

September 7, 1993

WATER
RESOURCES
DEPARTMENT

MR & MRS HEGGE
149 ROLLING RIDGE RD
OAKLAND OR 97462

RE: SWR-47

Dear Mr & Mrs Hegge,

This will acknowledge the receipt of the original surface water registration claim form in the name of CREEK BANK FARM, INCORPORATED. I will return the form to the file.

Sincerely,



Don Knauer
Adjudication Specialist

J:\W\S\C\0\SWR-0047.022



3850 Portland Rd NE
Salem, OR 97310
(503) 378-3739
FAX (503) 378-8130

September 2, 1993

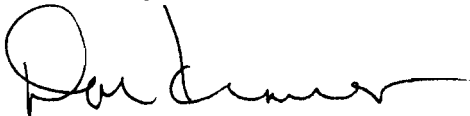
James F. Gosson
580 S State St
Sutherlin OR 97479

RE: SWR-47

Dear Jim,

I am sending copies of the letter, data and maps I received on January 6, 1992. The maps are on paper. I have looked at everything in the file and do not find the mylars. It isn't a big deal to me. As we have talked, if the Hegge's intend to file for something other than they did originally, it will require a "late" filing, petition, form new map, etc. If you have any questions, please give me a call.

Sincerely,



Don Knauer
Adjudication Specialist

J:\W\S\C\0\SWR-0047.021



3850 Portland Rd NE
Salem, OR 97310
(503) 378-3739
FAX (503) 378-8130

STATE OF OREGON
WATER RESOURCES DEPARTMENT
INTEROFFICE MEMO

August 30, 1993

TO: SWR-47 CREEK BANK FARMS FILE

FROM: DON KNAUER

SUBJECT: CONVERSATION WITH CWRE

I spoke with Jim Gosson, CWRE for Creek Bank Farms who told me Mrs. Hegge was in his office the other day and asked that he add stock water direct from Calapooya Creek to the map. I told Jim this sounded like a separate claim and I will require a separate form and late filing fees. We agreed he should inform the Hegge's and have them contact me.

J:\WP51\SWR\CLAIMANT\0\SWR-0047.020

*Rec'd Hegge
Send
SWR-47
mylar to
Jim Gosson.*

STATE OF OREGON
WATER RESOURCES DEPARTMENT
INTEROFFICE MEMO

August 5, 1993

TO: REED MARBUT

FROM: DON KNAUER 

SUBJECT: SWR-47 CREEK BANK FARMS (MARVIN HEGGE)

Attached is a copy of the letter I received from Marvin Hegge. I thought you might be interested. I am returning his form and will await any "modifications" he may make.

August 5, 1993

MARVIN E HEGGE
149 ROLLING RIDGE ROAD
OAKLAND OR 97462-9746

RE: SWR-47

Dear Mr Hegge,

In response to your request by letter received by the Water Resources Department on August 4, 1993, I am returning the surface water registration statement form filed by Creek Bank Farms.

Sincerely,



Don Knauer
Adjudication Specialist

J:\W\SVIC\SWR-0047.018



3850 Portland Rd NE
Salem, OR 97310
(503) 378-3739
FAX (503) 378-8130

February 1, 1993

WATER
RESOURCES
DEPARTMENT

JULIE JONES, ATTORNEY AT LAW
865 S MAIN ST
MYRTLE CREEK OR 97457

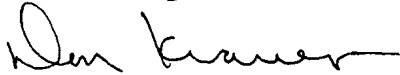
RE: SWR-47

Dear Ms Jones,

I have received your letter dated January 26, 1993 indicating Creek Bank Farms has "agreed to discontinue their claim for any water rights on land belonging to Bayards or Manderos." and a copy of a settlement agreement.

I will add these documents to the file and use them in our final review of this claim.

Sincerely,



Don Knauer
Adjudication Specialist

C:\WP51\SWR\CLAIMANT\SWR-0047.017



3850 Portland Rd NE
Salem, OR 97310
(503) 378-3739
FAX (503) 378-8130

September 10, 1992

WATER
RESOURCES
DEPARTMENT

Randolph Lee Garrison, PC
PO Box 266
Roseburg OR 97470-4442

re: SWR-47

Dear Mr. Garrison,

Thank you for the copy of the Final Judgement in case No. 92CV-1350CC. In your letter you state that a copy of the transcript of the proceeding could be obtained if necessary. It is not necessary for the Water Resources Department to have a copy of the transcript at this time.

You say you intend to obtain further affidavits. Any evidence pertaining to the Creek Bank Farm claim will be added to the file and used to render a final decision on the claim.

Under ORS 539.240 (8) the Director will mail a notice of proposed order to the person who filed the statement, affirming, modifying or rejecting the registration statement. When the Director's final decision is reached you will receive a copy of the proposed order.

Sincerely,



Don Knauer
Adjudication Specialist

C:\WASIC\SWR-0047.016



3850 Portland Rd NE
Salem, OR 97310
(503) 378-3739
FAX (503) 378-8130

July 27, 1992

WATER
RESOURCES
DEPARTMENT

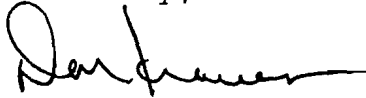
Randolph Lee Garrison, PC
PO Box 266
Roseburg OR 97470

re: SWR-47

Dear Mr Garrison,

I received your letter dated July 24, 1992 and the "Affidavit of Delia E. Trumbo Revoking Prior Affidavit". I have added these to the file for final review.

Sincerely,



Don Knauer
Adjudication Specialist

C:\WISIC\SWR-0047.015



3850 Portland Rd NE
Salem, OR 97310
(503) 378-3739
FAX (503) 378-8130

July 9, 1992

WATER
RESOURCES
DEPARTMENT

Marvin Hegge
Creek Bank Farm
149 Rolling Ridge Road
Oakland OR 97462

re: SWR-47

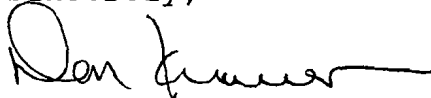
Dear Mr. Hegge,

I am sending copies of the letters and affidavits I recently received from Mr. Randolph Lee Garrison, Attorney, which involve the use of water under your registration statement.

There is a period of non-use alleged from December 1977 through July 1983 in the affidavits. It is necessary for you to submit any evidence you have of beneficial use of the spring as claimed in your registration statement during this period of time. Your file has documents which describe water use on the property but not specifically during this period of time.

If you have any questions, please give me a call.

Sincerely,



Don Knauer
Adjudication Specialist

copy: Randolph Lee Garrison
Gary Ball, Watermaster

C:\WIS\C\SWR-0047.014



3850 Portland Rd NE
Salem, OR 97310
(503) 378-3739
FAX (503) 378-8130

July 9, 1992

WATER
RESOURCES
DEPARTMENT

Randolph Lee Garrison, PC
PO Box 266
Roseburg OR 97470

re: SWR-47

Dear Mr. Garrison,

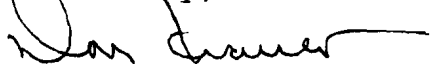
This will acknowledge receipt of your letters dated July 3, 1992 and July 7, 1992 along with the affidavits of Mary Bayard, Jesse Smith and Cynthia Mandero.

The affidavits show a period of non-use of the water from a spring which is claimed by Creek Bank Farm (CBF) in Surface Water Registration #47. The period of non-use which exceeds five successive years is grounds for the contest by your clients. This evidence will be used in reconsidering the claim by CBF.

I am requesting CBF to show evidence of use of the water from the spring during the period of December 1977 through July 1983. A copy of my letter is enclosed.

I am sending copies of the form, map and evidence submitted by CBF in their claim to a pre-1909 water right as you requested.

