (503) 986-0900
Fax (503) 986-0904
www.wrd.state.or.us

October 18, 2016

KENNETH G. GUSTAFSON
5200 SW MACADAM SUITE 470
PORTLAND, OR 97201

Reference: File T-10948

We have received your application for extension of the time limit to make complete application of water under T-10948. We also have your check in the amount of \$575.00. A copy of receipt number 121479 is enclosed.

The application indicates reasonable diligence toward completion of the proposed project. The time limit to make complete application of water is extended to 10/1/2017. The order approving the extension was entered 10/17/2016, at Volume 103, Page 133.

The time allowed to complete the transfer is specified in the final order. You should give particular attention to the time limit. The water right for any portion of the authorized change in character of use or change in place of use not carried out within the time allowed will be lost.

You are required to hire a Certified Water Rights Examiner (CWRE) to complete a Claim of Beneficial Use report and map which must be submitted to this Department within one year of the date you complete the change(s) or within one year of the completion date authorized in the extension final order, whichever occurs first.

If you have any questions, please contact the transfer section at 503-986-0808.

Sincerely,

Marissa Andrews
Water Right Services Support
Transfers and Conservation Section

cc: Gregory M. Silbernagel, Watermaster Dist. #5 (via email)
Landowners (other or receiving)
Irrigation District

Enclosure



Oregon

Kate Brown, Governor

S - 21059

Water Resources Department
North Mall Office Building
725 Summer St NE, Suite A
Salem, OR 97301
Phone (503) 986-0900
Fax (503) 986-0904
www.wrd.state.or.us

November 3, 2016

KATHRYN LINDSTROM
THE CAPRA COMPANY, LLC
P.O. BOX 2340
WINDSOR, CA 95492

Reference: Transfer Application T-12396

The above referenced transfer application was withdrawn from the record of the Water Resources Department on November 3, 2016, by Special Order Volume 103, Page 380 (copy enclosed). The transfer application is no further force or effect.

A refund check in the amount of \$807.00 has been sent to Jordan Ramis PC office.

If you have any questions related to the withdrawal of this transfer, you may contact me at 503-986-0890 or at Sarah.A.Henderson@wrд.state.or.us.

Sincerely,

Sarah Henderson

Sarah Henderson
Transfer Specialist
Transfer and Conservation Section

cc: Joel M. Plahn, Watermaster Dist. # 16 (via email)
Peter D. Mohr, Agent

Enclosure





Oregon

Kate Brown, Governor

Water Resources Department

North Mall Office Building

725 Summer St NE, Suite A

Salem, OR 97301

Phone (503) 986-0900

Fax (503) 986-0904

www.wrd.state.or.us

November 8, 2016

Jordan Ramis PC
Attn: Peter D. Mohr
PO Box 230669
Portland, OR 97281

Reference: T-12396

Water Right Transfer Application T-12396 in the name of Kathryn Lindstrom, The Capra Company, LLC has been withdrawn and is of no further force or effect.

Therefore, enclosed is a check in the amount of \$807.00 for a refund of the application.

If you have any questions, you may contact me at 503-986-0890 or at Sarah.A.Henderson@wrd.state.or.us.

Sincerely,

Sarah Henderson

Sarah Henderson
Transfer Specialist
Transfer and Conservation Section

cc: Fiscal
Kathryn Lindstrom, Applicant

Enclosure



BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON

In the Matter of Transfer Application)
T-12396, Yamhill County, Oregon) FINAL ORDER WITHDRAWING
) AN APPLICATION FOR A WATER
) RIGHT TRANSFER

Authority

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right.

Applicant

KATHRYN LINDSTROM
THE CAPRA COMPANY, LLC
P.O. BOX 2340
WINDSOR, CA 95492

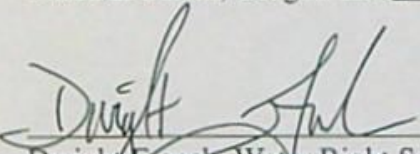
Findings of Fact

1. Transfer Application T-12396, in the name of KATHRYN LINDSTROM, THE CAPRA COMPANY, LLC, was filed on May 25, 2016.
2. On November 2, 2016, Peter Mohr, Attorney at Law, submitted a written request on behalf of the applicant asking that Transfer Application T-12396 be withdrawn.

Now, therefore, it is ORDERED:

Transfer Application T-12396, in the name of Kathryn Lindstrom, The Capra Company, LLC, is withdrawn and of no further force or effect.

Dated at Salem, Oregon this 3 day of November, 2016.


Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

Mailing date: NOV 11 2016

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.



United States Department of the Interior

BUREAU OF RECLAMATION
Pacific Northwest Regional Office
1150 North Curtis Road, Suite 100
Boise, ID 83706-1234

RECEIVED

JUL 07 2011

WATER RESOURCES DEPT
SALEM, OREGON

IN REPLY REFER TO:
PN-3323
WTR-4.00

JUL - 5 2011

Mr. Ken Gustafson
B&G Resources, Inc.
5200 SW Macadam Ave., Suite 470
Portland, OR 97239

Ms. Natasha Bellis
Flow Restoration Project Manager
The Freshwater Trust
65 SW Yamhill Street, Suite 200
Portland, OR 97204

Subject: Request for Temporary Lease of McKay Reservoir Stored Water

Dear Mr. Gustafson and Ms. Bellis:

This letter is in regard to water stored in accordance with Contract No. 14-06-100-1336 between B&G Resources, Inc., and the United States dated November 4, 1957.

Enclosed for your records is a copy of the letter agreement signed on behalf of the Bureau of Reclamation, B&G Resources, Inc., and The Freshwater Trust, in which 110 acre-feet of the McKay Reservoir water stored in accordance with that contract is approved to be leased by The Freshwater Trust for no more than 3 consecutive years for instream fishery enhancement use.

If you have any questions, please contact Mr. Larry Parsons, Economist, at the above address or by telephone at 208-378-5346.

Sincerely,

Acting For

Karl E. Wirkus
Regional Director

Enclosure

cc: Mr. Tony Justus, Watermaster
Oregon Water Resources Department
116 SE Dorion Avenue
Pendleton, OR 97801
(w/copy of encl to each)

Water Rights Division
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301-1271



United States Department of the Interior

BUREAU OF RECLAMATION
Pacific Northwest Regional Office
1150 North Curtis Road, Suite 100
Boise, ID 83706-1234

RECEIVED

JUL 07 2011

WATER RESOURCES DEPT
SALEM, OREGON

IN REPLY REFER TO:
PN-3323
WTR-4.00

MAY 27 2011

Mr. Ken Gustafson
B&G Resources, Inc.
5200 SW Macadam Ave., Suite 470
Portland, OR 97239

Ms. Natasha Bellis
Flow Restoration Project Manager
The Freshwater Trust
65 SW Yamhill Street, Suite 200
Portland, OR 97204

Subject: Request for Temporary Lease of McKay Reservoir Stored Water

Dear Mr. Gustafson and Ms. Bellis:

This is in response to The Freshwater Trust's request for the Bureau of Reclamation to approve its proposed lease of ¹¹⁰ ~~100~~ acre-feet of McKay Reservoir (McKay) water stored in accordance with Contract No. 14-06-100-1336 between B&G Resources, Inc., and the United States (dated November 4, 1957, as may have been amended and supplemented), for no more than 3 consecutive years for instream fishery enhancement use.

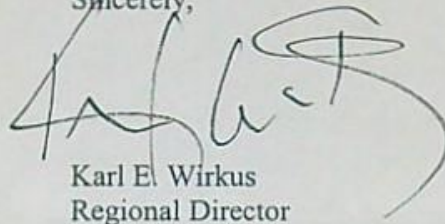
Upon successful completion of public notification and participation requirements of Reclamation Law, Reclamation can approve the requested lease pursuant to the Act of February 25, 1920 (41 Stat. 451), provided that:

1. The lease and instream fishery enhancement use of ¹¹⁰ ~~100~~ acre-feet of water stored to the account of Contract No. 14-06-100-1336 will be used for no more than 3 consecutive years, and will be used in accordance with McKay water rights held by Reclamation for purposes of supplemental irrigation and fishery enhancement under Certificates 76087 and 76086 issued by the Oregon Water Resources Department.
2. For any irrigation season in which McKay water is leased, B&G Resources, Inc., agrees not to irrigate any land with ¹¹⁰ ~~100~~ acre-feet of its contract entitlement described in Contract No. 14-06-100-1336.
3. The United States will continue to send the annual contract billings to B&G Resources, Inc.
4. No provision of this approval will be construed to set a precedent for any future requests.

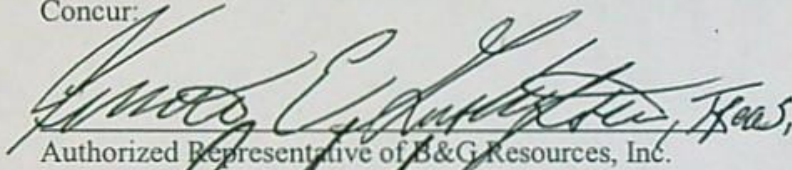
Ms. Natasha Bellis has agreed to obtain concurrence of both parties to this document by having an authorized representative of each party sign and date the same original of this letter, and returning it to this office (Attn: PN-3323) for Reclamation's approval. Once signed on behalf of the United States, copies would be provided to each party and to appropriate state and Federal offices.

If you have any questions, please contact Mr. Larry Parsons, Economist, at the above address or telephone 208-378-5346.

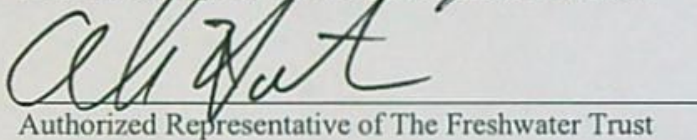
Sincerely,


Karl E. Wirkus
Regional Director

Concur:


Authorized Representative of B&G Resources, Inc.

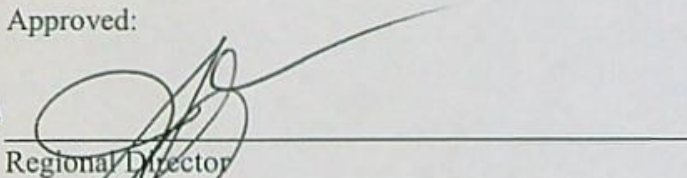
6/9/11
Date


Authorized Representative of The Freshwater Trust

6/5/11
Date

Approved:

ACTING


Regional Director

7/5/11
Date

cc: Mr. Tony Justus
Watermaster
Oregon Water Resources Department
116 SE Dorion Avenue
Pendleton, OR 97801



United States Department of the Interior

BUREAU OF RECLAMATION
Pacific Northwest Regional Office
1150 North Curtis Road, Suite 100
Boise, ID 83706-1234

IN REPLY REFER TO:
PN-3323
WTR-4.00

JUL 13 2011

Mr. John McBee
Ms. Debbie McBee
1062 NW Skyline Drive
Portland, OR 97801

Ms. Natasha Bellis
Flow Restoration Project Manager
The Freshwater Trust
65 SW Yamhill Street, Suite 200
Portland, OR 97204

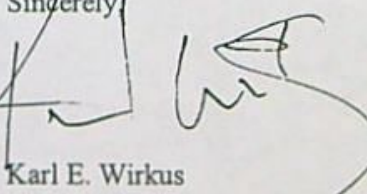
Subject: Request for Temporary Lease of McKay Reservoir Stored Water

Ladies and Gentleman:

This letter is in regard to water stored in accordance with Contract No. 14-06-100-1488 between Mr. John McBee, Ms. Debbie McBee, and the United States dated May 21, 1958, and Contract No. 14-06-100-1760 between Mr. John McBee, Ms. Debbie McBee, and the United States dated July 27, 1959.

Enclosed for your records is a copy of the letter agreement signed on behalf of the Bureau of Reclamation, Mr. John McBee, Ms. Debbie McBee, and The Freshwater Trust, in which 48.5 acre-feet of the McKay Reservoir water stored in accordance with Contract No. 14-06-100-1488, and 76 acre-feet of the McKay Reservoir water stored in accordance with Contract No. 14-06-100-1760, is approved to be leased by The Freshwater Trust for the 2011 irrigation season for instream fishery enhancement use.

If you have any questions, please contact Mr. Larry Parsons, Economist, at the above address or telephone 208-378-5346.

Sincerely,

Karl E. Wirkus
Regional Director

RECEIVED

JUL 18 2011

WATER RESOURCES DEPT
SALEM, OREGON

Enclosure

cc: Mr. Tony Justus, Watermaster
Oregon Water Resources Department
116 SE Dorion Avenue
Pendleton, OR 97801
(w/copy of encl to each)

Water Rights Division
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301-1271



United States Department of the Interior

BUREAU OF RECLAMATION
Pacific Northwest Regional Office
1150 North Curtis Road, Suite 100
Boise, ID 83706-1234

IN REPLY REFER TO:
PN-3323
WTR-4.00

MAY 27 2011

Mr. John McBee
Ms. Debbie McBee
1062 NW Skyline Drive
Portland, OR 97801

Ms. Natasha Bellis
Flow Restoration Project Manager
The Freshwater Trust
65 SW Yamhill Street, Suite 200
Portland, OR 97204

Subject: Request for Temporary Lease of McKay Reservoir Stored Water

Ladies and Gentleman:

This is in response to The Freshwater Trust's request for the Bureau of Reclamation to approve its proposed lease of 48.5 acre-feet of McKay Reservoir (McKay) water stored in accordance with Contract No. 14-06-100-1488 between Mr. John McBee, Ms. Debbie McBee, and the United States (dated May 21, 1958, as may have been amended and supplemented), and 76 acre-feet of McKay water stored in accordance with Contract No. 14-06-100-1760 between Mr. John McBee, Ms. Debbie McBee, and the United States (dated July 27, 1959, as may have been amended and supplemented), for the 2011 irrigation season for instream fishery enhancement use.

Upon successful completion of public notification and participation requirements of Reclamation Law, Reclamation can approve the requested lease pursuant to the Act of February 25, 1920 (41 Stat. 451), provided that:

1. The lease and instream fishery enhancement use of 48.5 acre-feet of water stored to the account of Contract No. 14-06-100-1488, and 76 acre-feet of water stored to the account of Contract No. 14-06-100-1760, will be used for the 2011 irrigation season in accordance with McKay water rights held by Reclamation for purposes of supplemental irrigation and fishery enhancement under Certificates 76087 and 76086 issued by the Oregon Water Resources Department.
2. For the 2011 irrigation season, Mr. John McBee and Ms. Debbie McBee agree not to irrigate any land with 48.5 acre-feet of their contract entitlement described in Contract No. 14-06-100-1448, nor irrigate any land with 76 acre-feet of their contract entitlement described in Contract No. 14-06-100-1760.
3. The United States will continue to send the annual contract billings to Mr. John McBee and Ms. Debbie McBee.
4. No provision of this approval will be construed to set a precedent for any future requests.

RECEIVED

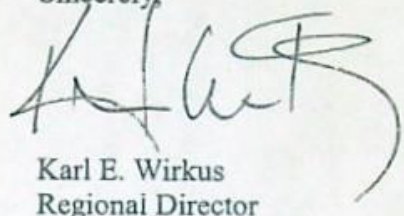
JUL 18 2011

WATER RESOURCES DEPT
SALEM OREGON

Ms. Natasha Bellis has agreed to obtain concurrence of both parties to this document by having an authorized representative of each party sign and date the same original of this letter, and returning it to this office (Attn: PN-3323) for Reclamation's approval. Once signed on behalf of the United States, copies would be provided to each party and to appropriate state and Federal offices.

If you have any questions, please contact Mr. Larry Parsons, Economist, at the above address or telephone 208-378-5346.

Sincerely,



Karl E. Wirkus
Regional Director

Concur:

John McBee
John McBee

6/9/11
Date

Debbie McBee
Debbie McBee

6/9/11
Date

[Signature]
Authorized Representative of The Freshwater Trust

6/5/11
Date

Approved:
[Signature]
Regional Director

13 July 2011
Date

cc: Mr. Tony Justus
Watermaster
Oregon Water Resources Department
116 SE Dorion Avenue
Pendleton, OR 97801

RECEIVED
JUL 13 2011
WATER RESOURCES DIVISION
PENDING

BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON

In the Matter of Transfer Application) FINAL ORDER APPROVING
T-10948, Umatilla County) CHANGES IN POINT OF DIVERSION
) AND PLACE OF USE

Authority

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

B & G RESOURCES
c/o KENNETH E. GUSTAFSON
5200 SW MACADAM AVE., SUITE 470
PORTLAND, OR 97239

Agent

SCHROEDER LAW OFFICES, P.C.
CORTNEY D. DUKE
1915 NE CESAR E. CHAVEZ BLVD.
PORTLAND, OR 97212

Findings of Fact

Background

1. On August 26, 2009, B & G Resources filed an application to change the point of diversion and place of use under Certificates 80564 and 83483. The Department assigned the transfer application number T-10948.

2. The first right to be transferred is as follows:

Certificate: 80564 in the name of B & G RESOURCES, INC. (perfected under Permit S-16393)

Use: IRRIGATION 26.2 ACRES

Priority Date: JULY 3, 1945

Rate: 0.655 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FORTIETH of one cubic foot per second, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 4.5 ACRE-FEET for each acre irrigated during the irrigation season of each year. The use of water shall

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

be subject to Contract Number 14-06-100-1336, or successor contract, with the Bureau of Reclamation.

Source: UMATILLA RIVER and McKAY RESERVOIR, constructed under Application Permit R-584, tributary of the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
2 N	30 E	WM	12	SE NE	- not specified

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	Type of change	Acres
2 N	30 E	WM	1	SW SE	POU & POD	4.1
2 N	30 E	WM	1	SW SE	POD only	2.0
2 N	30 E	WM	12	NE NE	POD only	11.1
2 N	30 E	WM	12	NW NE	POD only	8.9
2 N	30 E	WM	12	SE NE	POD only	0.1

3. Certificate 80564 does not describe the location of the point of diversion with coordinates and measured distances. However, information is available from Certificate 83483, which together with Certificate 80564, describes the water use perfected under Permit S-16393 from the Umatilla River indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
2 N	30 E	WM	12	SE NE	1330 FEET SOUTH AND 610 FEET WEST FROM NE CORNER OF SECTION 12

4. Transfer Application T-10948 proposes to change the place of use for the 4.1 acres described above to:

Proposed Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
2 N	30 E	WM	1	SW SE	0.5
2 N	30 E	WM	12	NE NE	0.3
2 N	30 E	WM	12	NW NE	3.3

5. Transfer application T-10948 also proposes to change the point of diversion for the entire water right described above downstream approximately 2400 feet to:

Proposed Place of Use:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
2 N	30 E	WM	12	NW NE	320 FEET SOUTH AND 2310 FEET WEST FROM NE CORNER OF SECTION 12

6. The second right to be transferred is as follows:

Certificate: 83483 in the name of KENNETH E. GUSTAFSON (perfected under Permit S-16393)

Use: IRRIGATION 5.4 ACRES

Priority Date: JULY 3, 1945

Rate: 0.135 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FORTIETH of one cubic foot per second, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 4.5 ACRE-FEET for each acre irrigated during the irrigation season of each year. The use of water shall be subject to Contract Number 14-06-100-1336, or successor contract, with the Bureau of Reclamation.