Sincerely,



Don Knauer
Adjudication Specialist

copy: Creek Bank Farm

C:\WSIC\SWR-0047.013



3850 Portland Rd NE
Salem, OR 97310
(503) 378-3739
FAX (503) 378-8130

7-9-92
DEC

ACKNOWLEDGE LETTERS OF July 3, 1992 & July 7, 1992
& THE 3 AFFIDAVITS OF 1.) MARY BAYARD
2.) JESSE SMITH
3.) CYNTHIA MANDELO

1.) COPIES OF FILE: COST [#]18⁵⁰ FOR 34 PAGES

2.) MARY BAYARD: DEC 1977 UNTIL July 1983 5yr 7mth

JESSE SMITH: DEC 1977 THEN July 1983 5y 8mth

~~John DIS CRIMINAL RECORD CONTROL 17 (MAY 1980)~~
CYNTHIA MANDELO: DEC 1977 UNTIL July 1983 5yr 7mth
~~has contact with CRIMINAL RECORD CONTROL~~

238 110

CRIMINAL RECORD CONTROL
Grounds FOR CONTEST = 5yr + PERIOD OF NON-USE
which WRO CAN NOW CONSIDER

238 100

"PROPERTY AGREEMENT" SIGNED July 1, 1988
By Speedy (MANDRO) & HEGGE'S

HEGGE'S DOCUMENTS DON'T SPECIFICALLY
COVER THE DEC 77 - July 83 PERIOD
OR TIME

539.240 - NOTHING ABOUT CONTEST - EVIDENCE
(REGISTRATION STATEMENT)

690-28-029 REVIEW OF SWR'S
(3) "ADDITIONAL INFORMATION MAY BE REQUESTED
OF THE REGISTRANT."

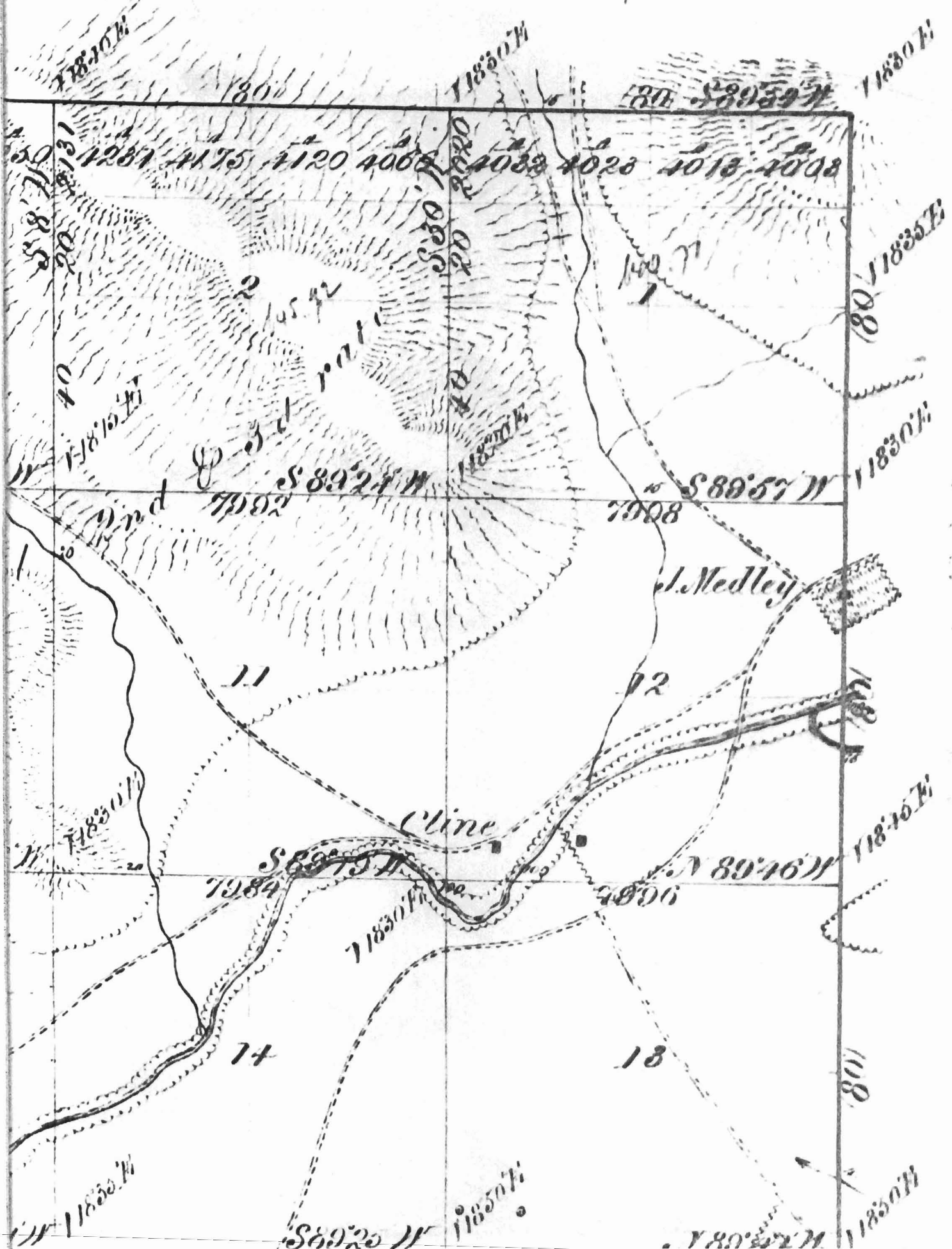
TOWNSHIP 25 S. RANGE 6 W. W.M.

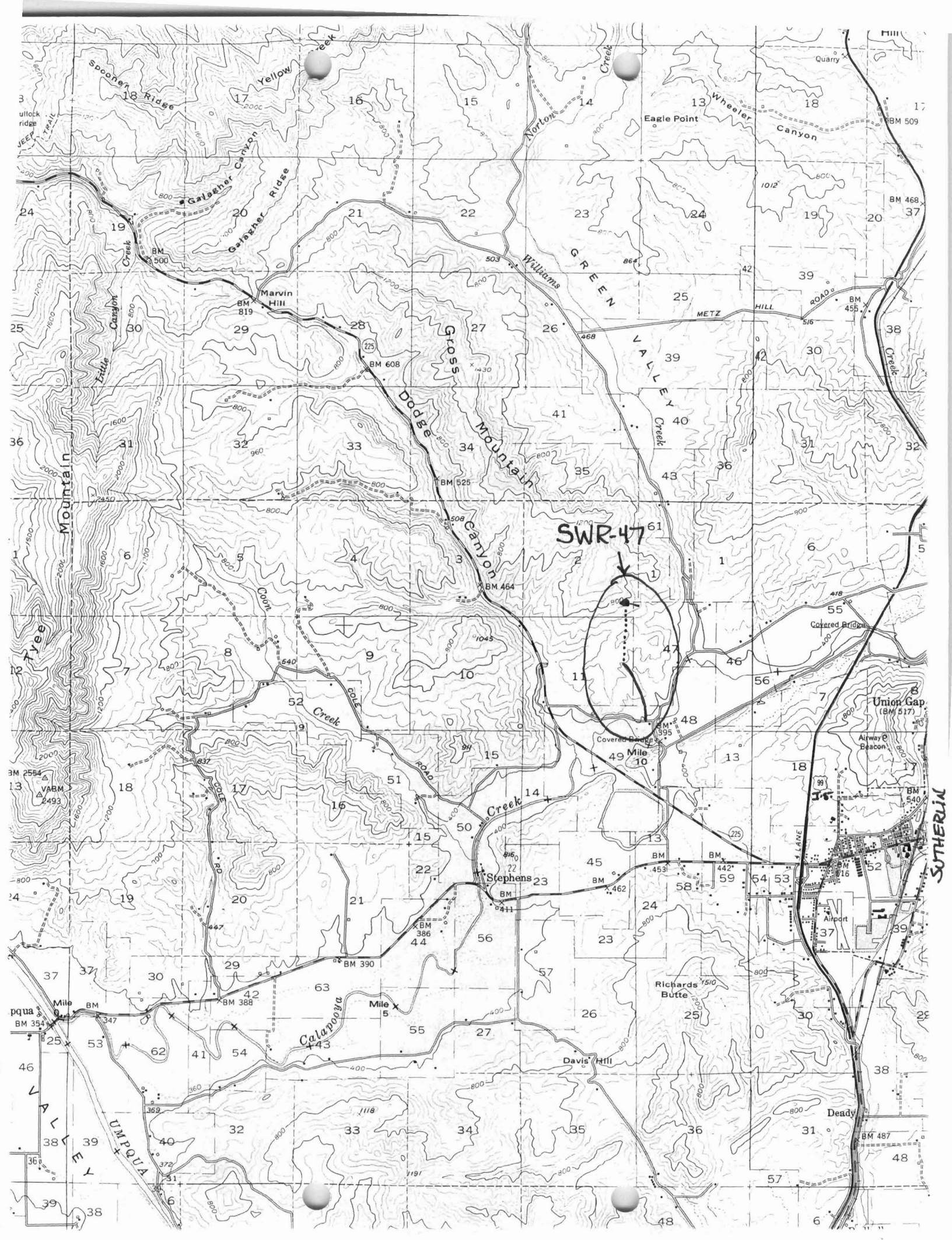
SECTION 11

| NE | | | | NW | | | | SW | | | | SE | | | | APPLICA- TION NUMBER | PERMIT NUMBER | CERTIFI- CATE NUMBER |
|------------------|----|----|------------------|------------------------|----|----|----|-----------------------------|------------------|------------------|--------|-----------------|-----------------|--------|----|----------------------------|------------------|----------------------------|
| NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | | | |
| DLC 47 | | | DLC 47 | | | | | | | DLC 47 | DLC 47 | | | DLC 47 | | | | |
| lot 1 | | | lot 2 | | | | | lot 7 | lot 6 | lot 3 | | lot 5 | lot 4 | | | | | |
| 33 ³⁶ | | | TOTAL | ACREAGE IN SUBDIVISION | | | | AS SHOWN ON GOVERNMENT PLAT | | | | | | | | | | |
| | | | 33 ³⁶ | | | | | 29 ⁰⁰ | 2 ⁸⁴ | 33 ³⁶ | | 2 ⁸⁰ | 2 ⁸² | | | | | |
| | | | | | | | | | | | | | | | | 4 ⁰ | 27907 | 21981 |
| | | | | | | | | | | | | | | | | 44690 | 38364 | 1 |
| | | | | | | | | | | | | | | | | STK. RES. | 47762 | R-5766 |
| | | | | | | | | | | | | | | | | 5E | 50820 | 38368 |
| | | | | | | | | STK 8E | Dom STK 3E | 0E | 1Z | | | | | | 52171 | 37527 |
| | | | | | | | | Dom STOCK 15E | | | | | | | | | 55725 | 42064 |
| | | | | | | | | | | | | | | | | DOM. STK. | SWR-47 | |

(SEE BACK OF CARD FOR PLAT OF SECTION)

10/20/853
 D. Frank





November 27, 1991

Creek Bank Farm
149 Rolling Ridge Road
Oakland OR 97462

RE: Surface Water Registration (SWR-47)

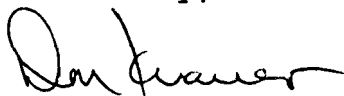
Dear Sir,

This will acknowledge that your Surface Water Registration Statement in the name of Creek Bank Farm has been received by our office. The fees in the amount of \$ 400.00 have been received and our receipt # 81315 is enclosed. Your registration statement has been numbered SWR-47.

Our office will review your form and map in the near future. If necessary we will schedule a meeting with you that will include a site inspection. If there are problems with your form we are usually able to take care of them during our visit. We will be able to answer any questions you might have about the adjudication process at that time.

Please feel free to contact this office if you have any questions.

Sincerely,



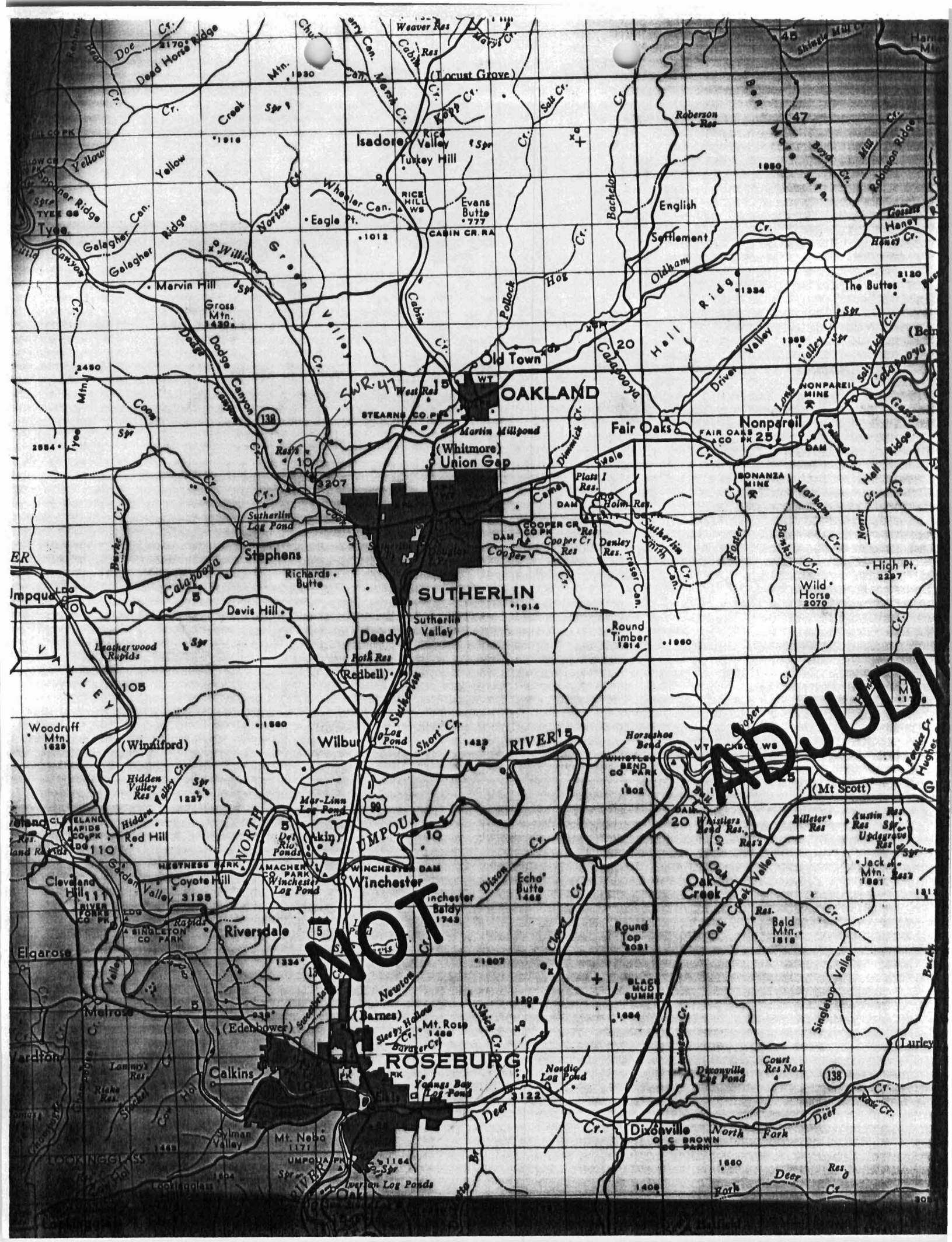
Don Knauer
Adjudications Section

enc

cc: James F. Gosson

A:SWR-0047.001





**STATE OF OREGON
WATER RESOURCES DEPARTMENT**
3850 PORTLAND ROAD NE
SALEM, OR 97310
378-3739/378-8130 (FAX)

RECEIPT # **81315**

| | | |
|---|---|--|
| RECEIVED FROM: <u>Creek Bank Farm Inc</u> | APPLICATION | |
| BY: _____ | PERMIT | |
| | TRANSFER | |
| CASH: <input type="checkbox"/> | CHECK: # <input checked="" type="checkbox"/> <u>24-12</u> | OTHER: (IDENTIFY) <input type="checkbox"/> |
| | | TOTAL REC'D \$ <u>400.⁰⁰</u> |