Source: UMATILLA RIVER and McKAY RESERVOIR, constructed under Permit R-584, tributary of the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
2 N	30 E	WM	12	SE NE	1330 FEET SOUTH AND 610 FEET WEST FROM NE CORNER OF SECTION 12

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	GLot	Acres
2 N	30 E	WM	12	NE NE	--	1.0
2 N	30 E	WM	12	SE NE	--	2.6
2 N	31 E	WM	7	NW NW	1	0.1
2 N	31 E	WM	7	SW NW	2	1.7

- Transfer application T-10948 proposes to change the point of diversion for the above described water right downstream approximately 2400 feet to:

Proposed Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
2 N	30 E	WM	12	NW NE	320 FEET SOUTH AND 2310 FEET WEST FROM NE CORNER OF SECTION 12

- Notice of the application for transfer was published on September 8, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.
- On December 9, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10948 to the agent on behalf of the applicant. The draft Preliminary Determination set forth a deadline of January 10, 2011, for the applicant to respond. The agent, on behalf of the applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
- On January 20, 2011, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10948 and mailed a copy to the applicant. Additionally,

notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on January 25, 2011, and in the East Oregonian newspaper on January 29, February 5 and February 12, 2011, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

Transfer Review Criteria [OAR 690-380-4010(2)]

12. Water has been used within the last five-year period prior to submittal of the transfer application according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
13. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-10948.
14. The proposed changes would not result in enlargement of the rights.
15. The proposed changes would not result in injury to other water rights.

Conclusions of Law

The changes in points of diversion and place of use proposed in Transfer Application T-10948 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in points of diversion and place of use proposed in application T-10948 are approved.
2. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 80564 and 83483 and any related decree.
3. Water right Certificates 80564 and 83483 are cancelled.
4. The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.
5. The former place of use of the transferred right shall no longer receive water under the right.
6. Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of diversion. The water user shall maintain the meter or measuring device in good working order. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.

7. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.
8. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2012**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.
9. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 21 day of March, 2011.


Dwight French, Water Right Services Division Administrator for
PHILLIP C. WARD, DIRECTOR

This Final Order was prepared by Susan Douthit. If you have questions about the information in this document you may reach me at 503-986-0858 or Susan.M.Douthit@wrds.state.or.us.

Mailing Date: MAR 23 2011

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

STATE OF OREGON
COUNTY OF UMATILLA
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

KENNETH E. GUSTAFSON
5200 SW MACADAM, SUITE 470
PORTLAND, OR 97239

confirms the right to use the waters of UMATILLA RIVER AND MCKAY RESERVOIR, constructed under Application R-7526 and Permit R-584, a tributary of the COLUMBIA RIVER, for IRRIGATION OF 5.4 ACRES.

This right was perfected under Permit 16393. The date of priority is July 3, 1945. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.135 CUBIC FEET PER SECOND or its equivalent in case of rotation, measured at the point of diversion from the source.

The point of diversion is located as follows:

SE 1/4 NE 1/4, SECTION 12, T 2 N, R 30 E, W.M.; 1330 FEET SOUTH AND 610 FEET WEST FROM THE NE CORNER, SECTION 12

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion not to exceed 4.5 acre-feet for each acre irrigated during the irrigation season of each year.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

The use of water shall be subject to Contract Number 14-06-100-1336, or successor contract, with the Bureau of Reclamation.

A description of the place of use to which this right is appurtenant is as follows:

NE 1/4 NE 1/4 1.0 ACRE
SE 1/4 NE 1/4 2.6 ACRES

SECTION 12
TOWNSHIP 2 NORTH, RANGE 30 EAST, W.M.

LOT 1 (NW 1/4 NW 1/4) 0.1 ACRE
LOT 2 (SW 1/4 NW 1/4) 1.7 ACRES

SECTION 7
TOWNSHIP 2 NORTH, RANGE 31 EAST, W.M.

When required by the Department, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.

This certificate is issued to confirm a change in PLACE OF USE approved by an order of the Water Resources Director entered January 20, 2004, approving Transfer Application 8718, and together with Certificate 80564, supersedes Certificate 76631, State Record of Water Right Certificates.

Issued AUG 24 2007


Phillip C. Ward, Director
Water Resources Department

Recorded in State Record of Water Right Certificates Number 83483.

T-8718.RA

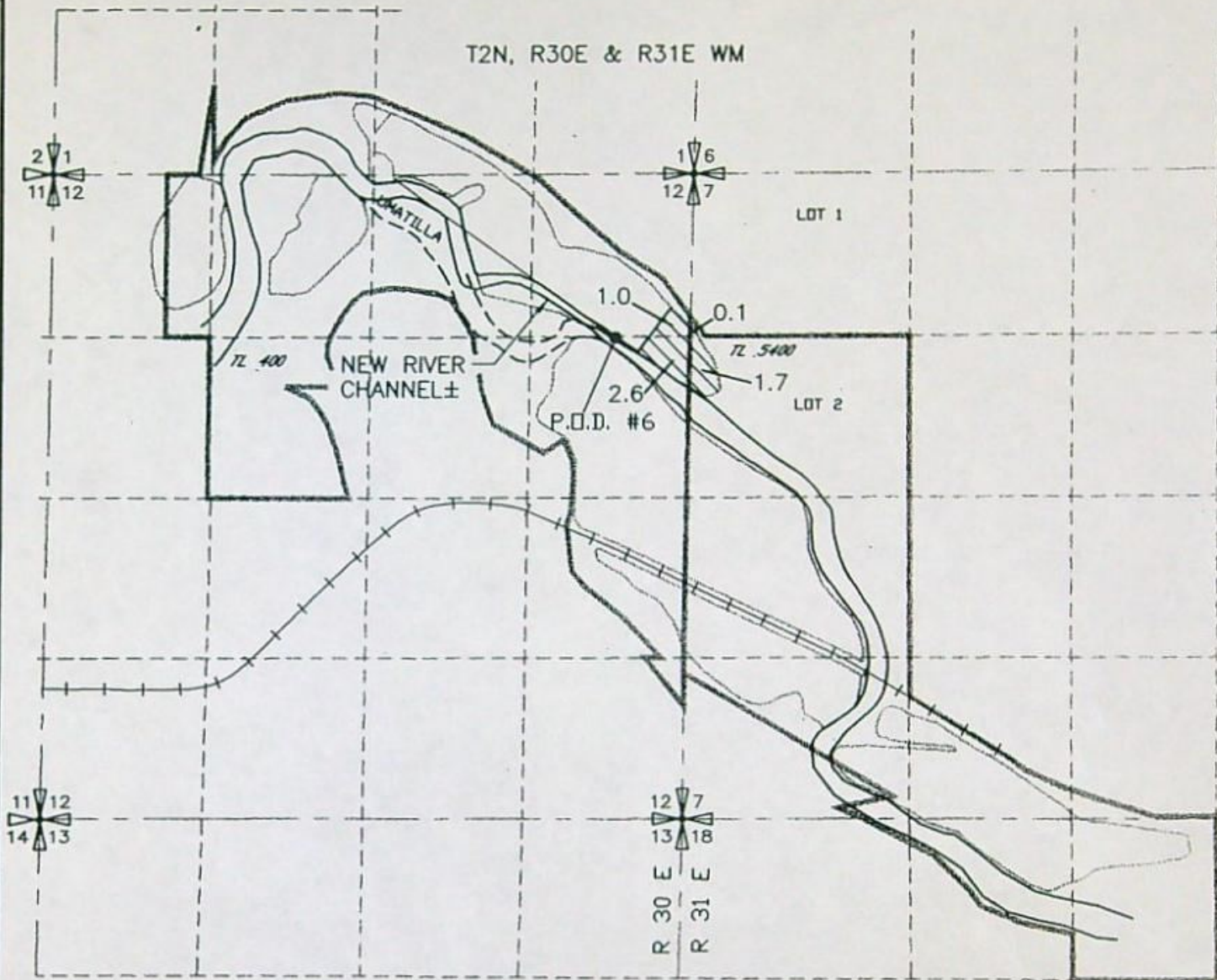
FINAL PROOF MAP
 FOR TRANSFER T-8718
 B&G RESOURCES
 C/O KENNETH E. GUSTAFSON


RECEIVED

FEB 25 2005

WATER RESOURCES DEPT
 SALEM, OREGON

T2N, R30E & R31E WM

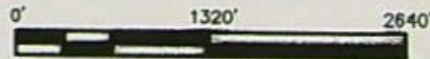


 5.4 AC AREA IRRIGATED

TL 5400 TAX LOT

AUTHORIZED POINTS OF DIVERSION

P.O.D. #6 1330 FEET SOUTH AND 610 FEET WEST
 FROM THE NE CORNER SECTION 12, T 2 N, R30E. WM.



NOTE: THE PURPOSE OF THIS MAP IS TO IDENTIFY THE APPROXIMATE LOCATION OF THE WATER RIGHT. IT IS NOT INTENDED TO PROVIDE INFORMATION RELATIVE TO THE LOCATION OF PROPERTY OWNERSHIP BOUNDARY LINES.

DRAWING: H:\CAD\AG\3522\032\3522032FP6776.dwg
 PRINTED BY: RogerW on 11/08/04 06:30 AM

B&G Consultants, Inc.
 A Tetra Tech Company



Oregon

Theodore R. Kulongoski, 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

Date Mailed: August 24, 2007

NOTICE OF CERTIFICATE ISSUANCE

The attached certificate confirms the water right established under the terms of a permit issued by this department. The water right is now appurtenant to the specific place where the use was established as described by the certificate. The water right is limited to a specific amount of water, but not more than can be beneficially used for the purposes stated within the certificate.

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within **60 days of the mailing date stated above** as specified by ORS 183.484(2).

This statement of judicial review rights is required under ORS 536.075; it does not alter or add to existing review rights or create review rights that are not otherwise provided by law.

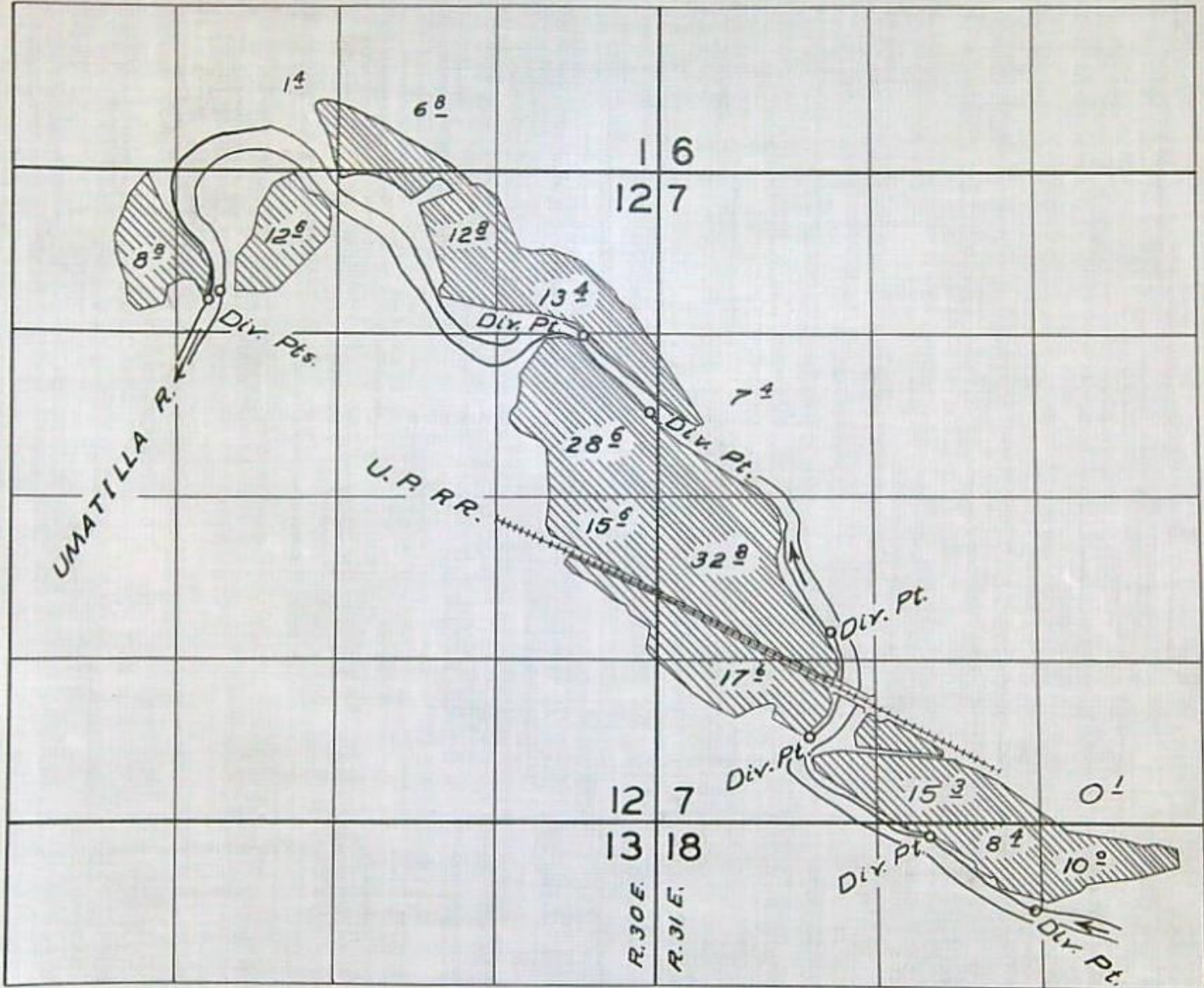
Under ORS 537.260 and 537.270, a water right certificate may be contested before the Water Resources Department within three (3) months of the date it is issued. If a certificate is contested, the qualifying contestant shall be offered an administrative hearing.

Oregon law does not allow the Director to reissue a certificate because of a change in the ownership of the appurtenant place of use. The water must be controlled and not wasted. To change the location of the point of diversion, the character of use, or the location of use requires the advance approval of the Water Resources Director.

If any portion of this water right is not used for five or more consecutive years, that portion of the right may be subject to forfeiture according to ORS 540.610. Land enrolled in a Federal Reserve Program is not subject to forfeiture during the period of enrollment. Other exceptions to forfeiture are explained in ORS 540.610.

If you have any questions please contact Gerry Clark at 503-986-0811.

T. 2 N. R. 30 & 31 E. W. M.



FINAL PROOF SURVEY
UNDER

Application No. 20,936 Permit No. 16,393.
IN NAME OF

E. E. Burlingham & Sons

Surveyed May 30, 1958, by C. O. Bartels
July 16, 1960, by R. H. Jackson

BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON

In the Matter of Transfer Applications) ORDER WITHDRAWING
T-7771 and T-7772, Umatilla County,) TRANSFER APPLICATIONS
Oregon)

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to temporarily transfer the place of use and, if necessary to convey the water to the temporary place of use, the point of diversion or appropriation authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

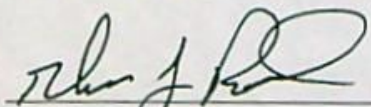
Applicant
B&G Resources, Inc.
c/o Kenneth E. Gustafson
18270 SW Boones Ferry Road
Portland, Oregon 97227

Transfer Applications 7771 and 7772, both in the name of B&G Resources, Inc., were filed May 19, 1997. On June 14, 2005, Kenneth E. Gustafson requested, in writing, that Transfer Applications 7771 and 7772 be withdrawn.

Now, therefore, it is ORDERED:

Transfers 7771 and 7772, in the name of B&G Resources, Inc., are withdrawn and of no further force or effect. Any unearned fees will be refunded.

Dated at Salem, Oregon this 15th day of June, 2005.


Phillip C. Ward
Director

Mailing date: JUN 29 2005

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW
This is an order other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2).

Pursuant to ORS 536.075 and OAR 137-004-080 and OAR 690-01-005, you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

STATE OF OREGON

COUNTY OF UMATILLA

ORDER APPROVING A CHANGE IN PLACE OF USE

Pursuant to ORS 550.510 through 540.530, after notice was given and no objections were filed, and finding that no injury to existing water rights would result, this order approves, as conditioned or limited herein, TRANSFER 8718 submitted by

KENNETH E. GUSTAFSON
5200 SW MACADAM, SUITE 470
PORTLAND, OREGON 97201.

The right to be modified, as evidenced by a PORTION of Certificate 76631 was perfected under Permit 16393 with a date of priority of JULY 3, 1945. The right allows the use of the UMATILLA RIVER and McKAY RESERVOIR, constructed under Application R-7526 and Permit Number R-584, tributary to the COLUMBIA RIVER, for the IRRIGATION OF 5.4 ACRES. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.135 cubic foot per second, if available at the authorized point of diversion; SE¼ NE¼, SECTION 12, T 2 N, R 30 E, W.M.; or its equivalent in case of rotation, measured at the point of diversion from the source.

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2).

Pursuant to ORS 536.075 and OAR 137-004-080 and OAR 690-01-005, you may either petition for judicial review or petition the Director for reconsideration of this order.

The amount of water used for irrigation, together with the amount secured under any other right existing on the same lands, shall be limited to a diversion of ONE-FORTIETH of one cubic foot per second or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 4.5 acre-feet per acre for each irrigated during the irrigation season of each year.

The use shall conform to any reasonable rotation system ordered by the proper state officer.

The use of water shall be subject to Contract Number 14-06-100-1336, or successor contract, with the Bureau of Reclamation.

The authorized place of use is as follows:

NE~~1~~/~~4~~ NE~~1~~/~~4~~ 1.60 ACRES
NW~~1~~/~~4~~ NE~~1~~/~~4~~ 3.80 ACRES

SECTION 12

TOWNSHIP 2 NORTH, RANGE 30 EAST, W.M.

The right to use water for the above purpose is restricted to beneficial use on the lands or place of use described.

The applicant proposes to CHANGE THE PLACE OF USE to:

NE~~1~~/~~4~~ NE~~1~~/~~4~~ 1.00 ACRE
NW~~1~~/~~4~~ NE~~1~~/~~4~~ 2.40 ACRES
SE~~1~~/~~4~~ NE~~1~~/~~4~~ 2.00 ACRES

SECTION 12

TOWNSHIP 2 NORTH, RANGE 30 EAST, W.M.