| 01-00-0 WRD MISC CASH ACCT | | |
|----------------------------|-------------------------------|-----------------|
| 842.010 | ADJUDICATIONS | \$ <u>400.-</u> |
| 831.087 | PUBLICATIONS/MAPS | \$ |
| 830.650 | PARKING FEES Name/month _____ | \$ |
| _____ | OTHER: (IDENTIFY) _____ | \$ |

| 02-00-0 FEDERAL FUNDS | | |
|-----------------------|-------------------------|----|
| _____ | OTHER: (IDENTIFY) _____ | \$ |

| 03-00-0 WRD OPERATING ACCT | | |
|----------------------------|--------------------------------|----|
| MISCELLANEOUS: | | |
| 840.001 | COPY FEES | \$ |
| 880.109 | MISC REVENUE: (IDENTIFY) _____ | \$ |
| 520.000 | OTHER (P-6): (IDENTIFY) _____ | \$ |
| WATER RIGHTS: | | |
| 842.001 | SURFACE WATER | \$ |
| 842.003 | GROUND WATER | \$ |
| 842.005 | TRANSFER | \$ |
| WELL CONSTRUCTION | | |
| 842.022 | WELL DRILL CONSTRUCTOR | \$ |
| 842.016 | WELL DRILL OPERATOR | \$ |
| | LANDOWNER'S PERMIT | \$ |

| 06-00-0 WELL CONST START FEE | | |
|------------------------------|----------------------|--------------|
| 842.013 | WELL CONST START FEE | \$ |
| | MONITORING WELLS | \$ |
| | | CARD # _____ |
| | | CARD # _____ |

| 45-00-0 LOTTERY PROCEEDS | | |
|--------------------------|------------------|----|
| 864.000 | LOTTERY PROCEEDS | \$ |

| 69001 SUSPENSE ACTIVITY | | |
|-------------------------|-----------------------|----|
| 842.115 | POWER LICENSE FEE(FW) | \$ |
| 842.115 | HYDRO LICENSE FEE(FW) | \$ |
| 832.009 | HYDRO EXAM FEE(GF) | \$ |

RECEIPT # **81315** DATED: 11-25-91 BY: DBushnell
Distribution—White Copy-Customer, Yellow Copy-Fiscal, Brown Copy-Fiscal

RECEIVED

REQUEST FOR ASSIGNMENT

DEC 22 1995

WATER RESOURCES DEPARTMENT
SALEM, OREGON

I, MAUREEN M HEGGE PRESIDENT OF CREEK BANK FARM INC
149 ROLLING RIDGE RD OAKLAND DOUGLAS OREGON 97462
(Mailing address) (City) (County) (State) (Zip) (Phone)
459-5909

do hereby assign all my interest in and to water right Application ^{SEE} ATTACHMENT # _____, Permit # _____; OR GR Statement # _____, GR Certificate of Registration # _____ as filed in the office of the Water Resources Director, to:

DONALD M / FRANCES L. SMITH
(name)

P.O. Box 14 BEATTY, OR, 97621 541-533-2127
(Mailing address) (City) (State) (Zip) (Phone)

(Note: If there are other owners of property described in Application, Permit or Certificate of Groundwater Registration you must attach a list of their names and addresses to this form.)

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

Witness my hand this 18 day of ~~JAN~~ DEC 1995.

CREEK BANK FARM, INC
by Maureen M Hegge
president

The completed assignment must be submitted to the Water Resources Department, together with a recording fee of \$10.

WATER RESOURCES DEPARTMENT
158 12TH ST. NE
SALEM, OREGON 97310

47
DEC 21 1995
SALEM, OREGON

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

**SURFACE WATER REGISTRATION STATEMENT
PRE-1909 VESTED WATER RIGHT CLAIM**

1. Name of Registrant: Creek Bank Farm, Incorporated
Mailing Address: 149 Rolling Ridge Road
Oakland, Oregon 97462 Telephone No: 459-5909

2. Source of water: a spring
Tributary to: Calapooya Creek

3. Purpose(s) for which water is used: Domestic and stockwater
(Irrigation, Stockwater, Domestic, Hydroelectric power, Industrial, Etc.)
If irrigation, total number of acres irrigated: _____

4. Priority Date
a) Date of first use: June 30, 1905
b) Date water use development first initiated: April 1905
c) Name of party who initiated development: F. A. Bemis

5. Amount of water claimed: 0.01, in CFS
(Water put to beneficial use)

(Handwritten initials)

Location of place of use:
2, 11 & 12 Sections, Township 25 S, Range 6 W.
____ Sections, Township ____ N/S, Range ____ E/W.
(Attach additional pages if necessary)

7. Usual period of use: Year Around to _____ / _____
month day month day

PRE-1909 VESTED WATER RIGHT CLAIM MAP

IN THE NAME OF CREEK BANK FARM, INCORPORATED

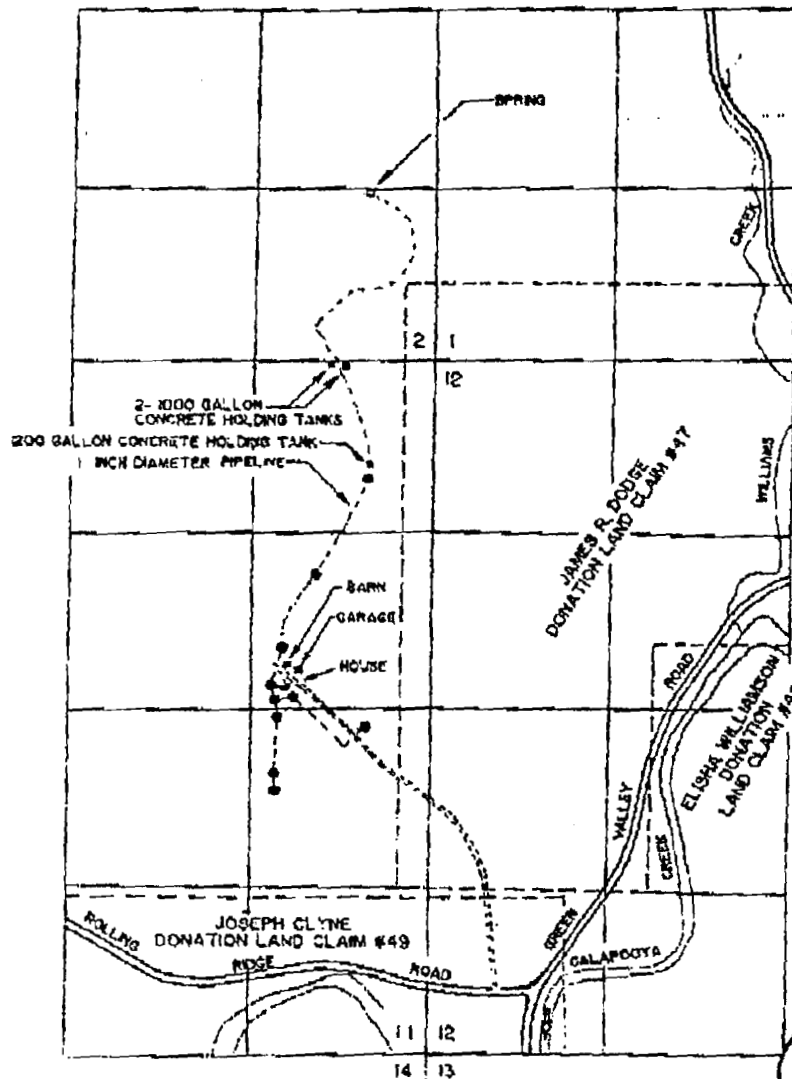
SECTIONS 2 & 11, T25S, R6W, W.M.

1 INCH = 1220 FEET

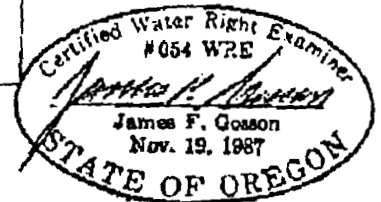
RECORDED

DEC 22 1995

WATER
SALEM, OREGON



• STOCKWATER (HOUSE BIES)



THE POINT OF DIVERSION IS LOCATED 1280 FEET NORTH AND 600 FEET WEST FROM THE SOUTHEAST CORNER OF SECTION 2, BEING WITHIN THE SE 1/4 OF THE SE 1/4 OF SECTION 2, TOWNSHIP 25 SOUTH, RANGE 6 WEST, W.M., DOUGLAS COUNTY.

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

December 29, 1995

DONALD AND FRANCIS SMITH
PO BOX 14
BEATTY, OR 97621

REFERENCE: Files R 47964, 40690, R 72692, 72693 and SWR #47

We received the assignment form for permits R 5772, 30304, R 11479 and 51512.

The assignment of Permit R 11479 from Creek Bank Farm Inc. to you has been recorded in the records of the Water Resources Department.

Our records have been changed accordingly and the original is enclosed along with our receipt number 131120 covering the recording fee of \$10 you submitted.


You will need to fill out another assignment form for file 72693 and submit another \$10 for that assignment. The charge for assigning each permit is \$10. You need to fill out an assignment form for each permit.

Only permits and applications can be assigned. Water rights that have been certificated cannot be assigned. Under Oregon law the right attaches to the land and goes with the land. Therefore we can only assign files R 72692 and 72693.

The assignment process does not include pre-1909 claims we will file the assignment in claim #47.

Included with this letter is another assignment form for file 72693.

Sincerely,



DALLAS S. MILLER
Water Rights Specialist

DSM:



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

January 2, 1996

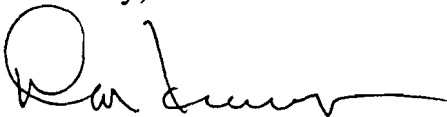
MAUREEN M HEGGE
149 ROLLING RIDGE RD
OAKLAND OR 97462

re: SWR-47

Dear Mrs. Hegge,

This will acknowledge the receipt of your request for assignment for Creek Bank Farms to Donald and Frances Smith. I have forwarded the request to Reed Marbut because I am not working in the Adjudication Section. You should contact Reed for any adjudication matters.

Sincerely,



Don Knauer
Program Representative



RECEIVED

SEP - 7 1993

**WATER RESOURCES DEPT.
SALEM, OREGON**

September 1, 1993

Martha O. Pagel
Director
Oregon Water Resources Department
3850 Portland Rd NE
Salem, OR 97310

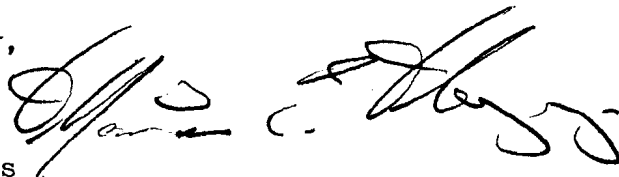
RE: SWR-47

Dear Director,

We are returning to you the surface water registration statement filed by Creek Bank Farm, Inc. We will be transmitting a letter to you with our requests regarding SWR-47, R-72692 and S-72693.

Sincerely,

The Heggess

A handwritten signature in cursive script, appearing to read "The Heggess", written in black ink.

Enclosed: SWR-47

August 14, 1993

Mr. Marvin Hegge
Creek Bank Farm
149 Rolling Ridge Rd.
Oakland, OR 97462

WATER
RESOURCES
DEPARTMENT

RE: Application Numbers R-72692 and 72693

Dear Mr. Hegge:

Carol Lewis-Spence has referred your August 12, 1993, letter to me for review. The comments expressed in your letter will be treated as "objections" to the Reports of Technical Review issued on the above-referenced applications.

I will eventually transmit an official response to the objections set out in your letter; however, in order to insure that there is no misunderstanding, and to be sure we meet the "deadline" you imposed in your letter, the following is a summary response to the issues you have raised:

1. In general, permittees diverting water in an amount greater than 0.1 cfs will be required to install a meter or other suitable measuring device. In your case, if the permit is limited to 0.1 cfs or less you will not be required to install a measuring device unless the Director so orders. If your permit is for greater than 0.1 cfs, we will examine the particulars of your diversion to see if this condition can be waived; however, to date no decision to waive the standard measuring and reporting condition has been made.
2. ORS 540.330 requires measuring and reporting on reservoirs "located across or upon the bed of a natural stream." However, there is nothing in that section or any other portion of Oregon water law that limits the Commission's authority to require measuring and reporting for off-channel reservoirs. In fact, ORS 537.211(1) clearly states that the Commission may set forth any terms, limitations and conditions it considers appropriate.
3. Until SWR 47 is adjudicated it does not represent a "water right" and does not effect our analysis of your applications.



3850 Portland Rd NE
Salem, OR 97310
(503) 378-3739
FAX (503) 378-8130

Mr. Marvin Hegge
August 14, 1993
Page Two

4. HB 2107 may or may not apply to your water use. No determination of the applicability of this legislation has been made.
5. HB 2153 may apply to your application; however, even if the language of this legislation is applicable to your applications, your applications must still proceed through our permitting process. Again, no determination of the applicability of this legislation has been made.
6. When HB 2110 becomes law it will alter our adjudication process and thus the way SWR 47 is handled. However, it will not change our review or analysis of your applications.
7. ORS 539.081(3) allows credit to be applied to fees paid in connection with a surface water registration. This credit is for fees paid in connection with an application filing made before the surface water registration is submitted, not the reverse.
8. The Water Rights/Adjudication Division has no authority over GWEB funds. You should address questions or comments concerning release of GWEB funds with the staff of GWEB.

In sum, you may not presume we do not oppose the analysis set out in your letter of August 12, 1993.

We will attempt to prepare an official response to the objections set out in your August 12, 1993, letter as soon as possible.

Sincerely,



A. REED MARBUT, Administrator
Water Rights/Adjudication Division

cc: Martha O. Pagel
Carol Lewis-Spence
Lorraine Stahr
Don Knauer
Al Cook
Gary Ball

RECEIVED

AUG - 4 1993

**WATER RESOURCES DEPT.
SALEM, OREGON**

Oregon Water Resources Department
3850 Portland Rd. N.E.
Salem, OR 97310

Attention: Donald Knauer, Adjudication Specialist

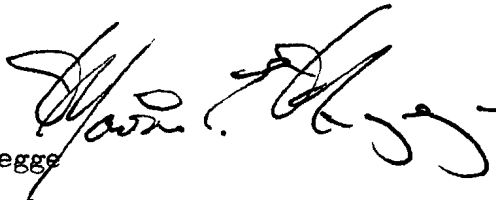
Re: Surface Water Registration Statement #47

Dear Mr. Knauer,

Please return SWR #47. We are considering modifications.

Sincerely,

Marvin E. Hegge



Cause - absent stipulate
adjudication -

SWR

other issues - Sanitation issues

{
Trespass
Conduct
Property agreement issues

Subpoena
well

Water issues -

Claim of ~~law~~ - if they
have right

- can get to water (across
Δ land)

- 1982 - Sale -

7/14/92

CREEK BANK FARM, INC.

Call from Gary Bell

Gary Bell - Tolson

① SWR has been filed

② Settlement

Carson asked if voted right
would there be a settlement.

- NO - Separate issue

→ no discussion about creation of
a settlement

③ he asked if a firm to determine
whether right

→ yes - kept determine.

④ Registration contested - yes.