THIS CHANGE TO AN EXISTING WATER RIGHT MAY BE MADE PROVIDED THE FOLLOWING CONDITIONS ARE MET BY THE WATER USER:

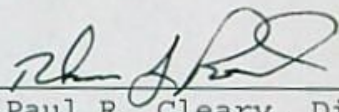
1. The proposed change shall be completed on or before October 1, 2005.
2. The former place of use shall no longer be irrigated as part of this water right.

3. When required by the Department, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.

Certificate 76631 is canceled. A new certificate will be issued to confirm that portion of the right NOT involved in this transfer. When satisfactory proof of the completed change is received, a new certificate confirming this water right will be issued.

WITNESS the signature of the Water Resources

Director, affixed JAN 20 2004.


For Paul R. Cleary, Director

STATE OF OREGON
COUNTY OF UMATILLA
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

B&G RESOURCES, INC.
18270 SW BOONES FERRY ROAD
PORTLAND, OREGON 97227

confirms the right to use the waters of the UMATILLA RIVER and MCKAY RESERVOIR, constructed under Application R-7526 and Permit R-584, tributary of the COLUMBIA RIVER, for IRRIGATION OF 26.2 ACRES.

This right was perfected under Permit 16393. The date of priority is JULY 3, 1945. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.655 CUBIC FOOT PER SECOND or its equivalent in case of rotation, measured at the point of diversion from the source.

The point of diversion is located as follows:

SE~~X~~ NE~~X~~, SECTION 12, TOWNSHIP 2 NORTH, RANGE 30 EAST, W.M..

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-FORTIETH 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 4.5 acre-feet for each acre irrigated during the irrigation season of each year.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

The use of water shall be subject to Contract Number 14-06-100-1336, or successor contract, with the Bureau of Reclamation.

A description of the place of use to which this right is appurtenant is as follows:

SW¼ SE¼ 6.1 ACRES
SECTION 1

NE¼ NE¼ 11.1 ACRES
NW¼ NE¼ 8.9 ACRES
SE¼ NE¼ 0.1 ACRE

SECTION 12
TOWNSHIP 2 NORTH, RANGE 30 EAST, W.M.

This certificate describes that portion of the water right confirmed by Certificate 76631, State Record of Water Right Certificates, NOT modified by the provisions of an order of the Water Resources Director entered JAN 2 0 2004, approving Transfer Application 8718.

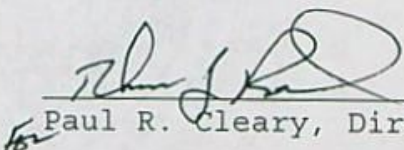
The issuance of this superseding certificate does not confirm the status of the water right in regard to the provisions of ORS 540.610 pertaining to forfeiture or abandonment.

The right to the use of the water for the above purpose is restricted to beneficial use on the lands or place of use described.

WITNESS the signature of the Water Resources

JAN 2 0 2004

Director, affixed _____.



Paul R. Cleary, Director

Recorded in State Record of Water Right Certificates numbered 80564.

3355 N.E. DAVIS
PORTLAND, OR 97232
TELEPHONE (503) 232-7110
FAX (503) 238-4076



SCHROEDER
LAW OFFICES

Legal Support for People Feeding the World

P.O. BOX 1392
115 W. HERMISTON AVE., STE. 140
HERMISTON, OR 97838
TELEPHONE (541) 564-9290
FAX (541) 564-0158

July 17, 1997

RECEIVED

JUL 21 1997

WATER RESOURCES DEPT.
SALEM, OREGON

Dallas S. Miller
Water Right Specialist
Oregon Water Resources Dept.
158 12th Street NE
Salem, OR 97310-0210

RE: Files 20936 (Certificate 28484) & 33006 (Certificate 32699)

Dear Mr. Miller:

We are in receipt of the check for \$25.00 made payable to Jerald Rea, Nomad Alfalfa Inc., 7720 SW Westgate Way, Portland, OR 97225 and are requesting action as follows:

Please assign the above referenced certificates of water right to correct the name and address. The assignments were sent to the Department previously in an effort to change the name and address after our client purchased the property. The previous owner of the property is disturbed that they continue to receive all mail regarding these certificates.

The correct name and address of the current owners of the property to which these certificated rights are appurtenant is as follows:

B & G Resources, Inc.
% Kenneth Gustafson
18270 SW Boones Ferry Road
Portland, OR 97224

Your assistance in the clarification of this matter would be greatly appreciated. Should you have any questions regarding this matter please contact the undersigned at our Hermiston office.

Sincerely,

Leann Rea
Paralegal

7/22/97
Sent copy of
5-21-97 letter to
Leann Rea

DSM



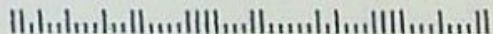
**SCHROEDER
LAW
OFFICES**

P.O. Box 1392
Hermiston, Oregon 97838



Dallas S. Miller
Water Right Specialist
Oregon Water Resources Dept.
158 12th Street NE
Salem, OR 97310-0210

97310-0210





Oregon

John A. Kitzhaber, M.D., Governor

Water Resources Department

Commerce Building
158 12th Street NE
Salem, OR 97301-4172
(503) 378-3739
FAX (503) 378-8130

December 1, 2000

Kenneth E. Gustafson
B&G Resources, Inc.
18270 SW Boones Ferry Rd.
Portland, OR 97227

RE: Water Right Certificate 76631 — Remaining Right from Partial Cancellation of
Certificate 28484

Enclosed is Water Right Certificate 76631. This certificate represents the remaining water right from the partial cancellation of Certificate 28484. The remaining right certificate is based on the enclosed final order on contested case hearing PC 97-15, recorded in Special Order Volume 53, pages 45 - 55. Attached to the remaining right certificate is a map describing the lands canceled according to the order. I have also enclosed the order.

Please note that as a result of the cancellation order, the remaining right certificate lists one point-of-diversion.

If you think the certificate is in error, you have 90 days from the issuance of the certificate to notify the Department of the error.

Please feel free to contact me with any questions you may have about the remaining right certificate. My telephone number is 503-378-8455, extension 285.

Sincerely,

Greg Nelson
Field Services Division

c: Tony Justus, District 5 Watermaster
Schroeder Law Offices

STATE OF OREGON
COUNTY OF UMATILLA
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

B & G RESOURCES, INC.
18270 SW BOONES FERRY RD.
PORTLAND, OR 97227

confirms the right to use the water of the UMATILLA RIVER and MCKAY RESERVOIR, constructed under Application Number R-7526 and Permit Number R-584, tributary to the COLUMBIA RIVER, for IRRIGATION of 31.6 ACRES.

The right was perfected under PERMIT 16393. The date of priority is JULY 3, 1945. The amount of water to which such right is entitled for the purposes aforesaid is limited to an amount actually beneficially used for said purpose and shall not exceed 0.79 CUBIC FEET PER SECOND or its equivalent in case of rotation, measured at the point of diversion from the source.

The point of diversion is located as follows:

SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 12, Township 2 North, Range 30 East, 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 a diversion of ONE-FORTIETH of one cubic foot per second or its equivalent for each acre irrigated and shall further be limited to a diversion of not to exceed 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year, and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

The use of water shall be subject to Contract Number 14-06-100-1336, or successor contract, with the Bureau of Reclamation.

A description of the place of use under the right, and to which such right is appurtenant, is as follows:

SW $\frac{1}{4}$ SE $\frac{1}{4}$ 6.1 ACRES
SECTION 1
NE $\frac{1}{4}$ NE $\frac{1}{4}$ 12.7 ACRES
NW $\frac{1}{4}$ NE $\frac{1}{4}$ 12.7 ACRES
SE $\frac{1}{4}$ NE $\frac{1}{4}$ 0.1 ACRES
SECTION 12

TOWNSHIP 2 NORTH, RANGE 30 EAST, W. M.

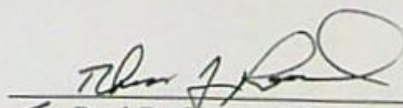
This certificate describes that portion of the water right confirmed by Certificate 28484, State Record of Water Right Certificates, NOT canceled by the provisions of an order of the Water Resources Director on Contested Case Hearing PC 97-15, entered January 25, 1999, and recorded at Special Order Volume 53, Pages 45 - 55, canceling a portion of said water right.

The issuance of this superseding certificate does not confirm the status of the water right in regards to the provisions of ORS 540.610 pertaining to forfeiture or abandonment.

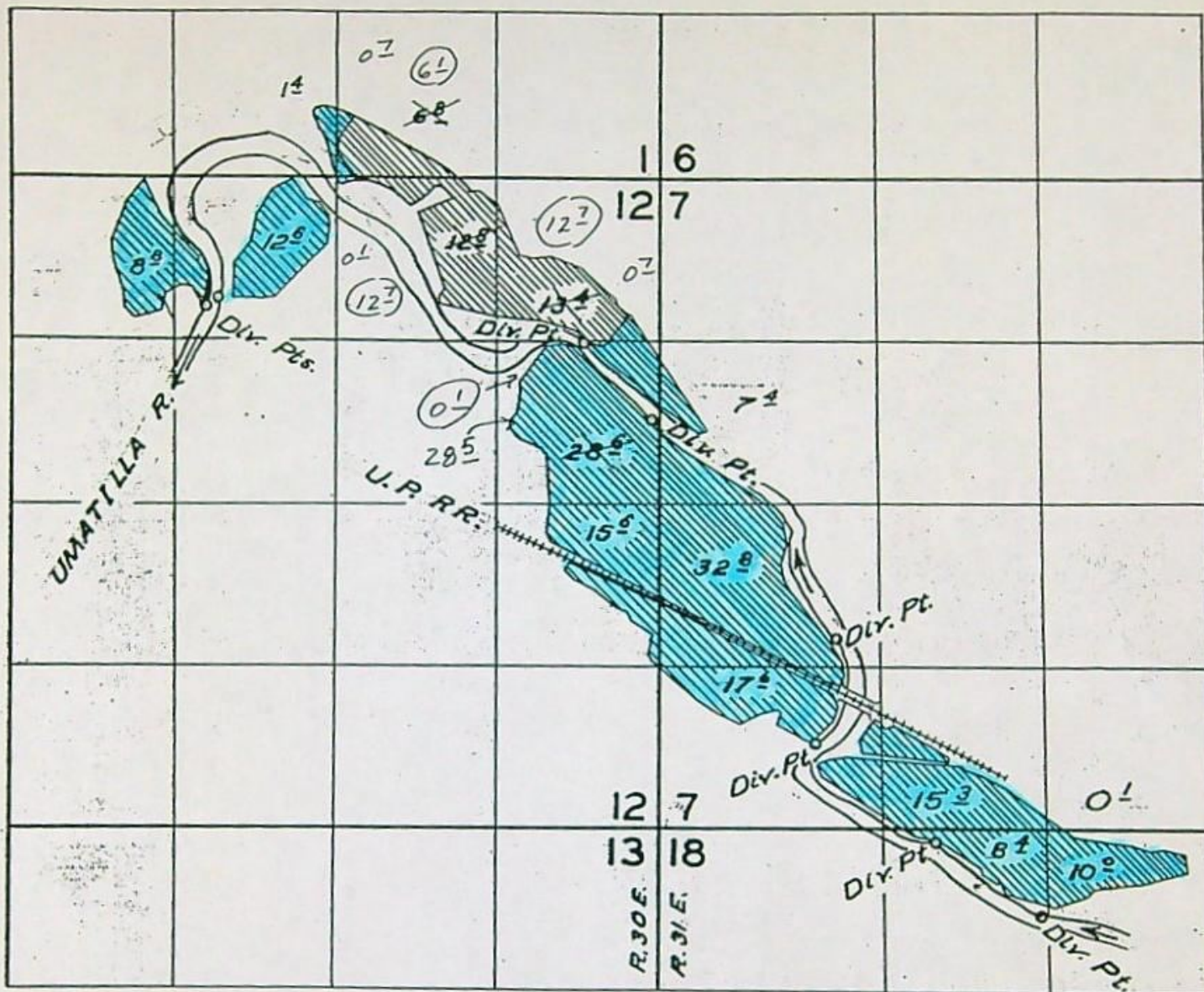
The right to the use of the water for the above purpose is restricted to beneficial use on the lands or place of use described.

NOV 07 2000

WITNESS the signature of the Water Resources Director, affixed _____


for Paul R. Cleary, Director

T. 2N. R. 30 & 31 E. W. M.



FINAL PROOF SURVEY

- REMAINING RIGHT ACREAGE
- CANCELED ACREAGE

Application No. 20,836 Permit No. 16,393.
IN NAME OF

E. F. Burlingham & Sons.

Surveyed May 30, 1958, by *C. O. Bartels*
July 16, 1960, by *R. H. Jackson*

NZ-2P-104
1957-2

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the matter of the Proposed Partial Cancellation)
of the Water Right Evidenced by Certificate 28484)
in the name of E. F. Burlingham & Sons for use of)
Water from the Umatilla River and McKay)
Reservoir, Umatilla County, Oregon)

FINAL ORDER ON
CONTESTED CASE HEARING
PC 97-15

History of Proceedings

This proceeding was initiated by the Department following receipt of affidavits from Tony Justus, Umatilla County Watermaster covering the years 1989 through 1996, and from Dave Williams, previously Umatilla River Coordinator and now Douglas County Watermaster, covering 1993 through 1996, asserting that a portion of the water right evidenced by Certificate 28484 had been forfeited by failure to make beneficial use of the water under the terms of the water right for five and more successive years. The Department initiated this cancellation proceeding proposing to cancel 160 of the 191.6 acres authorized for irrigation under Certificate 28484. The lands in question were further marked for ease of identification as Fields A, B, C and D, except for two small parcels in the south half of the NW $\frac{1}{4}$ Section 12, T2N, R30E which were not assigned any designation.

B & G Resources, the owners of record of real property located in Sections 1 and 12, Township 2 North, Range 30 East, and Sections 7 and 18, Township 2 North, Range 31 East, in Umatilla County, Oregon, were served notice of the proposed cancellation of a portion of the water right for irrigation use appurtenant to said property. Notice was served by certified mail on July 10, 1997 and reserved on September 16, 1997.

The record owner of the property, B&G Resources, filed a protest against the proposed cancellation on September 4, 1997. The basis asserted for the protest was that the water right had been exercised on field D continuously during the period in question, and that it had been beneficially used at least once in the last five years on the remainder of the lands. Protestant further asserted that the legal basis for the proceeding was improper, that either there should have been two affidavits covering five years each, that the affidavits did not provide a factual basis for determining lack of rebuttal, and that the notice of proposed cancellation, which had the certificate attached, was incomplete because it did not recite all lands to which the right is appurtenant, only those which were proposed for cancellation for nonuse.

Notice of hearing and information about parties' rights in contested case hearings was provided with the notice of hearing served November 24, 1997.

A supplemental affidavit was received from Tony Justus with a motion filed by the Department to expand the period of alleged nonuse under to consideration to include 1988. The protestant moved for an extension of time to file witness list and proposed exhibits. Both motions were granted by order issued March 12, 1998.

A contested case hearing in the above-captioned matter was held on April 30, 1998, in the Umatilla County Watermasters Conference Room in Pendleton, Oregon, before Administrative Law Judge (ALJ) Weisha Mize. The hearing was conducted pursuant to the provisions of the Oregon Administrative Procedures Act, ORS 183.310 *et seq*, and the procedural rules found at OAR 690-01-005 and OAR Ch. 690 Div. 2. Jurisdiction is conferred by ORS 540.631. Protestant B & G Resources was represented by Laura Schroeder, attorney at law. The Department was represented by lay representative David Jarrett.

Water right proposed to be cancelled for nonuse

The portion of the water right proposed for cancellation is a portion of the right described by Certificate 28484 State Record of Water Right Certificates in the name of E. F. Burlingham & Sons for the use of water from the Umatilla River and McKay Reservoir, for irrigation of 191.6 acres with a priority date of July 3, 1945.

A description of the acres proposed to be canceled is as follows:

SE $\frac{1}{4}$ SW $\frac{1}{4}$ 1.4 acres	SW $\frac{1}{4}$ NW $\frac{1}{4}$ 7.4 acres
SW $\frac{1}{4}$ SE $\frac{1}{4}$ 0.7 acres	NW $\frac{1}{4}$ SW $\frac{1}{4}$ 32.8 acres
Section 1	SW $\frac{1}{4}$ SW $\frac{1}{4}$ 17.6 acres
NE $\frac{1}{4}$ NE $\frac{1}{4}$ 0.7 acres	SE $\frac{1}{4}$ SW $\frac{1}{4}$ 15.3 acres
NW $\frac{1}{4}$ NE $\frac{1}{4}$ 0.1 acres	SW $\frac{1}{4}$ SE $\frac{1}{4}$ 0.1 acres
SE $\frac{1}{4}$ NE $\frac{1}{4}$ 28.5 acres	Section 7
NE $\frac{1}{4}$ NW $\frac{1}{4}$ 12.6 acres	NW $\frac{1}{4}$ NE $\frac{1}{4}$ 10.0 acres
NW $\frac{1}{4}$ NW $\frac{1}{4}$ 8.8 acres	NE $\frac{1}{4}$ NW $\frac{1}{4}$ 8.4 acres
NE $\frac{1}{4}$ SE $\frac{1}{4}$ 15.6 acres	Section 18
Section 12	Township 2 North, Range 31 East, W.M.
Township 2 North, Range 30 East, W.M.	

The remainder of the right is for for irrigation of the following lands:

SW $\frac{1}{4}$ SE $\frac{1}{4}$ 6.1 acres	NW $\frac{1}{4}$ NE $\frac{1}{4}$ 12.7 acres
Section 1	SE $\frac{1}{4}$ NE $\frac{1}{4}$ 0.1 acres
NE $\frac{1}{4}$ NE $\frac{1}{4}$ 12.7 acres	Section 12
Section 12	

all in Township 2 North, Range 30 East, W.M.. This portion of the water right was not in question in this proceeding and was not included in the notice of proposed cancellation.

Legal Issues Raised

At the outset, the decision maker and the parties should be clear on which party the burden of coming forward and of persuasion rests, and what level of proof is required. While correctly noting that the burden rests with the Department in this matter, the protestant mistakenly argues that the standard of proof for administrative hearings, and for this hearing in particular, is clear and convincing. Protestant's reliance on *Cook v. Michael*, 214 Or 513 (1958) as defining the standard of proof in administrative hearings, and in cancellation hearings in particular, is misplaced.