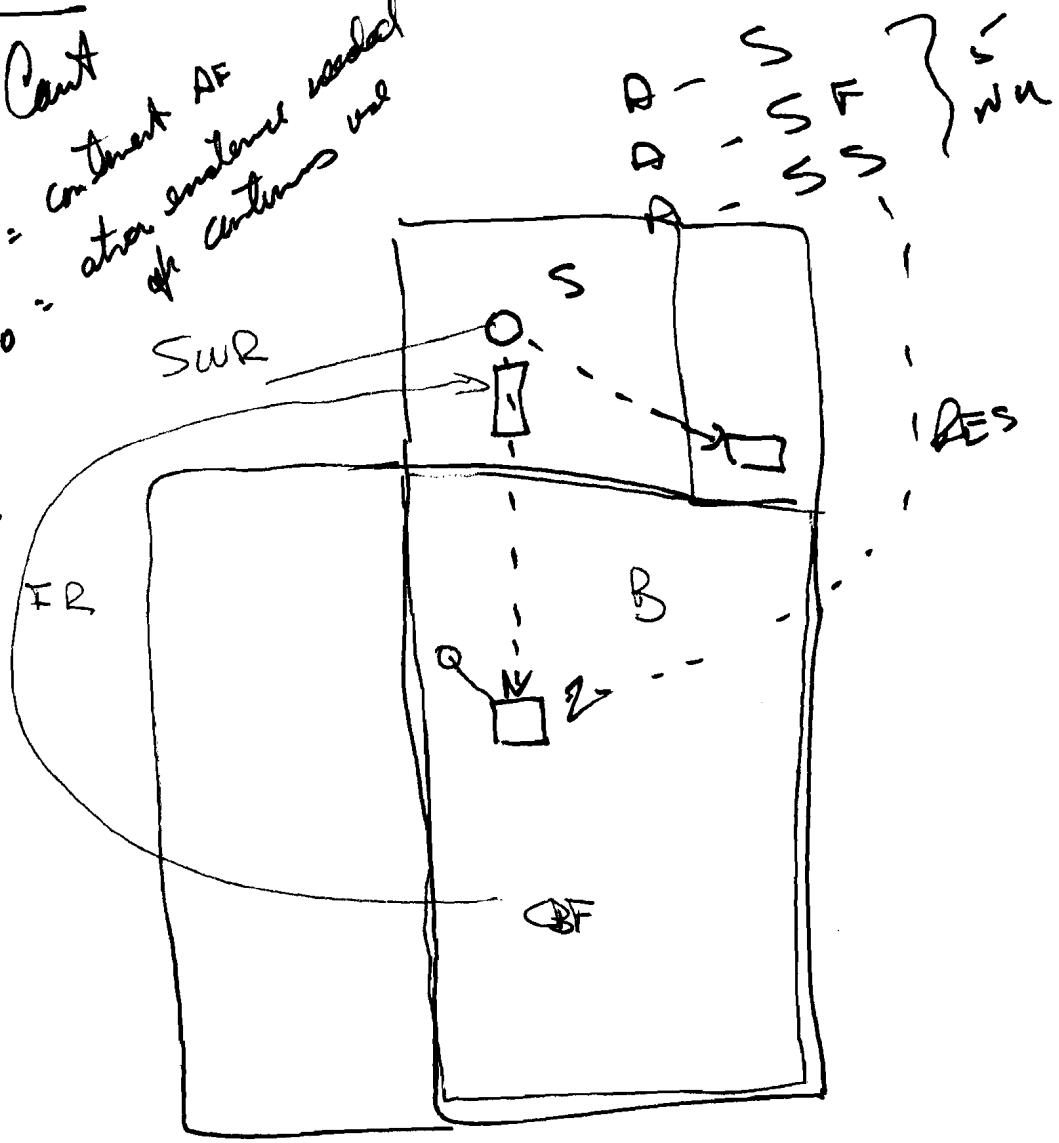
7/14/92

Oreels Bah Farms

Conference w/
Sue Sanders - Cont

(K) between the parties
→ implications
→ based on evidence
in contract P. 11

① Geo = contract AF
② No = other evidence needed
of contract use



Fitzgerald
218 OR 185
(1959)

240(8)

021(2)

7/10

- Called

7/13

- Called - book - Abs rat need
7/16

Cuddeback* - SUR - cc hearing
- allow challenge in Seller -

Relative determination
between

SUR and Seller (repair
doctrine)

Jones v Knoll
268 OR 103
(1974)

REED

7-10-92

1.) DISTRICT COURT JUDGE

Chair

WILLIAM LASWELL 440-4397

2.) HEARING SET FOR July 16th 1:30
TO HEAR MOTION TO REFER / TRANSFER
HIS MESS TO WRD

3.) ATTORNEY, GARRISON FOR BAYARD
(SQUARED TO CBF) WANTS ONE
OF WRD (YOU, ME, GORY BAW
AT THE HEARING).

Don

Parsons Lee & Kaser Ltd

ATTORNEYS AT LAW

Richard E. Parsons *Attorney*
Charles F. Lee *Attorney*
Stephen W. Kaser *Attorney*

505 S.E. Main / P.O. Box 1228
Roseburg, Oregon 97470-0308
(503) 672-1611
FAX # (503) 673-6537

Marian Howe *Legal Assistant*
Carrie D. Brock *Legal Assistant*
Pamela M. Burge *Legal Assistant*

DATE: 7/14/92

FILE/CASE # L90-118

TIME: _____

CLIENT NAME: Creek Bank Farm/

FROM: Charles Lee

Hegge

SEND TO FAX #: (503) 378-8130

RECIPIENT: REED MARBUT - ATTN: DARLENE

COMPANY NAME: _____

MESSAGE: _____

PLEASE CONFIRM: Yes No

**PLEASE DELIVER DOCUMENTS RECEIVED WITH THIS COVER SHEET
THE ABOVE NAMED RECIPIENT AS SOON AS POSSIBLE**

THIS TRANSACTION CONSISTS OF 2 PAGES, INCLUDING COVER SHEET.

Thank you.

CERTIFIED TRUE COPY


1 PARSONS, LEE & KASER, P.C.
2 **Charles F. Lee, Attorney**
3 505 SE Main
4 PO Box 1226
5 Roseburg OR 97470
6 (503)672-1611

7 IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR DOUGLAS COUNTY

8 **CREEK BANK FARM, INC.,**)
9)
10 Plaintiffs,)
11)
12 v.)
13)
14 **GERONIMO BAYARD AND MARY BAYARD,**)
15 **CYNTHIA MANDERO AND STEVE**)
16 **MANDERO,**)
17)
18 Defendants.)

Case No. 92-CV-1350CC

CIVIL SUBPOENA

19 **TO: REED MARBUT**
20 Water Resources Department

21 **YOU ARE HEREBY REQUIRED TO APPEAR AND ATTEND** at the following
22 place, date, and time, to testify as a witness in the above proceeding now pending
23 in this court as follows:

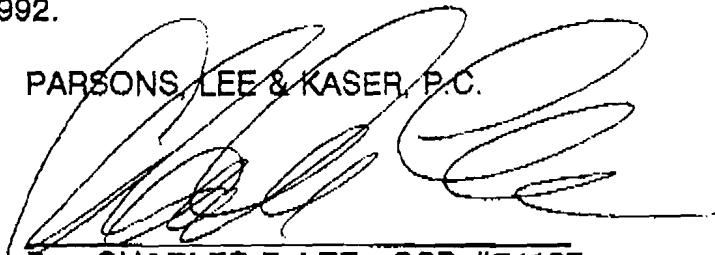
24 **Place:** Douglas County Courthouse, District Courtroom D

25 **Date and Time:** Thursday, July 16, 1992, 2:00 p.m.

26 Disobedience to this Subpoena may be punished as contempt of court or
27 otherwise. Any inquiries should be directed to the undersigned.

28 **DATED** this 14th day of July, 1992.

29 PARSONS, LEE & KASER, P.C.



30
31 By: **CHARLES F. LEE - OSB #74187**
32 Attorney for Plaintiff



WATER
RESOURCES
DEPARTMENT

F A X C O V E R S H E E T

Watermaster
District 15

DATE: 7/13/92

TO: Reed Marbut

FROM: Gary Ball

DEPT: WRD - Water Rights

DEPT: Watermaster

FAX NO.: 378-8130

FAX NO.: 440-4408

PLEASE RESPOND ASAP

4 PAGES, INCLUDING COVER

M E S S A G E

Have confirmed that motion was filed with Court.
(Bea - Circuit Court Clerk) Also, attached
was sent to Mr. Garrison.

Also, letter from Garrison to me of
Subpoena attached.



Room 103
Justice Bldg.
Roseburg, OR
97470-1719
(503) 440-4255

1 Randolph Lee Garrison, P.C.
 2 OSB No. 76142/Attorneys at Law
 3 430 S.E. Main/P.O. Box 266
 4 Roseburg, OR 97470-0049
 5 Telephone: (503) 672-4441
 6 ~~Of Attorneys for Plaintiffs~~

7 Of Attorneys for Geronimo and Mary Bayard

8 IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR DOUGLAS COUNTY

9 CREEK BANK FARM, INC.,)
 10)
 11 Plaintiff,)
 12 vs.)
 13 GERONIMO BAYARD and MARY C.)
 14 BAYARD, CYNTHIA MANDERO and)
 15 STEVE MANDERO, Husband)
 16 and Wife,)
 17 Defendants.)

Case No. 92CV-1350CC

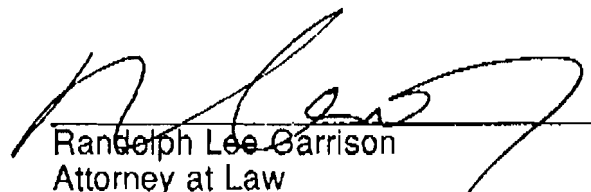
**CIVIL SUBPOENA
 (Duces Tecum)**

18 TO: Gary Ball

19 You are hereby required to appear in the above entitled **Court** in **Courtroom**
 20 **No. "D" (Judge Lasswell)** of the **County Courthouse of Douglas County** in the **City**
 21 **of Roseburg, Oregon, on Thursday, the 16th day of July, 1992, at 1:30 o'clock p.m.,**
 22 to testify as a witness in the above entitled case on behalf of Defendants, Geronimo and
 23 Mary Bayard, and to remain until the testimony is closed unless you are sooner
 24 discharged.

25 You are commanded to bring with you any and all books, papers, documents
 26 or tangible things related to Creek Bank Farm, Inc., and the above entitled matter, Case
 No. 92CV-1350CC.

Dated: 10 July 1992
 Issued By:


 Randolph Lee Garrison
 Attorney at Law
 P.O. Box 266, Roseburg, OR 97470
 Telephone: (503) 672-4441

I hereby certify that the foregoing is a complete and exact copy of the original
 Subpoena in the above entitled case as the same appears for service.

 Randolph Lee Garrison

LAW OFFICES OF
 RANDOLPH LEE GARRISON, P.C.
 ATTORNEYS AT LAW
 430 S.E. MAIN - P. O. Box 266
 ROSEBURG, OREGON 97470-0049
 (503) 672-4441

IN THE CIRCUIT COURT OF THE STATE OF OREGON
 FOR DOUGLAS COUNTY
 DOUGLAS COUNTY COURTHOUSE
 Justice Bldg, Rm 201, 1036 SE Douglas Roseburg, Oregon 97470
 (503) 440-4360

July 9, 1992

Randy Garrison
 Attorney at Law
 Po Box 266
 Roseburg OR 97470

Bar#: 76142

Creek Bank Farm Inc/Bayard Geronimo
 Case#: 92CV1350 Civil Injunctive Relief

NOTICE OF SCHEDULED COURT PROCEEDING

Scheduled Proceeding: Hearing
 Date: 7/16/92
 Time: 1:30AM
 Room: DISTRICT COURTROOM D

Additional Information:

~~Motion for trial w/15 days;~~
 * Motion to transfer
~~Motion amend answer~~

IMPORTANT NOTICE: PLEASE READ

Failure to appear at the court event indicated above at the time and place specified may result in an order being rendered against you in this case.

Client(s) of Addressee:

Geronimo Bayard
 Mary Bayard

CC:

Charles Lee
 Darryl E Johnson

LAW OFFICES OF
RANDOLPH LEE GARRISON, P.C.
ATTORNEYS AT LAW

OFFICE AT 430 S.E. MAIN
MAILING ADDRESS: P.O. BOX 266
ROSEBURG, OR 97470-0049
Phone: (503) 672-4441
Fax: (503) 672-4442

10 July 1992

Gary Ball
Douglas County Watermaster
Justice Hall
Douglas County Courthouse
Roseburg, OR 97470

Re: *Creek Bank Farm vs. Bayard/Mandero*
DCCC No. 92CV-1350CC

Dear Gary:

Pursuant to your request, enclosed please find the following documents:

- (1) A Subpoena. The Hearing on the Motion to Transfer *Creek Bank Farm vs. Bayard/Mandero* to the Water Resources Department is scheduled for 1:30 p.m., Thursday, 16 July 1992 (Judge Lasswell).
- (2) The Motion to Transfer.
- (3) The Complaint (Suit for Injuncton).
- (4) Bayards' Response Opposing the Temporary Restraining Order.
- (5) Bayards' Answer and Counter-Claim.
- (6) Mandero's Answer and Counter-Claim.

Bayards intend to oppose Creek Bank Farm's Motion to Transfer. We understand that the Water Resources Department may deal with the "water appropriation" issue, but typically does not involve itself in the "access/ingress/egress" or contract or easement issues. These are "private matters" and are typically not handled by the Water Resources Department, but by the courts (see Don Knauer's 1 July 1992 letter).

Please let me know whether you are the appropriate person to testify.

Very truly yours,

RANDOLPH LEE GARRISON, P.C.

By 
Randolph Lee Garrison

RLG:ba
Enclosures
c (w/o enc): Darryl Johnson
Mr. and Mrs. Bayard / [ball.586]

Telephone: (503) 672-4441

20
24
25
26

I hereby certify that the foregoing is a complete and exact copy of the original Subpoena in the above entitled case as the same appears for service.

Randolph Lee Garrison

1 PARSONS, LEE & KASER, P.C.
2 **Charles F. Lee, Attorney**
3 505 SE Main /PO Box 1226
4 Roseburg OR 97470-0301
5 (503) 672-1611
6 OSB #74187

7 IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR DOUGLAS COUNTY

| | | | |
|----|---|---|---------------------------|
| 8 | CREEK BANK FARM, INC., |) | Case No. 92-CV-1350CC |
| 9 | |) | |
| 10 | Plaintiff, |) | |
| 11 | |) | |
| 12 | v. |) | MOTION TO TRANSFER |
| 13 | |) | |
| 14 | GERONIMO BAYARD AND MARY BAYARD, |) | |
| 15 | CYNTHIA MANDERO AND STEVE |) | |
| 16 | MANDERO, |) | |
| 17 | |) | |
| 18 | Defendants. |) | |

19 Plaintiff moves the court for an order transferring this action to the director of
20 the Water Resources Department to determine rights to the use of the water in
21 question, as provided in ORS 539.012²¹(2).

22 This motion is well founded in law and is not for purposes of delay.

23 DATED this 7th day of July, 1992.

24 PARSONS, LEE & KASER, P.C.
CHARLES F. LEE

25
26 By: **CHARLES F. LEE**
27 Attorney for Plaintiff
28 OSB #74187

1 PARSONS, LEE & KASER, P.C.
2 Charles F. Lee, Attorney
3 505 SE Main /PO Box 1226
4 Roseburg OR 97470-0301
5 (503) 672-1611
6 OSB #74187

7 IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR DOUGLAS COUNTY

| | | | |
|----|----------------------------------|---|-----------------------|
| 8 | CREEK BANK FARM, INC., |) | Case No. 92-CV-1350CC |
| 9 | |) | |
| 10 | Plaintiff, |) | |
| 11 | |) | MEMORANDUM IN SUPPORT |
| 12 | v. |) | OF MOTION TO TRANSFER |
| 13 | |) | |
| 14 | GERONIMO BAYARD AND MARY BAYARD, |) | |
| 15 | CYNTHIA MANDERO AND STEVE |) | |
| 16 | MANDERO, |) | |
| 17 | |) | |
| 18 | Defendants. |) | |

19 The proper resolution of this motion is illuminated by Oregon Lumber Co. v.
20 East Fork Irrigation Dist., 80 Or 568, 157 P 963 (1916).