The court in *Cook* was ruling on the propriety of the lower court's instruction in a civil assault and battery case. In its opinion, the court compared the various statutory standards of burden of proof in a civil trial. While offering an instructive discussion on the meaning of the various standards, at no point did the court state that the standard of proof in administrative hearings was clear and convincing. Nor did the court hold that "preponderance," the established standard of proof in administrative proceedings, was the equivalent of the "clear and convincing" standard.

Oregon's Administrative Procedures Act (APA) declares in ORS 183.450(5) that the decision in an administrative proceeding should be "supported by, and in accordance with, reliable, probative, and substantial evidence." Oregon's Court of Appeals has held that, absent legislation adopting a different standard, the standard of proof in an administrative proceeding is by a preponderance of the evidence. See *Metcalf Automotive Technology v. Employment Div.*, 97 Or App 320, *rev den* 309 Or 592 (1989); *OSCI v. BOLI*, 98 Or App 548, *rev den* 308 Or 660 (1989) (so stating).

The only exception to this standard may be license revocation based solely on allegations of fraud and misrepresentation, where the standard currently is clear and convincing. *Bernard v. Bd. of Dental Examiners*, 2 Or App 22 (1970); *Van Gorden v. Bd. of Dental Examiners*, 52 Or App 749 (1981); *Sobel v. Board of Pharmacy*, 130 Or App 374 (1994). That is not the case here. The applicable standard in this and all other water right cancellation proceedings is a preponderance of the evidence.

Protestant has also asserted that ORS 540.631 and OAR 690-17-0400(2) require two affidavits where a cancellation proceeding is initiated on the basis of watermaster information. ORS 540.631 only refers to "evidence submitted to the commission by any person[;]" it does not address how the evidence must be submitted. OAR 690-17-0400(2) requires that "[w]here the evidence of nonuse submitted to the Department is in the form of affidavits, notarized affidavits from two individuals shall be required." However, under OAR 690-17-0400(3), "[w]here the evidence submitted is solely from Department personnel, such evidence shall be submitted in the form of an affidavit" containing all the information required in affidavits as described in OAR 690-17-0400(2). (Emphasis supplied). OAR 690-17-0400(3) further requires that "the affidavit shall be supported by" the records listed therein. (Emphasis supplied). The use of the indefinite article "an" and the definite article "the" before "affidavit," in the text of OAR 690-17-0400(3), indicates that only one single affidavit is required when the evidence is submitted by a Department

employee, as opposed to the multiple affidavits specifically required when the evidence is submitted by "individuals." An affidavit submitted under OAR 690-17-0400(3) is evidence that an owner of a water right has not used all or part of the water appropriated for a period of five successive years or more. "The failure to use [a water right] shall establish a rebuttable presumption of forfeiture of all or part of the water right. ORS 540.610(1). See also OAR 690-17-0400(1) ("The decision to initiate cancellation proceedings shall be based on evidence submitted to the Department, by any person, that alleges five or more years of nonuse so as to create a presumption of forfeiture.").

Finally, protestant asserts that the proceeding should have been brought under ORS 540.660. ORS 540.660(1) directs a watermaster to submit an affidavit in instances where the "watermaster has reason to **believe** (rather than know with certainty) that circumstances exist that prevent a water right from being exercised according to the terms and conditions of the water right certificate * * *, such as * * * the diversion mechanism used to appropriate water under a water right is no longer operable[.]" (Emphasis supplied). If the watermaster files such an affidavit each year for 5 consecutive years, those affidavits constitute *prima facie* evidence of forfeiture and the "Water Resources Commission shall initiate proceedings under ORS 540.631 to cancel the water right." ORS 540.660(2).

Protestant argues that Watermaster Tony Justus' statement in his affidavit that there was no pump or power source [or diversion dam and headgate] at the authorized points of diversion for the challenged rights, and thus no way existing at the source to divert water, constitutes an allegation that falls under ORS 540.660. That argument confuses Mr. Justus' statement that there is no diversion structure, an ORS 540.610 situation, with a situation where there is a known and physically-present, albeit apparently inoperable, diversion structure. Unless the watermaster could see the pump or other diversion mechanism at the authorized point of diversion, there would be no "reason to believe" that the mechanism was no longer operable, thereby preventing exercise of the water right. In contrast, the lack of any pump, diversion or other mechanism directly leads to the conclusion that no water has been or is being used.

Determination on Exceptions

Protestant has taken a number of exceptions to the proposed order, one of which I will address briefly here. In the exception number three dealing with Finding of Fact 2, protestant refers to an affidavit of Robert Burns, a State-certified appraiser. Protestant has improperly attempted to add this affidavit to the administrative record after the record had been closed, and then to rely on this extra-record affidavit in arguing this exception. No request was made that the record be reopened because of newly-discovered evidence which existed at the time of the hearing. The protestant was granted extensive discovery and had in its possession long before hearing the evidence which it now attempts to refute or explain away through this extra-record affidavit. No offer of this testimony was made at the hearing. It will not be considered now.

Protestants exceptions to the proposed order are DENIED.

Discussion of Decision

This case hinges on the significance and relevance of challenged evidence, witness credibility, and the weight of the evidence.

One item of contention was the significance and relevance of WRD's exhibit A40, which is a copy of the real property petition filed by Kenneth Lewis in 1994 with the state Board of Equalization. Mr. Lewis was the lessee and then the owner of the property involved in the instant proceeding during the period in which nonuse is asserted. Mr. Lewis purchased the property in 1993. Mr. Lewis notes in his explanation for basis for appeal that the property consists of silt which has settled behind the Coe Dam and continues to wash away.

The petition filed with the Board of Equalization is accompanied by an April, 1992 update appraisal report prepared for Mr. Lewis prior to his purchase of the property from the Union Pacific Railroad Company. The appraisal notes that the weed problem noted 5 years earlier continues to exist, and that the water rights are assumed to be nonexistent, although Bill Dick continues to farm the same portion as he was farming 5 years earlier when another appraisal report had been done on this same property. At the time of the cancellation hearing, Mr. Dick continued to lease and raise irrigated crops on what is referred to as field D of this same property.

The appraiser notes that the 1992 update appraisal report was being done with two additional limiting conditions at Mr. Lewis' direction, the significant condition being that no water rights are appurtenant to the property and therefore it is not farmable. The appraiser also attached his investigation log notes from February 13, 1992. With the exception of one area noted as "still being used," although with the point of diversion possibly in the wrong location, the remainder of the property was described as "large thistles and major weed growth" and "covered by trees" in one portion, "no sign of use, obviously not being used, large, sage brush" in another area, "gullie (sic) but nothing else" and only one area clearly being used.

A related piece of documentary evidence is the Oregon Department of Revenue's determination on protestant B&G Resources' valuation appeal of the subject property found at Opinion and Order 97-3221 through 97-3226, entered into the record here as WRC Exhibit A41. B&G Resources was seeking a substantial reduction in Umatilla County's real market and assessed value of the subject lands purchased in 1996 from Ken Lewis. The summary of the evidence in the hearing record on pages 2-3 of Revenue's Opinion and Order states that only 32 acres of the 455 acres involved are irrigated, the remainder being scrubland not used for any beneficial purpose. B&G was represented at this hearing by its president. Based on the evidence adduced at the hearing, the valuation was reduced as requested by B&G Resources.

Both the petition, including the appraisal report, and the Revenue Department's factual determination based on the record made at the hearing at which B&G Resources was a represented party lend support to the Department's case for forfeiture. On their face, these evidentiary documents illustrate that both Mr. Lewis, the previous owner, and B & G Resources, the current owner, sought to have the majority of the property taxed as non-irrigated land.

The parties also disagreed over the reliability and usefulness of testimony given by Bill Alexander of Bill Alexander Forestry, a consulting firm, and by Robert Bostwick of the local Farm Service Agency, a federal agency. Mr. Alexander was called as a witness by the protestant. He had no personal knowledge of the property and had used photographs taken by Mr. Bostwick to prepare maps and his testimony. Mr. Alexander's experience in interpreting photographs for crop production is limited to the extent agricultural land appeared in or next to forest land on which he was consulting. The only "ground-truthing" done of the maps Mr. Alexander prepared regarding whether and where irrigation had occurred was done by the protestant, Mr. Gustafson. Mr. Alexander emphasized on several occasions that distortion is high with 35 mm lens shots, so that the location of field lines and other landmarks was not of the accuracy one would obtain by using a stereoscope. However, it is sufficient to locate and identify the fields in question and to observe general characteristics like color, vegetation and cultivation marks.

Conversely, Robert Bostwick has been taking and interpreting 35mm aerial photographs (slides) specifically of agricultural crop production for 33 years, and has been doing this work for the Farm Service Agency since 1981. The purpose of the photographs is to determine crop acreage and to describe and interpret what crops are grown as related to the crop reports filed with the Farm Service Agency by the individual producers. The aerial photos are taken annually after the 4th of July of every crop acre in production.

Mr. Bostwick testified that it was usually possible to tell from the slides whether the lands were irrigated but occasionally a site visit was necessary. He further noted that a number of crops in the Pendleton area, including cereal grains, wheat, barley, oats, oil seeds and green peas do not require irrigation. Mr. Bostwick credibly testified from the slides from which Exhibits A22 -- A37 were taken that from 1988 through 1995, fields A, B and C were neither cropped nor irrigated, with the exception of Field A in 1993 which had a crop growing, and that the southeast-most end of field D was also not irrigated during this period.

Based on Mr. Bostwick's substantial experience over the past 33 years in the topic of this testimony, which is interpreting 35 mm aerial photographs to identify acreages, crops, and irrigated and non-irrigated agriculture for the purpose of paying out federal subsidies, in contrast with Mr. Alexander's very limited experience in this field, I find Mr. Bostwick's testimony more credible and reliable on this matter.

Protestants sought to put Department's witness Tony Justus' credibility in question by asserting that he had accepted half a beef from Ken Lewis, previous owner of the property, and suggesting that it was for this reason that a forfeiture action was not initiated in 1991 when the beef was allegedly accepted, or in 1992, the following year. Andy Lewis alluded to a possible gift but ultimately indicated that his father gave a lot of beef away and he could not say that any had actually gone to Mr. Justus. Mr. Gustafson testified that in May, 1991, at Mr. Lewis' instruction, he had placed a half a beef in a frozen food locker, although he did not know who owned the locker, and that the next month he overheard a speaker phone conversation in which Mr. Lewis was speaking to a Tony who thanked him for the beef and talked about water rights.

Mr. Justus denied receiving or accepting any gift from Mr. Lewis, and testified that the reason he had not sought to have the Department initiate a forfeiture proceeding in 1991 or in 1992 was because the nonuse did not rise to a level of concern unless and until there was an attempt to reactivate a forfeited right, which is what prompted him to file the affidavit he submitted in this case in 1997.

I find Mr. Justus' testimony to be more credible. Even assuming Mr. Gustafson's statements to be true, they amount to no more than vague, circumstantial statements speculating about the possibility of Mr. Justus receiving a gift. In contrast, Mr. Justus, who had first-hand knowledge of the alleged events, specifically testified that he did not receive a gift and provided a plausible reason for not filing an affidavit of nonuse until 1997.

The proponents of cancellation together testified that they were at or observing the lands in question each year from 1988 through 1996, occasionally early in the year in January or March but most years not until June and thereafter, when Department staff observed the lands and river several times a month. The primary reason for their close monitoring of usage on the Umatilla River after June involved the Department's oversight of the use of stored water, fish flow releases, and, from 1992 on, reading flow meters which had been required of all users on the Umatilla River. In 1992 the proponents also observed the lands in question early in the season and found that no diversion or evidence of irrigation of fields A, B or C was occurring or had occurred between April 15 and May 18, 1992. However, this was one year when the protestants testified they had not done any irrigation.

Bill Dick, a witness called by the proponents, has a lengthy and more frequent association with the lands in question. He leased field D for the entirety of the period in question through 1996, and was on or by this property frequently, if not daily, both prior to and during each irrigation season. Mr. Dick's residence is situated such that he can observe a portion of field D and all of field C. Mr. Dick's testimony was consistent with the affidavit he prepared for the protestants in this matter when the protest was first filed in September, 1997, which is that he planted but did not irrigate field A in 1993, and that he leased field D for 10 years, from 1986 through 1996. Additionally, he testified, consistent with the proponents, that with the exception of the planting to grain of field A in 1993, there had been no cultivation or irrigation of fields A, B and C for the period in question, and that the condition of the lands was generally poor and filled with thistle and other weeds.

Sandy Cairns worked as an assistant watermaster for Umatilla County in February 1992 under the supervision of Bob DeBow, the watermaster at that time. He directed her to prepare a voluntary affidavit of abandonment of water rights for the owner of the lands in question at that time. As the property was in the process of being purchased by Mr. Lewis, the affidavit was not signed. While inconclusive on its own, the fact that this affidavit was prepared because "the property is no longer being irrigated" is consistent with the testimony of the Department's witnesses that the water rights had been forfeited for nonuse.

Witnesses for protestant included Darrel Mecham, Bill Rahder, Andy Lewis and protestant, Mr. Gustafson.

Mr. Mecham testified that he had primary responsibility for irrigating the lands in question by sprinkler irrigation in 1988, 1989, and 1993, which he did the last two weeks of April and the first week in May. During this time, he worked elsewhere during the day but testified that in the morning he would turn the pump off, drain and move the lines, and in the evening he would return again to the property and turn the pump on, leaving the system to run over night. Irrigation would start in field A, it would take between three and four days to irrigate across the field and back, and then he would move on to field B and then C, going across and back over the course of 3-4 days on 12 hour settings. The purpose for irrigating fields A, B, and C in 1988 and 1989 was to provide a little forage for cows which were stationed there for a maximum of four days the second week in May before being moved to pasture on the Lewis ranch. There was no cultivation or planting done in any of the fields except for the grain planting in 1993 in field A, and the vegetation was thistles, pig weed and pasture grass. In his affidavit filed with the original protest in September 1997, Mr. Mecham indicated that he had irrigated in 1994. However, Mr. Mecham testified on the stand that he did nothing on the lands in question in 1994, 1995, 1996 and 1997.

Mr. Rahder testified that he observed irrigation of fields A, B and C in 1993 and 1994. At one point he testified that the irrigation lasted from April to mid-June, while in response to other questions he indicated that it was only through May.

The protestant and Andy Lewis testified that they had come from Portland in 1988, 1989 and 1993 to move pipe to and in fields A, B and C the last weekend in April and the first two weekends in May. They testified that they would also move the pipes off the fields for use on other ranch lands on their third weekend trip. According to their testimony, they did not observe the diversion points nor have any involvement with the pumps, leaving that to Mr. Mecham. Mr. Gustafson also testified that he irrigated fields B and C in 1994, a point that he failed to mention in the affidavit accompanying his protest, while Andy Lewis was not sure about 1994, and Mr. Mecham testified that no irrigation occurred in 1994. Mr. Gustafson said nothing about irrigation in either 1993 or 1994 in the affidavit filed with his protest against the proposed cancellation action.

In addition to the noted inconsistencies regarding irrigation in 1994, all of the above testimony is inconsistent as to when the land was irrigated. Mr. Mecham testified that the land was irrigated from the last two weeks of April through the first week of May in 1988, 1989, and 1993. Mr. Rahder testified that the land was irrigated in 1993 and 1994, from April to mid-June, or, alternatively, from April through May. Andy Lewis and Mr. Gustafson testified that the fields were irrigated from the last week of April through the first two weeks of May in 1988, 1989, and 1993.

Furthermore, protestant's and Andy Lewis' testimony contradicted that of Mr. Mecham on some vital points. The protestant and Mr. Lewis' testimony was that the pipes would be at the opposite end of the field from where they started the previous weekend, and that they then would move the

pipes to the next field and set them. On the other hand, Mr. Mecham testified that it would take 3-4 days to cross the field twice, which would put the pipes back at the point of beginning, and that he would then move them to the next field and start again. This is inconsistent with Mr. Gustafson's and Mr. Lewis's testimony. By protestant and Lewis' testimony, the pipes would be in the same field they had moved them into the weekend before, whereas by Mecham's testimony, the pipes would be in a different field.

It is also difficult to believe that Mr. Gustafson and Mr. Lewis would drive from Portland to Pendleton for 3 weekends in a row to move pipes one time each weekend, when Mr. Mecham already resided nearby and allegedly moved these pipes daily, as well as continuing to turn the pump on and off after Mr. Gustafson and Mr. Lewis had moved the pipes one time on the weekends. It is notable that Mr. Mecham made no mention in his testimony of these alleged weekend visits.

Mr. Rahder testified that most pasture lands in the vicinity were generally green through April and would begin browning up as May progressed. Mr. Lewis did not know what the fields looked like after the second weekend in May. Mr. Justus, Mr. Williams and Mr. Dick all testified that the fields did not change in vegetation or character, that the vegetation was predominantly thistles and pig weed and a little pasture grass, and the fields were brown and dry. It does not appear, in fact, that there was a need to apply water in late April or the first week in May. The lands in question did not appear to be green much past April, as it would be naturally.

Taken together, the testimony presented by protestant is of little weight. Mr. Mecham's testimony, while credible on its face, is discounted by the testimony of the other witnesses. Mr. Rahder's testimony conflicts with that of Mr. Mecham and of Andy Lewis and Mr. Gustafson. The testimony of Andy Lewis and Mr. Gustafson, two primary witnesses, lacks credibility because it contradicts Mr. Mecham's on the specifics of how and when the land was irrigated. In sum, the testimony from protestant and his witnesses was contradictory, internally inconsistent, and unpersuasive. In contrast, the Department's testimony is internally consistent, credible and cumulative. The testamentary, photographic and documentary evidence presented by the Department supports the conclusion that the rights in question have been forfeited by 5 years of nonuse. I find that the lands were not irrigated during the period in question.

Considering the record as a whole, in particular the testimony of the department's witnesses, including Mr. Dick, Mr. Justus, Mr. Bostwick, and Ms. Cairns, and the entirety of the two valuation appeals in Exhibits A-40 and A-41, I conclude that the preponderance of the evidence supports a determination that the portion of the water right in question has been forfeited for 5 and more years of nonuse between 1988 and 1996. *See Riley Hill General Contractor, Inc. v. Tandy Corp.*, 303 Or 390, 394 (1987) (preponderance is generally accepted to mean the greater weight of the evidence).

FINDINGS OF FACT

1. The lands in question were predominantly covered in thistle, pigweed and other weeds and had large sage brush in at least one area. This condition changed for field A in 1993 when it was planted to grain, but otherwise the lands were in poor condition and no irrigation or evidence of irrigation was observed by the proponents or proponents' witnesses, either through in person visits or through expert review of aerial photographs, between 1988 through 1996.
2. The previous owner and the current owner both have sought a reduction in the valuation of this property for tax purposes, on the basis that the appurtenant water right had not been exercised with the exception of approximately 32 acres.
3. The grain crop planted in field A in 1993 was planted in the 6th year of the period of nonuse, which began in 1988.
4. The portion of the water right in question in this proceeding has not been exercised to beneficial use between 1988 and 1996.
5. That portion of the water right not in question which is appurtenant to 31.5 acres on Field D, constituting 6.1 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 1, 12.7 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and 12.7 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 12, has been exercised by lessee Bill Dick each year from 1988 through 1996, inclusive.

CONCLUSIONS OF LAW

1. The portion of the water right in question has been forfeited for 5 years of nonuse.
2. The standard of proof in administrative hearings, including those concerning the alleged forfeiture and proposed cancellation of water rights, is a preponderance of the evidence.
3. This proceeding was properly initiated under the provisions of ORS 540.610, ORS 540.631, and OAR 690-17-0400(1)-(3).

NOW, THEREFORE, it is ORDERED that the portion of the water right evidenced by Certificate 28484 for irrigation of the following lands, and that Certificate 28484, be and the same is hereby CANCELLED:

SE $\frac{1}{4}$ SW $\frac{1}{4}$ 1.4 acres
SW $\frac{1}{4}$ SE $\frac{1}{4}$ 0.7 acres
Section 1

Township 2 North, Range 30 East, W.M.

NW $\frac{1}{4}$ NE $\frac{1}{4}$ 10.0 acres
NE $\frac{1}{4}$ NW $\frac{1}{4}$ 8.4 acres
Section 18

Township 2 North, Range 31 East, W.M.

NE $\frac{1}{4}$ NE $\frac{1}{4}$ 0.7 acres
NW $\frac{1}{4}$ NE $\frac{1}{4}$ 0.1 acres
SE $\frac{1}{4}$ NE $\frac{1}{4}$ 28.5 acres
NE $\frac{1}{4}$ NW $\frac{1}{4}$ 12.6 acres
NW $\frac{1}{4}$ NW $\frac{1}{4}$ 8.8 acres
NE $\frac{1}{4}$ SE $\frac{1}{4}$ 15.6 acres

Section 12

Township 2 North, Range 30 East, W.M.

SW $\frac{1}{4}$ NW $\frac{1}{4}$ 7.4 acres
NW $\frac{1}{4}$ SW $\frac{1}{4}$ 32.8 acres
SW $\frac{1}{4}$ SW $\frac{1}{4}$ 17.6 acres
SE $\frac{1}{4}$ SW $\frac{1}{4}$ 15.3 acres
SW $\frac{1}{4}$ SE $\frac{1}{4}$ 0.1 acres

Section 7

Township 2 North, Range 31 East, W.M.

It is FURTHER ORDERED that a new Certificate be issued confirming the portion of the right remaining for irrigation of the lands set out below:

SW $\frac{1}{4}$ SE $\frac{1}{4}$ 6.1 acres

Section 1

NE $\frac{1}{4}$ NE $\frac{1}{4}$ 12.7 acres

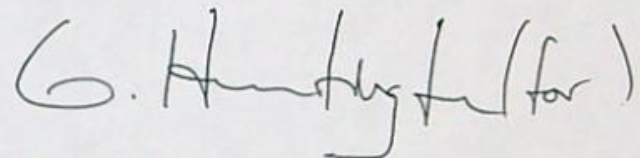
NW $\frac{1}{4}$ NE $\frac{1}{4}$ 12.7 acres

SE $\frac{1}{4}$ NE $\frac{1}{4}$ 0.1 acres

Section 12

all in Township 2 North, Range 30 East, W.M.

This Final Order in Case No. PC 97-15 is issued this 26th day of January, 1999.



Martha O. Pagel, Director

NOTICE: You are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for review with the Oregon Court of Appeals within 60 days from the date of service (date of mailing) of this Order. Judicial review is pursuant to the provisions of ORS 536.075.

May 21, 1997

WATER
RESOURCES
DEPARTMENT

GLORIA LEWIS, PRESIDENT
NOMAD ALFALFA, INC.
7720 SW WESTGATE WAY
PORTLAND, OR 97225

RE: File 33006, 49008 and 20936

Dear Ms Lewis,

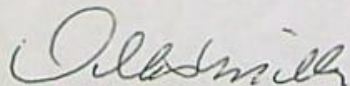
We received your request to assign your certificates 28484, 32699 and permit 41362 to B&G Resources, Inc.. We do not change the name on certificates. They are perfected rights and there is no mechanism for assigning them, it is not necessary because whoever owns the land owns the right under Oregon water law. The Department does process assignments of permits because they are not perfected rights.

We cannot process the assignment form you submitted for permit 41362. Your form includes language that refers to transfer and trust deeds that we are not involved in and do not concern us. Please complete the enclosed assignment form required by our department for processing assignments.

The \$35 submitted for the assignments will be partially refunded since we cannot process the certificated rights. We will refund \$25 to you and hold \$10 for processing the permit assignment.

If you have questions please contact me at the address below or phone (503)378-3739 ext. 272.

Sincerely,



Dallas Miller
Natural Resource Specialist 2

cc: B&G Resources, Inc.



Commerce Building
158 12th Street NE
Salem, OR 97310-0210
(503) 378-3739
FAX (503) 378-8130

ASSIGNMENT

We, Gloria Lewis and Nomad Alfalfa, Inc., water rights certificate holders and owners of land which may be appurtenant to Certificate #28484 held in the name of E.F. Burlingham & Sons, hereby assign any and all interest we might have in the aforementioned certificate as filed in the office of the Water Resources Director, to:

B & G Resources, Inc.
(Name of New Owner)

3132 S.E. Tindall Circle Portland Multnomah Oregon 97202
(Mailing Address) (City) (County) (State) (Zip) (Phone)

This water right is assigned to the new owner and includes any right to transfer all or a portion of the water right identified in the aforementioned water right even though the undersigned may hold a trust deed on the appurtenant property.

I hereby certify that I have notified all other owners of the property described in the Certificate of this request for assignment.

Witness my hand this 28 day of August, 1996

RECEIVED

MAY 19 1997

WATER RESOURCES DEPT.
SALEM, OREGON

Certificate Holder Gloria Lewis
Gloria Lewis

Certificate Holder Gloria Lewis, President
Nomad Alfalfa, Inc.
By Gloria Lewis, President

The completed assignment must be submitted to the Water Resources Department, together with a recording fee of \$10. Additional pages will cost \$5 per page.

WATER RESOURCES DEPARTMENT
158 12TH STREET NE
SALEM, OREGON 97310-0210

Received 5-19-97
\$10.
Receipt # 12380

July 1, 1997

JERALD REA
NOMAD ALFALFA INC
7720 SW WESTGATE WAY
PORTLAND OR 97225:

REFERENCE: Files 20936 (Certificate 28484) & 33006 (Certificate
32699)

Enclosed is our \$25 refund in unnecessary assignment fees for the
above certificated water rights.

Sincerely,

Dallas S. Miller
Water Right Specialist

DSM:jh

enclosure



Commerce Building
158 12th Street NE
Salem, OR 97310-0210
(503) 378-3739
FAX (503) 378-8130

* Return to Janet H.
for mailing

INTEROFFICE MEMO

TO: FISCAL SECTION

DATE: 6/4/97

FROM: X C. Williams
Authorized Examiner

SUBJECT: Request for transfer of fees or refund check

Please transfer \$ _____ Receipt _____ from file
_____ to file _____ for:
_____ Examination fee
_____ Permit Recording Fee

Please refund \$ 10⁰⁰ to Jerald Rea
file 20936, receipt 12380. These funds are
refunded due to:

- _____ Application rejected
- _____ Application withdrawn
- _____ Excess fees collected for application/PON
- _____ Payment of PON
- _____ Protest Filing Fees
- Other: Assignment unnecessary

0.40⁰⁰

Jerald Rea
Nomad Alfalfa Inc.
7720 Sw Westgate Way
Portland, OR 97225

JUN 09 1997

STATE OF OREGON
WATER RESOURCES DEPARTMENT

RECEIPT # **12380**

158 12TH ST. N.E.
 SALEM, OR 97310-0210
 378-8455 / 378-8130 (FAX)

INVOICE # _____

RECEIVED FROM: Gerald Rea
 BY: _____

APPLICATION	20936
PERMIT	16393
TRANSFER	

CASH: CHECK: # 96-411 OTHER: (IDENTIFY)

Certificate 28434
 TOTAL REC'D \$ 35.

0417 WRD MISC CASH ACCT

ADJUDICATIONS

PUBLICATIONS / MAPS

OTHER: (IDENTIFY)

OTHER: (IDENTIFY)

\$
\$
\$
\$

REDUCTION OF EXPENSE

CASH ACCT.

PCA AND OBJECT CLASS

VOUCHER #

\$

0427 WRD OPERATING ACCT

PCA 66111

- 0407 MISCELLANEOUS COPY & TAPE FEES
- 0410 RESEARCH FEES
- 0408 MISC REVENUE: (IDENTIFY)
- TC165 DEPOSIT LIAB. (IDENTIFY)

- 0201 WATER RIGHTS: SURFACE WATER
- 0203 GROUND WATER
- 0205 TRANSFER

- 0218 WELL CONSTRUCTION WELL DRILL CONSTRUCTOR LANDOWNER'S PERMIT

OTHER (IDENTIFY)

*Janet -
 Please
 Refund \$25 of
 the \$35 submitted.
 Saw letter & cc;
 to B & G
 Dallas*

0437 WELL CONST. START FEE

- 0211 WELL CONST START FEE
- 0210 MONITORING WELLS

OTHER (IDENTIFY)

0539 LOTTERY PROCEEDS

1302 LOTTERY PROCEEDS

0467 HYDRO ACTIVITY

LIC NUMBER

- 0233 POWER LICENSE FEE (FW/WRD)
- 0231 HYDRO LICENSE FEE (FW/WRD)

HRDRO APPLICATION

\$
\$
\$

RECEIPT # **12380**

DATED: 5-19-97 BY: D. Bushnell

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

RECEIPT # **12380**

158 12TH ST. N.E.
SALEM, OR 97310-0210
378-8455 / 378-8130 (FAX)

INVOICE # _____

RECEIVED FROM: Gerald Rea
BY: _____

APPLICATION	20936
PERMIT	16393
TRANSFER	

CASH: CHECK: # 96-411 OTHER: (IDENTIFY) _____

Certificate 28434
TOTAL REC'D \$ 35.00

0417 WRD MISC CASH ACCT

ADJUDICATIONS

PUBLICATIONS / MAPS

OTHER: (IDENTIFY) _____

OTHER: (IDENTIFY) _____

\$
\$
\$
\$

REDUCTION OF EXPENSE

CASH ACCT.

PCA AND OBJECT CLASS

VOUCHER #

0427 WRD OPERATING ACCT

MISCELLANEOUS

0407 COPY & TAPE FEES

0410 RESEARCH FEES

0408 MISC REVENUE: (IDENTIFY) _____

TC165 DEPOSIT LIAB. (IDENTIFY) _____

WATER RIGHTS:

0201 SURFACE WATER

0203 GROUND WATER

0205 TRANSFER

WELL CONSTRUCTION

0218 WELL DRILL CONSTRUCTOR

LANDOWNER'S PERMIT

OTHER (IDENTIFY) _____

PCA 66111

assignment

EXAM FEE		RECORD FEE
\$	0202	\$
\$	0204	\$
\$	0206	\$
EXAM FEE		LICENSE FEE
\$	0219	\$
	0220	\$

0437 WELL CONST. START FEE

0211 WELL CONST START FEE

0210 MONITORING WELLS

OTHER (IDENTIFY) _____

\$	CARD #
\$	CARD #

0539 LOTTERY PROCEEDS

1302 LOTTERY PROCEEDS

0467 HYDRO ACTIVITY

LIC NUMBER

0233 POWER LICENSE FEE (FW/WRD)

0231 HYDRO LICENSE FEE (FW/WRD)

HRDRO APPLICATION

\$
\$
\$

RECEIPT # **12380**

DATED: 5-19-97 BY: D. Bushnell

STATE OF OREGON
COUNTY OF UMATILLA

RECEIVED
MAR 14 1961
STATE ENGINEER
SALEM, OREGON

CERTIFICATE OF WATER RIGHT

This Is to Certify, That E. F. BURLINGHAM & SONS

of Forest Grove, 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 Umatilla River and McKay Reservoir constructed under Application No. R-7526, Permit No. R-584, a tributary of Columbia River for the purpose of irrigation of 191.6 acres

under Permit No. 16393 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 3, 1945

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 4.79 cubic feet per second

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 $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 12, T. 2 N., R. 30 E., W.M.; NW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 7; NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 18; T. 2 N., R. 31 E., 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-fourtieth 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 4 $\frac{1}{2}$ acre feet per acre for each acre irrigated during the irrigation season of each year, and shall be subject to contract No. 14-06-100-1336 with the Bureau of Reclamation, a copy of which is on file in the office of the State Engineer,

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:

1.4 acres SE $\frac{1}{4}$ SW $\frac{1}{4}$	7.4 acres SW $\frac{1}{4}$ NW $\frac{1}{4}$
6.8 acres SW $\frac{1}{4}$ SE $\frac{1}{4}$	32.8 acres NW $\frac{1}{4}$ SW $\frac{1}{4}$
Section 1	17.6 acres SW $\frac{1}{4}$ SW $\frac{1}{4}$
13.4 acres NE $\frac{1}{4}$ NE $\frac{1}{4}$	15.3 acres SE $\frac{1}{4}$ SW $\frac{1}{4}$
12.8 acres NW $\frac{1}{4}$ NE $\frac{1}{4}$	0.1 acre SW $\frac{1}{4}$ SE $\frac{1}{4}$
28.6 acres SE $\frac{1}{4}$ NE $\frac{1}{4}$	Section 7
12.6 acres NE $\frac{1}{4}$ NW $\frac{1}{4}$	10.0 acres NW $\frac{1}{4}$ NE $\frac{1}{4}$
8.8 acres NW $\frac{1}{4}$ NW $\frac{1}{4}$	8.4 acres NE $\frac{1}{4}$ NW $\frac{1}{4}$
15.6 acres NE $\frac{1}{4}$ SE $\frac{1}{4}$	Section 18
Section 12	T. 2 N., R. 31 E., W.M.
T. 2 N., R. 30 E., W.M.	

The right to the use of the water for the purposes aforesaid is restricted to the lands or place of use herein described.

THIS IS A DRAFT OF WATER RIGHT CERTIFICATE

See other side for instructions and final proof to be executed by permittee.

STATE OF OREGON
STATE ENGINEER
WATER RESOURCES DEPARTMENT
SALEM

251 FINANCE BUILDING
170 12TH STREET S. E.

REFER TO
FILE NO. 20936

March 10, 1961

E. F. Burlingham and Sons
Forest Grove
Oregon

Gentlemen:

On the reverse side of this paper is a copy of a draft of water right certificate to confirm the right under Permit No. 16393..... You are requested to examine this draft and if you find it correctly describes the appropriation of water made, execute the following final proof. A fee of \$1.00 is required for recording your certificate of water right in the office of the County Clerk. The fee of \$1.00, together with this signed draft, must be returned to the State Engineer.

Very truly yours,

LEWIS A. STANLEY
State Engineer

FINAL PROOF

I have read the draft of water right certificate shown on the reverse side of this paper and as final proof of appropriation of water I hereby certify that the water has been used as described in said draft.

March 13, 1961
(Date)

E. F. Burlingham and Sons
By [Signature]
(Signature)

Need 2N-30E-sec.12

Permit No. 16393

Umatilla

Application No. 20936

County WASHINGTON

Proof of Appropriation of Water

- Name E. F. Burlingham & Sons 2. Address Forest Grove, Oregon
- Source of supply Umatilla River and McKay Reservoir *constructed under Act 2527*
- Tributary of Columbia R
- Amount of water 5.18 c.f.s. *4.79* 5. Priority date July 3, 1945
- Use Irrigation *1/4 of 42.5 shall be subject to permit No. 14-06-100-1376*
- Location of point of diversion, SE 1/4 NE 1/4 NE 1/4 NW 1/4 Sec 12 T 2N R 30E
SW 1/4 SW 1/4 SW 1/4 SW 1/4 *7 T 2N R 31E*
(See attached sheets)

Table Survey 1957-2
190-57-7
Tied on 1957-2
Nov. 19, 1958
M.B.

2N	30E	1	SE 1/4 SW 1/4	1.4
			SW 1/4 SE 1/4	6.8
		12	NENE	13.4
			NW NE	12.8
			SE NE	28.6
			NENW	12.6
			NWNW	9.8
			NE SE	15.6
2N	31E	7	SW NW	7.4
			NW SW	32.8
			SW SW	17.6
			SE SW	15.3
			SW SE	0.1
		18	NW NE	10.0
			NENW	8.4
				<u>191.6</u>

Permit covering land to be

mit	No. Acres Actually Irrigated
	12.0 ✓
	8.8 ✓
	12.8 ✓
	13.4 ✓
	28.6 ✓
	15.6 ✓
	1.4 ✓
	6.8 ✓
	7.4 ✓
	32.8 ✓
	17.6 ✓
	15.3 ✓
	0.1 ✓
	8.4 ✓
	10.0 ✓
	191.6

1/40th of one cubic shall be further for each acre irrigated at to such reasonable

Wayne Harris,
R. Bridges
bl. sheet 1957-2

Application No. 20936

County WASHINGTON

Proof of Appropriation of Water

Plane Table Survey 1957-2
 May 30 - 31
 Tied on 1957-2
 Nov. 19, 1958
 M.B.

- Name E. F. Burlingham & Sons 2. Address Forest Grove, Oregon
- Source of supply Umatilla River and McKay Reservoir
 Tributary of Columbia R
- Amount of water 5.18 c.f.s. 4.79
 5. Priority date July 3, 1945
- Use Irrigation
 (See attached sheets)
- Location of point of diversion, Sec. 12, Twp. 2N, Range 30E, W. M.
 (Legal Subdivision)
- The description of land given below corresponds to that found in your permit covering land to be irrigated, or, if for other purposes, the place of use.

Township	Range	Section	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
2 N	30 E	12	NE 1/4 of NW 1/4	5.8	12.6
2 N	30 E	12	4 NW 1/4 of NE 1/4	10.7	8.8
2 N	30 E	12	3 NE 1/4 of NE 1/4	23.8	12.8
2 N	30 E	12	5 SE 1/4 of NE 1/4	27.1	13.4
2 N	30 E	12	6 NE 1/4 of SE 1/4	9.9	28.6
2 N	30 E	1	1 SE 1/4 of SW 1/4	13.	15.6
2 N	30 E	1	2 SW 1/4 of SE 1/4	14.6	1.4
2 N	31 E	7	7 SW 1/4 of NW 1/4	15.2	6.8
2 N	31 E	7	8 NW 1/4 of SW 1/4	31.6	7.9
2 N	31 E	7	9 SW 1/4 of SW 1/4	5.5	32.8
2 N	31 E	7	10 SE 1/4 of SW 1/4	19.9	17.6
2 N	31 E	7	11 SW 1/4 of SE 1/4	3.	15.3
2 N	31 E	18	12 NE 1/4 of NW 1/4	8.3	0.1
2 N	31 E	18	13 NW 1/4 of NE 1/4	18.5	8.4
				206.9	10.0
					191.6

If for irrigation, this appropriation shall be limited to 1/40th of one cubic foot per second or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 4 1/2 acre feet per acre for each acre irrigated during the irrigation season of each year, and shall be subject to such reasonable rotation system as may be ordered by the proper state officer.

Check R.R. Map owned by Wayne Harris,
 Co. Surveyor for tie from R.R. Bridge &
 Track signal. See plane Table sheet 1957-2

DESCRIPTION OF WORKS

9. (a) If a dam has been constructed, give description: Height, ft.; length on top, ft.; length on bottom, ft.; material used and character of construction,
- (b) Give description of headgate: Width, ft.; depth, ft.; material used and character of construction,
- (c) Size of canal: Width on top (at waterline), ft.; width on bottom, ft.; depth of water, ft.; grade, ft. fall per 1,000 ft. Actual capacity, sec.-ft. Give general description:
- (d) Pipe line: Description of intake, Length of pipe, ft.; size at intake, in.; size at ft. from intake, in.; size at place of use, in. Difference in elevation between intake and place of use, ft. Is grade uniform? Actual capacity of pipe line, sec.-ft. Give general description:
(Material: Steel, wrought, cast iron, wood stave, etc.)
- (e) Pumping plant: Give size and type of pump, Suction lift, ft.; discharge lift, ft. Type of motor used Horsepower rating, H. P. Actual capacity of pump, sec.-ft.
10. During what months is water beneficially used?
11. State character of soil Kind of crops raised
12. Does the accompanying map, filed with your application, show correctly the point of diversion, area of land irrigated, or place of use?
13. If not, wherein is such map in error?
14. Domestic use: Give number of families actually using water at this time
15. If for power, mining, municipal, manufacturing, storage or any other purpose than irrigation, give extent and method of such use

Item 7

The points of diversion are located at any point along either bank of the Umatilla River in Sec. 12. T. 2 N. R. 30 E. W.M.; (and in Sec. 7. T. 2 N. R. 31 E. W.M.); and (Sec. 18. T 2 N. r 31 E. W.M.) being withing the N.W. $\frac{1}{4}$ of the N.W. $\frac{1}{4}$, NW $\frac{1}{4}$ of NE $\frac{1}{4}$, SE $\frac{1}{4}$ of NE $\frac{1}{4}$, of Sec. 12, T 2 N. R. 30 E; SW $\frac{1}{4}$ of NW $\frac{1}{4}$. NW $\frac{1}{4}$ of SW $\frac{1}{4}$, and SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 7, T 2 N. R 31 E. W.M.; NE $\frac{1}{4}$ of NW $\frac{1}{4}$ and NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 18 T. 2 N. R. 31 E. W.M. in the county of Umatilla.

The main ditches to be respectively 5600 feet, 3200 feet, and 4000 feet in length terminating respectively in the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 12; SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 12. T 2 N. R. 30 E.; and SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 7 T 2 N. R 31 E. W.M., the proposed locations being shown throughout on the accompanying map.

AFFIDAVIT OF APPROPRIATOR

STATE OF OREGON,

County of

} ss.

I,, being first duly sworn, depose and say that I have read the above and foregoing proof of appropriation of water; that I know the contents thereof, and that the facts therein stated are true.

IN WITNESS WHEREOF, I have hereunto set my hand this day of, 194.....

Subscribed and sworn to before me this day of, 194.....

Notary Public for Oregon

[Notarial Seal]

My commission expires

AFFIDAVIT OF WITNESSES

STATE OF OREGON,

County of

} ss.

We,, and of being first duly sworn, depose and say that we are well acquainted with the facts and conditions set forth in the foregoing statement relative to proof of appropriation of water under Permit No.; that we and each of us have been over and upon each tract described in said proof, and from such personal inspection have knowledge that all necessary ditches, dams and other diversion and distributing works have been constructed, and water used as stated therein; that we have carefully read such proof of appropriation, and that each and every statement contained therein is true to the best of our knowledge and belief.

Subscribed and sworn to before me this day of, 194.....

Notary Public for Oregon

[Notarial Seal]

My commission expires

REPORT OF PERSON MAKING INSPECTION

(For use by Representative of State Engineer)

I,, do hereby certify that I have made an inspection of the works described herein and in Permit No., on the day of, 194..., and found the foregoing statements and descriptions of works to be accurate. In my opinion the appropriation has been completed to the extent of (Quantity of water in second-feet or acre-feet) and I recommend the issuance of water right certificate for this amount.

NOTICE TO INSPECTORS

If conditions do not justify the above report by you, please return the proof without your signature, with a full report by letter.

(Name)

(Title)

Pump: Coulds 3x4" cent. dir. dr.

Motor: Westinghouse 20 HP. 3Phase 3500 RPM

Pump: Coulds 3x4" Cent. dir. dr. Belt dr., 6' 9" pulleys, 22' centers.

Motor: G.E. 20 HP. 3Phase 1760 RPM

Pump: Jacuzzi 3x4" cent. dir. dr.

Motor: G.E. 20 HP. 3Phase, 3490 RPM

pipe: ± 2500' x 6" steel

± 3000' x 6" AL.

± 9000' x 3" x 4" AL.

Heads: 216 RB# 40 - 1/8 x 3/16

Lift: See plane Table sheet 1457-2 for Lift to various fields.

Crop: Hay - Pasture - Grain

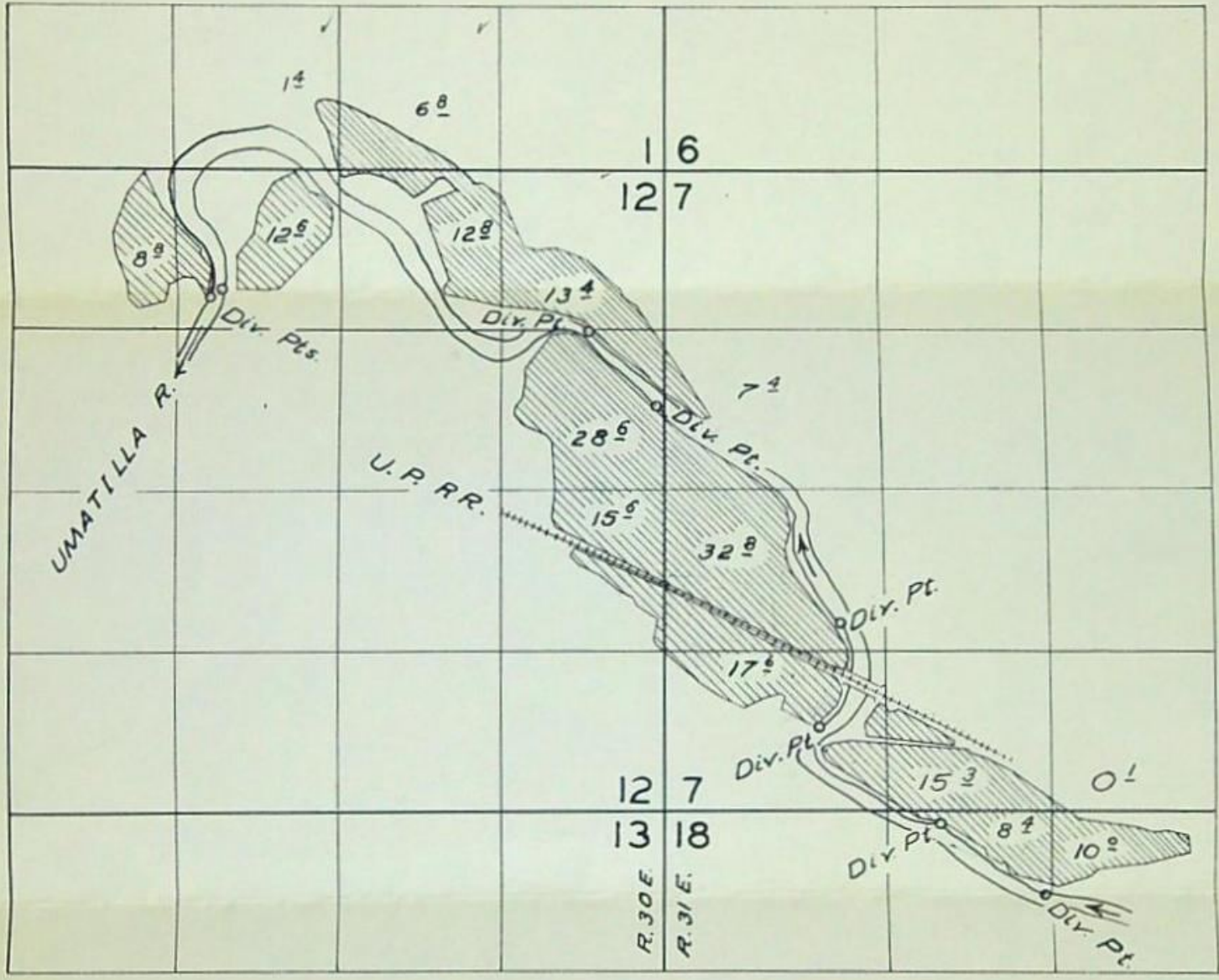
Info.: Buck Wanless, Manager

John Schreder

STATE OF OREGON

DEPARTMENT OF AGRICULTURE

T. 2 N. R. 30 & 31 E. W. M.



FINAL PROOF SURVEY
UNDER

Application No. 20936 Permit No. 16393
IN NAME OF

E. E. Burlingham & Sons

Surveyed May 30, 1958, by C. O. Bartels
July 16, 1960, by R. H. Jackson

NZ-2P-184
1957-X

This is ok except
for a claim that
12 e SW 1/4 SE 1/4 Sec 1
6 e SE 1/4 SW 1/4 Sec 1
were irrigated within
time limit of permit.
Check this ~~at~~ survey
if you believe proof
can be made.

COBs BP extend.

2P-184

New map.

add additional field

July 16-1960

Land claimed by Burlingham shown on N2-2P-184
Information from Bob Schroeder, mgr.

Mr. Schroeder stated that he took over management in 1958 and that there was no irrigation on this land prior to this time. He has irrigated since he has been on the place. Said no irrig. for 8 yrs. on these fields prior to 1958.

It appears this claim should be denied.

Mr. Bennett says field in question
has been irrig. for several years &
preceding 1958

P Jackson

March 11, 1961

E. F. Burlingham & Sons
Forest Grove
Oregon

Gentlemen:

This will acknowledge receipt of the draft of the proposed certificate in connection with Permit No. 16393 and your check for \$1.00 in payment of the certificate recording fee.

This fee was paid in October 1959, therefore we are returning herewith your check No. 25908 in the amount of \$1.00.

Very truly yours,

LEWIS A. STANLEY
State Engineer

By
Trevor Jones
Assistant

TJ:cr

September 6, 1960

E. F. Burlingham & Sons
Forest Grove, Oregon

Attention: Mr. Cyrus

Dear Gentlemen:

This will acknowledge receipt of your letter in reference to permit No. 16393. When the field crews return from the summer work I will have a new map prepared showing the additional field and will prepare a new draft of the proposed certificate.

Very truly yours,

LEWIS A. STANLEY
State Engineer

By
Trevor Jones, Assistant

TJ:km

Specialties: Nomad Alfalfa; Meadow Foxtail

20936

E. F. BURLINGHAM & SONS

RECORD  SEEDS

Phone EL 7-2141

P. O. Box 217

Forest Grove, Oregon

September 1, 1960

Mr. Trevor Jones
Assistant State Engineer
Water Resources Department
251 Finance Building
170 12th Street, S. E.
Salem, Oregon

RECEIVED
SEP 1 1960
STATE ENGINEER
SALEM, OREGON

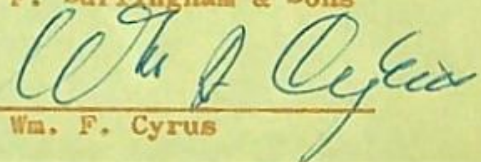
Dear Mr. Jones:

I believe the corrected map with your letter of August 25 and the corrections listed in the letter cover the acreage that is being irrigated on the property we operate in Umatilla county. At least, it covers it about as well as possible without actually surveying out the section lines.

Our concern is not to be deprived at some future date of the use of irrigation water on land that we have been irrigating and intend to continue to irrigate.

Sincerely,

E. F. Burlingham & Sons

By 
Wm. F. Cyrus

WFC:ps

August 25, 1960

E. F. Burlingham & Sons
P.O. Box 217
Forest Grove, Oregon

Attention: Mr. Cyrus

Gentlemen:

I have again gone over with our field engineer the map and report in connection with permit No. 16393. I have also discussed this with Mr. Marvin Bennett who was water master in Umatilla County for quite a number of years, and is well acquainted with the property in question.

We will accept your statement regarding land in the SW SE of Section 1. This field is outlined in yellow on the enclosed print and is labeled "1". The area marked "3" I understand was once irrigated but the river changed channel and cut back to the road and bank so there is no irrigation north of the river in this area. The area labeled "2" is reported as being mostly gravel bar and brush covered, and not crop land. When our field crews end the summer season I will have a new map prepared including area "1" and will prepare a new draft of the certificate to agree with the new map. If you have any comments regarding this would you please so advise us by fall.

Very truly yours,

LEWIS A. STANLEY
State Engineer

By
Trevor Jones, Assistant

TJ:km
Enc. *now 1*

Specialties: Nomad Alfalfa; Meadow Foxtail

E. F. BURLINGHAM & SONS

RECORD  SEEDS

Phone EL 7-2141

P. O. Box 217

Forest Grove, Oregon

August 15, 1960

Mr. Trevor Jones
Assistant State Engineer
Water Resources Department
251 Finance Building
170 12th Street S. E.
Salem, Oregon

RECEIVED
AUG 16 1960
STATE ENGINEER
Salem, Oregon

Dear Mr. Jones:

I have your letter of August 5 with the inclosed certificate in connection with permit 16393.

Bob Schroder told me of the visit of your field engineer on July 16, 1960. Schroder has been the foreman on the place beginning January 1, 1958.

I am returning the certificate but have not re-signed it. There is some acreage omitted that should be included. The blueprint of the property I have before me shows around 14 acres of crop land in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of section 1, T-2N. R 30 East. I do not know where the section lines are but if this blueprint is correct then all of the farm land in that 40 has been irrigated every year beginning in 1946 and is still being irrigated.

There is another approximately 13 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of section 1, of cropland. That was all irrigated in 1946, 1947, 1948 and 1949. Since 1949 possibly one-third to one-half of this area has been irrigated.

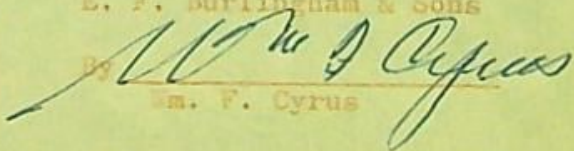
In other words, if we have any cropland in those tracts, and I am confident that we do have, it has all been irrigated and most of it is now being irrigated.

I am thoroughly familiar with our operation of the place. Since we started with it in 1945 I have been on it an average of once every two weeks. It is rather important to us that all the eligible cropland be included in the certificate. I will be glad to discuss this with you or your engineer either here at our office or at the farm in Umatilla county.

Sincerely yours,

E. F. Burlingham & Sons

By


E. F. Cyrus

WFC:ps

Incl.

August 5, 1960

E. F. Burlingham and Sons
P. O. Box 217
Forest Grove, Oregon

ATTENTION: Wm. F. Cyrus

Dear Mr. Cyrus:

When you returned the signed draft of the proposed certificate in connection with permit 16393 you thought that land in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 1, Township 2 North, Range 30 East should have been included in the draft. As promised, we made a second inspection on July 16, 1960, and our field engineer reports that on the basis of his inspection and conversation with Mr. Bob Schroeder, reportedly ranch manager, the land in question should not be included in the certificate confirming permit 16393.

I am again returning the draft of the certificate and request that you again date and sign the form under your signature of October 28, 1959. The certificate recording fee was previously submitted.

Very truly yours,

LEWIS A. STANLEY
State Engineer

By
Trevor Jones, Assistant

TJ:vmf

November 10, 1959

Nomad Alfalfa, Inc.
P. O. Box 217
Forest Grove, Oregon

Gentlemen:

This will acknowledge receipt of your letter dated November 6, 1959, regarding omitted acreage on a survey made in connection with your permit No. 16393. Next time we have a field engineer in the area, which will probably be next summer, he will make an inspection of the area described in Section 1.

Very truly yours,

LEWIS A. STANLEY
State Engineer

By
Trevor Jones, Assistant

TJ:rb

Specialties: Nomad Alfalfa; Meadow Foxtail

E. F. BURLINGHAM & SONS

RECORD  SEEDS

Phone EL 7-2141

P. O. Box 217

Forest Grove, Oregon

November 6, 1959

Mr. Trevor Jones
Assistant State Engineer
Water Resources Department
251 Finance Building
170 12th Street S. E.
Salem, Oregon

Dear Mr. Jones:

20936

I have your letter of November 5 regarding Permit No. 16393.

The original application for water permit listed 13 acres in the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 1, T.2N.R30E; and 14.6 acres in the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 1. T.2N.R30E.

All of the above has been irrigated since 1945. Except for possibly 7 acres in the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ all of the above acreage has been, and is irrigated every year. The exact acreage is difficult to determine because of recurring changes in the Umatilla river channel. However, there should be included in the certificate approximately the following:

- 12 acres in the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 1. T.2N. R 30 E
- 6 acres in the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 1. T.2N. R 30 E.

That acreage is all within the limits of the permit and has been irrigated during the last five years.

The above acreage should be added to the acreage listed in the certificate forwarded with your letter of October 27 and which we returned under date of October 28.

Sincerely,

E. F. Burlingham & Sons

By


Wm. F. Cyrus

WFC:ps

November 5, 1959

Nomad Alfalfa, Inc.
P. O. Box 217
Forest Grove, Oregon

Gentlemen:

This will acknowledge receipt of the signed draft of the certificate in connection with Permit No. 16393 and the certificate recording fee of \$1, for which our Receipt No. 23292 is enclosed.

It is not our intention to deprive you of any land which could properly be included in the proof to complete this right. Non-use of water for five years constitutes abandonment of that portion of the right and you could have irrigated more land since 1945 and not be able to include all of it in the final proof.

Since you did sign and return the draft of the certificate, I assume you are satisfied with the acreage shown, however, if you believe there is an area which has been irrigated within the limits of the permit and has been irrigated during the past five years which you believe should be included, you should so notify us.

If we do not receive such notification within 30 days from the date of this letter, we will assume that you are satisfied with the figures shown on the draft and will issue the certificate accordingly.

Very truly yours,

LEWIS A. STANLEY
State Engineer

By
Trevor Jones, Assistant

TJ:bks

Enc:1

Specialties: Nomad Alfalfa; Meadow Foxtail

E. F. BURLINGHAM & SONS

RECORD  SEEDS

Phone EL 7-2141

P. O. Box 217

Forest Grove, Oregon

October 28, 1959

Mr. Trevor Jones
Assistant State Engineer
251 Finance Building
170 12th St. S. E.
Salem, Oregon

RECEIVED
OCT 29 1959
STATE ENGINEER
SALEM, OREGON

Dear Mr. Jones:

I am returning the certificate pertaining to the use of water by Nomad Alfalfa, Inc., under Permit No. 16393. A check for \$1.00 is attached.

I have signed the affidavit with some uncertainty. The total acreage now being irrigated, as shown on your "Final Survey" map is, I think, correct. However, the total acreage that has been irrigated at one time or another since 1945 amounts to about 190 acres. That difference in acreage is possibly in the following tracts:

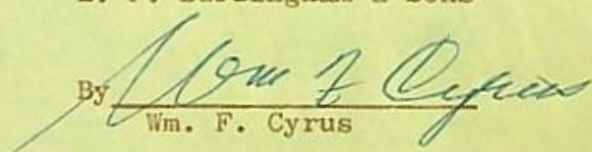
SE1/4 of SW1/4, Sec. 1, 2N 30E
SW1/4 of SE1/4, Sec. 1, 2N 30E

I appreciate your letter of October 27 calling our attention to not having returned the certificate.

Kindest regards.

Sincerely,

E. F. Burlingham & Sons

By 
Wm. F. Cyrus

Encl.
WFC:ps

October 27, 1959

Nomad Alfalfa, Inc.
P. O. Box 217
Forest Grove, Oregon

Gentlemen:

On September 24, 1959, we mailed you a copy of a draft of the certificate in connection with the incomplete water right represented by your Permit No. 16393 granting a right to the use of 4.53 cubic feet of water per second from Umatilla River and McKay Reservoir for irrigation of 181.2 acres, together with the instructions that the affidavit at the bottom of the page be signed and the copy be returned to this office accompanied by the certificate recording fee in the amount of \$1.

To date this form has not been received nor has any correspondence regarding it. This is to notify you that unless we receive the signed final proof form and the certificate recording fee within thirty days from the date of this letter, we will be required to take steps toward the cancellation of this permit.

Very truly yours,

LEWIS A. STANLEY
State Engineer

By
Trevor Jones, Assistant

TJ:rb

July 9, 1959

Nomad Alfalfa, Inc.
P. O. Box 217
Forest Grove, Oregon

Gentlemen:

This will acknowledge receipt of an assignment of Permit No. 16393 from E. F. Burlingham and Sons to Nomad Alfalfa, Inc. and the assignment recording fee of \$1, for which our Receipt No. 22373 is enclosed.

This will also acknowledge receipt of a copy of the contract for McKay Reservoir storage in connection with the same permit. Since the copying fee of \$0.60, referred to in my letter dated June 30, 1959, was not submitted, I assume that this copy of the contract is for our files.

Very truly yours,

LEWIS A. STANLEY
State Engineer

By
Trevor Jones, Assistant

TJ:bks

Enc:2

Seed Shippers: Red and Alsike Clovers; Vetches; Austrian Winter Field Peas; Fescues; Bent Grass; Oregon Ryegrass

Specialties: Nomad Alfalfa; Meadow Foxtail

E. F. BURLINGHAM & SONS

RECORD  SEEDS

Phone EL 7-2142

P. O. Box 217

Forest Grove, Oregon July 1, 1959

Mr. Trevor Jones
Assistant State Engineer
251 Finance Building
170 12th Street S. E.
Salem, Oregon

RECEIVED
JUL 2 1959
STATE ENGINEER
SALEM, OREGON

Dear Mr. Jones:

We are returning the assignment of water permit No. 16393, from E.F. Burlingham & Sonsto Nomad Alfalfa, Inc. Check for \$1.00 is attached.

Also inclosed is a copy of Bureau of Reclamation contract No. 14-06-100-1336 covering the use of McKay reservoir water.

I believe this is all in order.

Sincerely yours,

E. F. BURLINGHAM & SONS

BY


W. F. Cyrus

WFC:BLS
Enc. 2

June 30, 1959

E. F. Burlingham & Sons
Forest Grove
Oregon

Gentlemen:

This will acknowledge receipt of your letter regarding a contract for use of stored waters from McKay Reservoir described in Permit No. 16393. ORS 537.300 requires documentary evidence that an agreement has been entered into with the owners of the reservoir for permanent and sufficient interest in the reservoir to impound enough water for the purposes set forth in the permit. I believe the contracts the Bureau of Reclamation use are mimeographed with certain specific data added. The Bureau would probably furnish you with a duplicate copy from their files. If you prefer, and will submit the copy you have, we will copy it for a copying fee of 60 cents and will return your copy to you.

So we may change our records pertaining to this permit from E. F. Burlingham and Sons to Nomad Alfalfa, Inc., will you please execute and submit the enclosed assignment together with the statutory recording fee of \$1.

Very truly yours,

LEWIS A. STANLEY
State Engineer

By
Trevor Jones, Assistant

TJ:rb
Enc

Specialties: Nomad Alfalfa; Meadow Foxtail

E. F. BURLINGHAM & SONS

RECORD  SEEDS

Phone EL 7-2141

P. O. Box 217

Forest Grove, Oregon June 29, 1959

Mr. Trevor Jones
Assistant State Engineer
Water Resources Dept.
251 Finance Building
170 12th Street S. E.
Salem, Oregon

RECEIVED
JUN 30 1959
STATE ENGINEER
SALEM, OREGON

RE: File No. 20936

Dear Mr. Jones:

Land covered by Permit No. 16393, in the name of E. F. Burlingham & Sons, is now operated in the name of Nomad Alfalfa, Inc., C. G. Burlingham, President. Nomad Alfalfa, Inc. have a contract issued by the Bureau of Reclamation; No. 14-06-100-1336, issued November 4, 1957, providing a preproportionate share in McKay Reservoir equivalent to 130 acre feet.

The change is one in name only. Nomad Alfalfa Inc, is part of the E. F. Burlingham & Sons organization.

You request documentary evidence of the right to use McKay reservoir water. Is this letter sufficient? Is it necessary to submit a document from the Bureau of Reclamation at Boise? We have only one copy of the contract - 10 pages.

Kindest regards.

Sincerely yours,

E. F. BURLINGHAM & SONS

BY 
W. F. Cyrus

WFC:BLS

June 26, 1959

E. F. Burlingham and Sons
Forest Grove
Oregon

Gentlemen:

Permit No. 16393 in the name of E. F. Burlingham and sons describes the appropriation of waters of the Umatilla River and McKay Reservoir for irrigation. The customary final proof survey has been made and, in preparing the final proof papers, I have not been able to locate any reference to a contract with the Bureau of Reclamation for purchase of stored water in McKay Reservoir. If stored water is used in addition to the direct flow of the river, documentary evidence of the right to use such water must be submitted before we may issue the certificate. If the appropriation is made only from the direct flow of the river and no agreement for the purchase of stored water exists, we would appreciate being so advised.

Very truly yours,

LEWIS A. STANLEY
State Engineer

By
Trevor Jones, Assistant

TJ:rb

October 15, 1948

Mr. E. F. Burlingham & Sons
Forest Grove, Oregon

Gentlemen:

This will acknowledge receipt of your letter of October 6, with which you enclosed Form C, being notice of the complete application of water under your Permit No. 16393.

Pursuant to your report and in line with the general practice of this office, a survey will be made at a later date for the purpose of checking the acreage actually irrigated. After this survey, proof may be made by you and certificate issued covering the lands which the survey shows to have been irrigated, and any lands described in your permit that have not been irrigated will be automatically eliminated from your water right.

In the meantime, the permit which you hold will be valid evidence of your water right.

Very truly yours,

CHAS. E. STRICKLIN
State Engineer

By
Ed K. Humphrey, Assistant

EKH:dh

E. F. BURLINGHAM & SONS

SEEDSMEN  RECORD FEEDS

Phone 222

Robinson's Code

Forest Grove, Oregon

October 6, 1948

Chas. E. Stricklin, State Engineer
State of Oregon
Office of the State Engineer
Salem, Oregon

RECEIVED
OCT 7 1948
STATE ENGINEER
SALEM, OREGON

Dear Mr. Stricklin:

We are enclosing form C pertaining to the completion of the application of water under application No. 20936 and permit No. 16393. During the season just ended, we have applied water to the entire acreage covered by the application and permit.

Sincerely yours,

E. F. BURLINGHAM & SONS

By


Wm. F. Cyrus

WFC:vr
enc.

October 9, 1947

E. F. Burlingham & Sons
Forest Grove, Oregon

Gentlemen:

This acknowledges receipt of Form B, being notice of the completion of construction under Permit No. 16393 in the name of E. F. Burlingham & Sons.

This report has been filed with other matter pertaining to the water right, and the permit is in good standing until October 1, 1948, when under its terms, all the water which it is intended to use at any time should be used to the full extent intended.

Very truly yours,

Chas. E. Stricklin

CHAS. F. STRICKLIN
State Engineer

E. F. BURLINGHAM & SONS

SEEDSMEN



RECORD FEEDS

Phone 222

Robinson's Code

Forest Grove, Oregon

RECEIVED
OCT 8 1947
STATE ENGINEER
SALEM, OREGON

Oct. 6, 1947

Office of the State Engineer
Salem, Ore.

Attention, Chas. E. Stricklin;

Attached hereto is the "Form B",
Notice of Completion of Construction
for Application No. 20936, Permit
No. 16393.

Because of unforeseen problems
this project was changed in 1946
from a flood type of irrigation
to a sprinkler type. We are now
using two 4 inch centrifugal pumps
each powered by a 20 H.P. electric
motor. We operate usually up to
40 sprinklers at one time. I do not
have the data at hand (in Puddleton)
as to the capacity of these sprinkler
heads but can supply it when I
return to the Forest Grove office
if it is essential.

Sincerely yours,
E. F. Burlingham & Sons
By W. M. J. Lyons

20936

September 1, 1945

Mr. E. F. Burlingham & Sons
Forest Grove, Oregon

Gentlemen:

Herewith you will find Application No. 20936, Permit
No. 16393, together with blueprint.

July 5, 1945

Mr. W. F. Cyrus
Forest Grove, Oregon

Dear Mr. Cyrus:

This will acknowledge receipt of your corrected application for a permit to appropriate water from the Umatilla River and McKay Reservoir for irrigation, together with fees in the amount of \$25.45 for which our Receipt No. 8 is enclosed.

The application has been filed, given No. 20936, and placed in line for approval and issuance of a permit.

Very truly yours,

CHAS. E. STRICKLIN
State Engineer

by

Ed K. Humphrey, Assistant

EKH:mjo

Enclosure

E. F. BURLINGHAM & SONS

SEEDSMEN



RECORD FEEDS

Phone 222

Robinson's Code

Forest Grove, Oregon

RECEIVED

JUL 3 1945

STATE ENGINEER
SALEM, OREGON

July 2, 1945

Charles E. Strickland
State Engineer
Salem, Oregon

Dear Sir:

I am returning an application for a water permit. I have put this on tracing paper and made the corrections in the application referred to in your letter of June 13.

We are also inclosing a check for the fees in the amount of \$25.45.

We hope you will find this all in order.

Sincerely yours,

E. F. BURLINGHAM & SONS

BY


W. F. Cyrus

WFC:BLS

no money.

June 13, 1945

Mr. E. F. Burlingham & Sons
Forest Grove, Oregon

Attention: Mr. W. F. Cyrus:

Dear Mr. Cyrus:

This will acknowledge receipt of your letter of April 30 transmitting your application for a permit to appropriate water from the Umatilla River for the irrigation of 206.9 acres.

The application has been checked over and some discrepancies are noted.

Since, as indicated by your letter, you intend to use water under your proposed appropriation from the Umatilla River and McKay reservoir, both sources should be named under Item 1.

The map accompanying your application does not show any land to be irrigated in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 18, Township 2 North, Range 31 East, W. M. as listed under Item 8.

If construction in connection with the proposed appropriation has been commenced, it should be so indicated under Item 12.

The application should be signed.

The map accompanying the application should be in the form of a tracing made on tracing cloth or tracing paper such as the enclosed four-section plat and should show the location of the stream from which diversion is to be made, the location of main ditches and the number of acres to be irrigated in each 40 acre tract as explained on pages 6 and 7 of the enclosed copy of the Rules and Regulations of the State Engineer. It is not necessary that this map be prepared by an engineer, but it is required that the map be in the form of a tracing so that blue prints may be made from it.

June 13, 1945

Relative to the statement in your letter concerning complete application of water, the State Engineer is permitted by law to extend the time for completion under a permit upon a showing of due diligence by the permittee but he can not under any circumstances extend the time for beginning of construction and if construction is not commenced within one year from the date of issuance, the permit is by law subject to cancellation.

The check mentioned in your letter was evidently inadvertently omitted because no check was attached.

For your convenience in completing your application and preparing a map as suggested, I am enclosing the application and your map herewith.

Upon receipt of your application in completed form and accompanied by the statutory fees in the amount of \$25.45, it will be filed and placed in line for approval and issuance of a permit.


Yours very truly,

CHAS. E. STRICKLIN
State Engineer

By
Ed K. Humphrey, Assistant

EKH:CI
Enc.

E. F. BURLINGHAM & SONS

SEEDSMEN  RECORD FEEDS
Phone 222 Robinson's Code

Forest Grove, Oregon

April 30, 1945

C. E. Stricklin
State Engineer
Salem, Oregon

RECEIVED
JUN 13 1945
STATE ENGINEER
SALEM, OREGON

Dear Sir:

We are inclosing an application for a water permit.

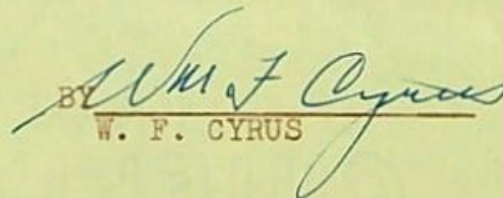
I have not attempted to fill in the amount of water which will be used. All of the water we pump during the growing season will be purchased from the McKay reservoir. It is our intention however, to pump during the late winter, for at least part of the land in certain years. This will not be reservoir water, but will be flood water flowing down the Umatilla river.

It is our expectation to completely apply water to the land described within the prescribed three year limitation.. Should events or conditions arise to delay some of our land preparation, we assume an extension of time for applying the water will be granted, provided that we have clearly indicated our intent at the time the extension is requested.

Check for the required fees is attached here to.

Sincerely yours,

E. F. BURLINGHAM & SONS

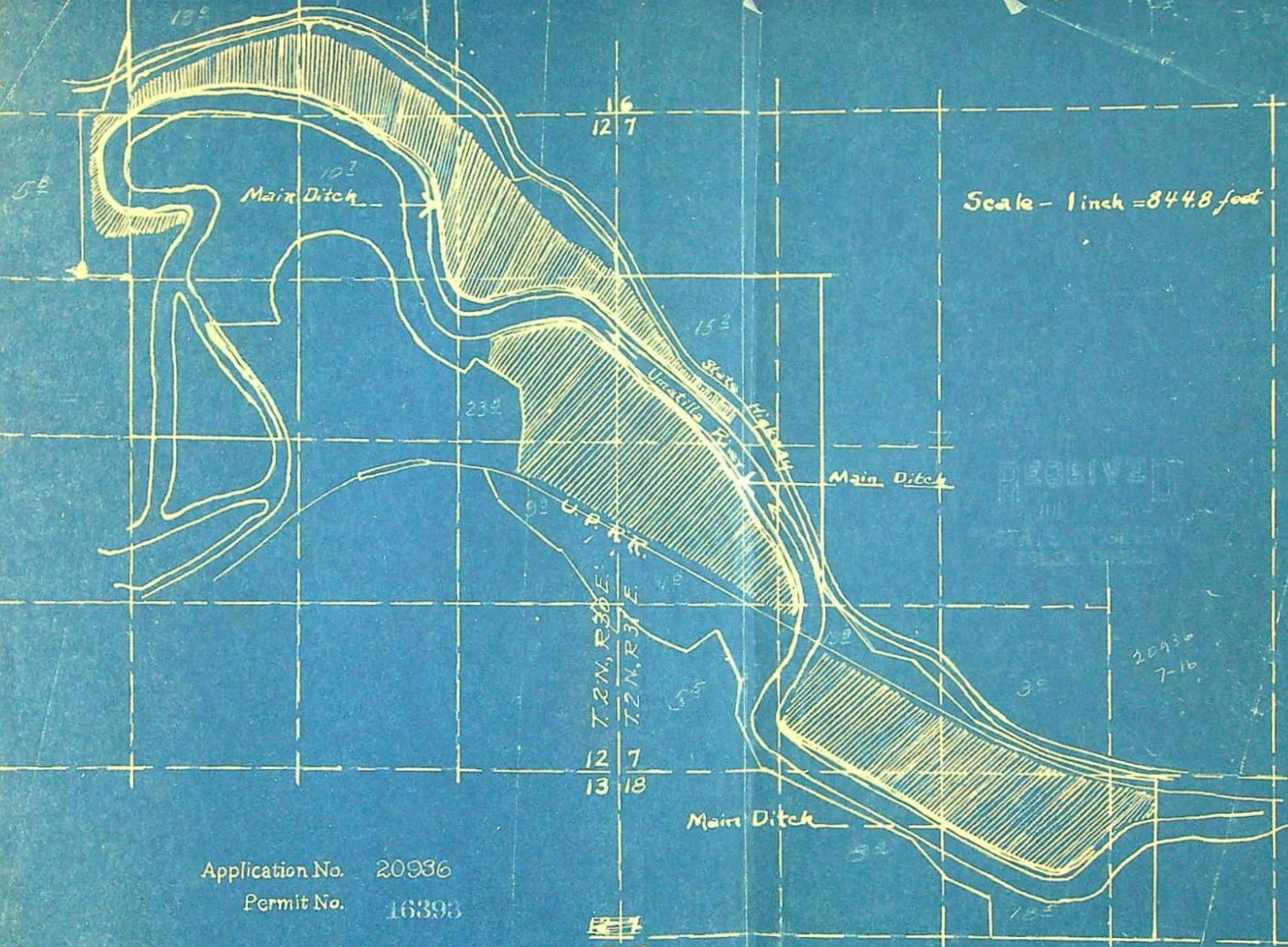

BY W. F. CYRUS

WFC:BLS

5.80 *

1	0.70
2	3.80
2	7.10
	9.90
1	3.00
1	4.60
1	5.20
3	1.60
	5.50
1	9.90
	3.00
	8.30
1	8.50
2 0	6.90 *

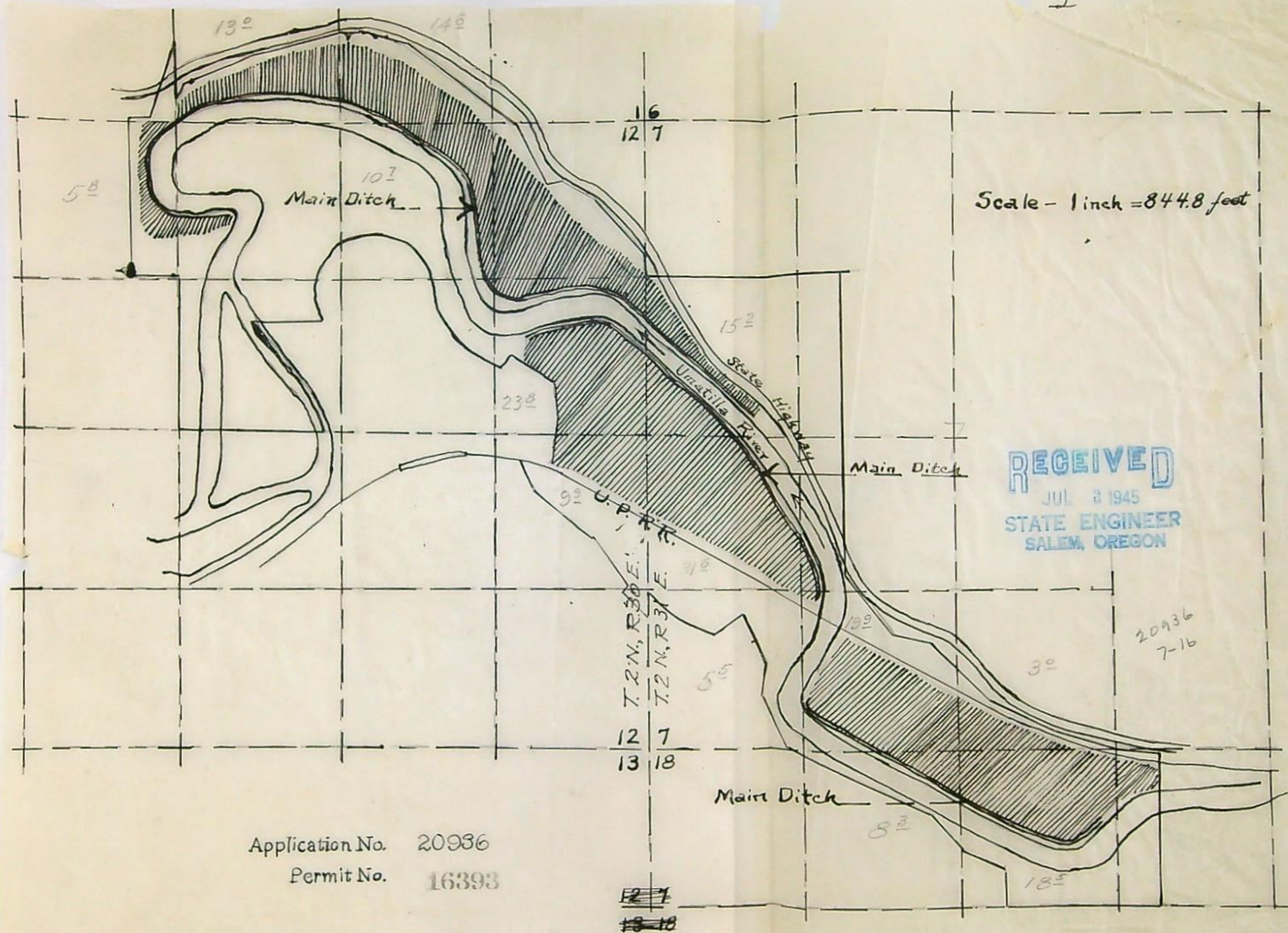
	5.80 ✓
1	0.70 ✓
2	3.80 ✓
2	7.10 ✓
	9.90 ✓
1	3.00 ✓
1	4.60 ✓
1	5.20 ✓
3	1.60 ✓
	5.50 ✓
1	9.90 ✓
	3.00 ✓
	8.30 ✓
1	8.50 ✓
2 0	6.90 *



Scale - 1 inch = 844.8 feet

Application No. 20936
 Permit No. 16393





Scale - 1 inch = 844.8 feet

RECEIVED
 JUL 3 1945
 STATE ENGINEER
 SALEM, OREGON

20936
 7-16

Application No. 20936
 Permit No. 16393

~~127~~
~~1318~~

Contract No. 14-06-100-1336

Approved 4/16/57

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Umatilla Project, Oregon

CONTRACT FOR MCKAY RESERVOIR STORAGE

THIS CONTRACT, made this 4th day of November, 1957, pursuant to the act of Congress approved June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplementary thereto, including the act of February 21, 1911 (36 Stat. 925) all of which acts are commonly known and referred to as the Federal Reclamation Laws, between THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, represented by the Contracting Officer executing this contract, and **NOMAD ALFALFA INC.**

hereinafter referred to as the Contractor,

WITNESSETH, THAT:

EXPLANATORY RECITALS

2. WHEREAS, because the United States has heretofore constructed, pursuant to the Federal Reclamation Laws, McKay Dam and Reservoir on McKay Creek, known as McKay Reservoir, for the impounding and storage of water for irrigation purposes; and

3. WHEREAS, the Contractor is the owner of lands hereinafter described, for which a supply of water stored in McKay Reservoir is desired to be secured from the United States;

NOW, THEREFORE, in consideration of the premises and the payment by the Contractor to the United States of the charges in the manner hereinafter provided, it is agreed:

DEFINITIONS

4. The following terms used in this contract shall have the following respective meanings:

"Secretary" shall mean the Secretary of the Interior or his duly authorized representative.

"McKay Reservoir" shall mean the entire McKay Dam and Reservoir of the Umatilla Project located on McKay Creek, Oregon, including all works constructed or utilized in connection with such reservoir.

TERM OF CONTRACT

5. This contract shall become effective upon its execution by the Secretary, and shall remain in effect as long as the Contractor pays to the United States, in full, each annual instalment of the construction charge obligation and any and all other amounts owing to the United States under this contract.

WATER TO BE PROVIDED BY UNITED STATES

6. The United States, so long as McKay Dam and Reservoir can be operated feasibly and economically for the storage of water, shall make available each year to the Contractor during the irrigation season from May 1 to October 1, inclusive, water from McKay Reservoir for irrigation of the land of the Contractor described as follows:

T2N R 30E Sec. 1	- SW $\frac{1}{4}$ of SE $\frac{1}{4}$	- 12	acres
T2N R 30E Sec. 1	- SE $\frac{1}{4}$ of SW $\frac{1}{4}$	- 13	"
T2N R 30E Sec. 12	- NW $\frac{1}{4}$ of NW $\frac{1}{4}$	- 11	"
T2N R 30E Sec. 12	- NE $\frac{1}{4}$ of NW $\frac{1}{4}$	- 7	"
T2N R 30E Sec. 12	- NW $\frac{1}{4}$ of NE $\frac{1}{4}$	- 11	"
T2N R 30E Sec. 12	- NE $\frac{1}{4}$ of NE $\frac{1}{4}$	- 24	"
T2N R 30E Sec. 12	- SE $\frac{1}{4}$ of NE $\frac{1}{4}$	- 27	"
T2N R 30E Sec. 12	- NE $\frac{1}{4}$ of SE $\frac{1}{4}$	- 18	"

T2N R 31E	Sec. 7	- SW $\frac{1}{4}$	of NW $\frac{1}{4}$	- 13	Acres
T2N R 31E	Sec. 7	- NW $\frac{1}{4}$	of SW $\frac{1}{4}$	- 35	"
T2N R 31E	Sec. 7	- SW $\frac{1}{4}$	of SW $\frac{1}{4}$	- 25	acres
T2N R 31E	Sec. 7	- SE $\frac{1}{4}$	of SW $\frac{1}{4}$	- 15	"
T2N R 31E	Sec. 7	- SW $\frac{1}{4}$	of SE $\frac{1}{4}$	- 3	"
T2N R 31E	Sec. 18-	NE $\frac{1}{4}$	of NW $\frac{1}{4}$	- 8	"
T2N R 31E	Sec. 18-	NW $\frac{1}{4}$	of NE $\frac{1}{4}$	- 16	"

Of the land described, 190 acres are to be irrigated. The quantity of water to be made available hereunder shall be a 0.1761% proportionate share, as nearly as is reasonably practicable to determine it, of the stored waters actually available from said reservoir, but in no event shall it exceed that quantity which may be applied beneficially in accordance with good usage in the irrigation of the land above described, nor shall it exceed a total amount of 130 acre-feet annually, measured at the point of delivery of said water.

PLACE OF DELIVERY AND MEASUREMENT OF WATER

7. Water for the purposes hereof shall be made available at the outlet works of McKay Reservoir and shall be delivered to the Contractor and measured at that point. The Contractor shall receive said water at said point and shall be wholly responsible for taking said water at that point and diverting, conveying, and utilizing it. The water to be delivered hereunder is to be diverted at:

1 point in the NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 18, T. 2 N., R. 31 E. W.M.
 1 point in the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 18, T. 2 N., R. 31 E., W.M.
 1 point in the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 7, T. 2 N., R. 31 E., W.M.
 1 point in the NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 7, T. 2 N., R. 31 E., W.M.
 2 points in the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 12, T. 2 N., R. 30 E., W. M.
 1 point in the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 1, T. 2 N., R. 30 E., W.M.
 1 point in the NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 12, T. 2 N., R. 30 E., W.M.
 1 point in the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 12, T. 2 N., R. 30 E. W.M.

by means of a device satisfactory to the state officer in charge of the distribution of water from Umatilla River. Such device shall be furnished, installed and maintained by and at the expense of the Contractor, but it shall be and remain at all times under the control of the state-appointed watermaster whose representative may at all times have access to it over any lands of the Contractor. The Contractor will stand his proportionate share of all losses incurred in running the stored water from the place of measurement and delivery, McKay Dam, to the place of diversion and losses of water from seepage, evaporation, or other cause, below said point of measurement at McKay Dam, shall be borne by the Contractor.

RATE OF DELIVERY OF WATER

8. Subject to the provisions of this contract, the water to be delivered to the Contractor shall be turned out as required by the Contractor during the irrigation season at a rate not in excess of the available outlet capacity of McKay Reservoir, having consideration for delivery requirements of other contractors for space in McKay Reservoir. The Contractor shall, to the extent practicable, submit to the Contracting Officer, in advance of the storage use season, a schedule of probable water requirements. Changes in such schedule may be made only upon sufficient advance notice, at least three (3) days, to the Contracting Officer to allow him to adjust releases to meet the new schedules. The Contractor shall conform his diversions to the control of the stream as established by the state watermaster.

CONSTRUCTION CHARGE

9. For the right to obtain stored water as herein provided, the Contractor shall pay to the United States the proportionate part of the construction cost of McKay Reservoir properly allocable to such right which is the sum of \$ 3900., and this amount is established as the Contractor's construction charge obligation. The Contractor shall pay to the United States the construction charge obligation in forty (40) successive annual instalments of \$ 97.50 each, the first of which shall be paid in cash and shall accompany this contract. The second annual instalment shall be due and payable on or before December 31 of the year following the year in which this contract is entered into, and additional instalments on each December 31 thereafter until the entire construction charge obligation shall have been fully paid.

OPERATION AND MAINTENANCE CHARGE

10. (a) In addition to the construction charge established in article 10, the Contractor shall pay to the United States perpetually in advance on or before January 1 of each year, beginning with January 1, 1958, the estimated costs of operation and maintenance of McKay Reservoir as is properly apportionable to the Contractor's right to stored water as provided herein, such cost to be estimated by the Secretary. Payment shall be made on the basis of notices sent by the Secretary to the Contractor which shall make such adjustments as are necessary for overcollection or undercollection in previous years. The Contractor's proportionate part of the cost of operation and maintenance

of McKay Dam and Reservoir during each year shall be the fraction whose numerator is the number of acre-feet of water delivered to the Contractor that year and whose denominator is the total amount of water in acre-feet delivered to all parties using McKay storage water that year, although the Secretary may, after all space in the reservoir is contracted, determine the proportionate part on the basis of the Contractor's share of the total space in the reservoir.

(b) The costs which make up the obligation to be paid by the Contractor to the United States under this article shall embrace all expenditures of whatsoever nature or kind in relation to the function for which the charge is made, including, but without limitation by reason of this enumeration, cost of surveys and investigations, labor, property, material and equipment, engineering, legal work, superintendence, administration, overhead, general expenses, inspection, special services, and damage claims of all kinds, whether or not involving the negligence of officers, agents or employees of the United States. The Secretary's determination as to what costs are properly chargeable under this article, the amount thereof, and the classification of those charges for repayment purposes shall be conclusive.

WATER SUPPLY

11. The Contractor and all other entities heretofore or hereafter contracting with the United States for a right to use water from the McKay Reservoir shall, to the extent of their respective contracted rights, have equal priority to the use of water so far as that may be physically practicable and legally possible, without regard to the date of their respective contracts. The amount of water available each year

for delivery under this and similar contracts shall be determined by the Secretary and shall be determined without regard to holdover water not used in prior years, although the Secretary may, if he so desires, contract with others with respect to holdover rights, and if such contracts are executed, the determinations as to the amount of water available hereunder shall be made in accordance with such contracts and the Contractor can then have the privilege of carrying over from year to year stored water, but in no event in an amount at any one time which together with inflow exceeds the proportionate reservoir space of the Contractor. It is the responsibility of the Contractor to comply with the laws of the State of Oregon regarding the obtaining and perfecting of permits to divert water to the lands described in article 6. The waste, seepage, and return-flow waters attributable to the irrigation of the lands by the water made available under this contract are not abandoned or relinquished but are reserved and retained by the United States for the benefit of the Umatilla Project.

UNITED STATES NOT LIABLE FOR WATER
SHORTAGE OR INTERRUPTIONS

12. No liability shall accrue against the United States or any of its officers, agents, or employees for damage, direct or indirect, arising by reason of shortages in the quantity of water available from McKay Reservoir or interruptions in water deliveries to lands of the Contractor resulting from drought, inaccuracy in distribution, hostile diversion, prior or superior claims, accident to or failure of facilities of the United States, whether or not attributable to negligence of officers,

agents or employees of the United States, or other causes of whatsoever kind. Nor shall the Contractor's obligations to the United States under this contract be reduced by reason of such shortages or interruptions.

PENALTY FOR DELINQUENCY IN PAYMENT

13. Every instalment, payment or charge required to be paid to the United States under this contract and which remains unpaid after it shall become due and payable shall be subject to, and the Contractor shall pay, a penalty at the rate of one-half percent per month from the date of delinquency.

REFUSAL OF WATER IN CASE OF DEFAULT; TERMINATION

14. No water shall be delivered to the Contractor during any year until all charges herein provided to be paid as of that year shall have been fully paid. Should it be in arrears on any charge under this contract twelve (12) months, the Secretary may, at his option, terminate this contract by notice in writing to the Contractor, and the Contractor thereafter shall have no further right or interest in this contract or the water supply provided hereunder. The Contractor, for himself, his successors and assigns, and all or any persons claiming under or through the Contractor, expressly consents and agrees that after such termination by the Secretary, all rights to receive water from said reservoir, either by reason of this contract or by reason of the previous delivery of water hereunder, shall thereupon terminate and revert in the United States, as fully and completely as if no contract had ever been made and no water had ever been furnished from said reservoir. In case of such termination, the payments heretofore made by the Contractor under this contract shall

be deemed the rental price of the use theretofore allowed the Contractor of said reservoir capacity for the storage of said water, and the Contractor acknowledges that such payments are no more than a reasonable rental of the proportionate part of the reservoir space used as herein provided for furnishing said stored water. The provisions of this article are not exclusive and shall not in any manner hinder the United States from exercising any other remedy to enforce collection of the moneys payable hereunder.

IRRIGABLE AREA LIMITATION

15. Pursuant to the provisions of the Federal Reclamation Laws water made available to the Contractor hereunder shall not be delivered to more than 160 irrigable acres in the ownership of any one person or other entity, or more than 320 irrigable acres held by a husband and wife as community property, except that delivery may be made to lands held in excess of these limitations pursuant to the provisions of section 46 of the act of May 25, 1926, as amended by the act of July 11, 1956 (70 Stat. 524). In the event there is a repeal of the so-called excess land provisions of the Federal Reclamation Laws, this article will no longer be of any force or effect and, in the event these provisions are amended in materials respects, the United States will, at the request of the Contractor, negotiate amendments of this article in order to conform them to the excess land provisions of the law as so amended.

TITLE TO REMAIN IN UNITED STATES

16. The title to, management and control of McKay Reservoir shall remain in the United States until otherwise provided by the Congress.

SUCCESSORS AND ASSIGNS OBLIGATED

17. The terms of this agreement shall inure to the benefit of and be binding upon the successors in interest and assigns of the parties hereto. No assignment of this agreement shall be effective without the prior approval of the Contracting Officer.

OFFICIALS NOT TO BENEFIT

18. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

CONTINGENT ON APPROPRIATIONS OR ALLOTMENT OF FUNDS

19. The expenditure of any money or the performance of any work by the United States herein provided for, which may require appropriations of money by the Congress or the allotment of Federal funds, shall be contingent on such appropriations or allotments being made. The failure of the Congress to appropriate funds, or the failure of any allotment of funds shall not, however, relieve the Contractor from any obligations theretofore accrued under this contract, nor give the Contractor the right to terminate this contract as to any of its executory features. No liability shall accrue against the United States in case such funds are not so appropriated or allotted.

IN WITNESS WHEREOF, the parties have caused this contract
to be executed the day and year first above written.

THE UNITED STATES OF AMERICA

By /s/ Wm. H. Tuller
Regional Director, Region 1
Bureau of Reclamation
P. O. Box 937, Boise, Idaho

/s/ Nomad Alfalfa Inc.
Contractor
/s/ C. G. Burlingham, Pres.

(CORPORATE SEAL)