21 That case, like this, involved vested water rights dating before 1909, and the
22 problem of the proper assignment of the right to use water between two claimants.
23 That case involved the right to use water from the east fork of Hood River. The
24 plaintiff lumber company claimed to have dammed the river in 1905 and to have
25 then begun appropriating 340 second-feet of water. The lumber company sought
26 a court injunction to keep the defendant irrigation district from diverting water above
27 the lumber company's dam, in a quantity sufficient to irrigate 13,000 acres. The
28 lumber company said that diversion would deny the lumber company adequate
29 water all through the growing season. The irrigation district, on the other hand,
30 claimed that its right to the water dated back to 1895, through a claim posted by a
31 predecessor private irrigation company.

1 claimants can be determined administratively, but not in the context of this lawsuit
2 without making all potential claimants parties.

3 This case also may raise issues affecting the water policies of the state, so
4 that those issues are best addressed in an administrative forum. Defendants
5 themselves tried to raise such administrative issues at the evidentiary hearing on the
6 preliminary injunction, asking witnesses how the department would rule in various
7 hypothetical situations.

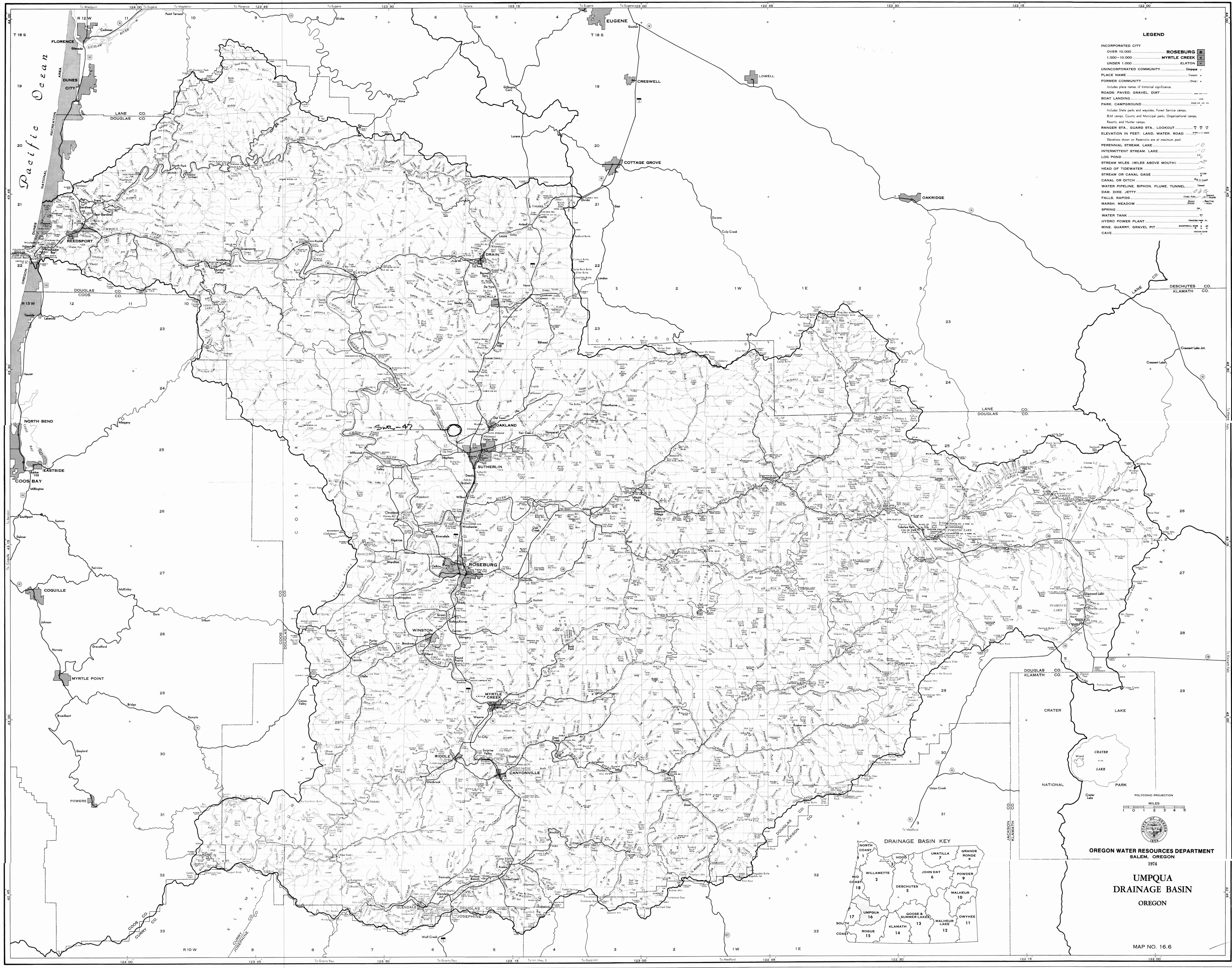
8 Proceeding with this case in its present posture, without referral to the Water
9 Resources Department, creates the risk of a great deal of wasted energy, since the
10 Supreme Court on appeal of this case might well follow the precedent it set in
11 Oregon Lumber Co. and simply vacate any judgment of this court for the more
12 accurate and efficient fact finding procedure available administratively.

13 **Respectfully Submitted,**

14 **PARSONS, LEE & KASER, P.C.**

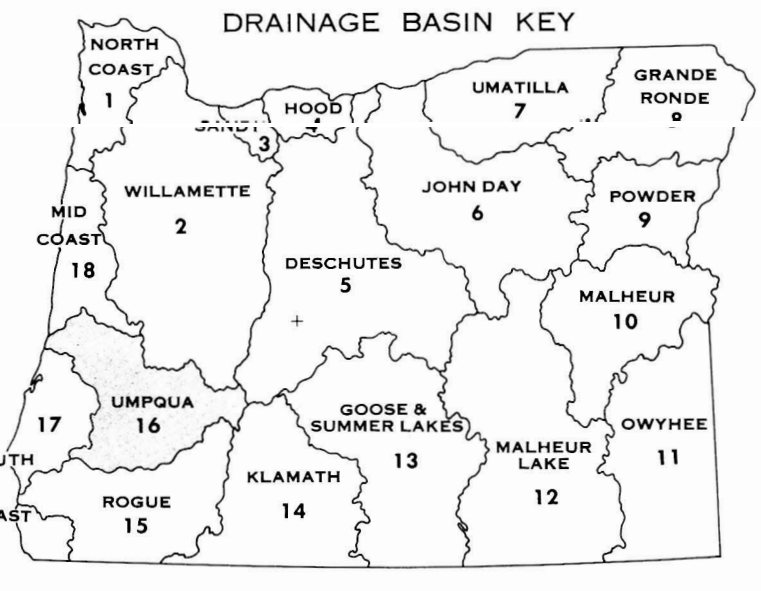
CHARLES F. LEE

15
16 **By: CHARLES F. LEE**
17 **Attorney for Plaintiff**
18 **OSB #74187**



LEGEND

| | |
|--|--------------|
| INCORPORATED CITY | ROSEBURG |
| OVER 10,000 | MYRTLE CREEK |
| 1,000 - 10,000 | ELKTON |
| UNDER 1,000 | |
| UNINCORPORATED COMMUNITY | UNIQUE |
| PLACE NAME | COUNTY |
| FORMER COMMUNITY | (This) |
| Includes place names of historical significance. | |
| ROADS: PAVED, GRAVEL, DIRT | |
| BOAT LANDING | |
| PARK, CAMPGROUND | |
| Includes State parks and wayides; Forest Service camp, BLM camp, County and Municipal parks, Organizational camp, Resort, and Hunter camp. | |
| RANGER STA., GUARD STA., LOOKOUT | |
| ELEVATION IN FEET: LAND, WATER, ROAD | |
| Elevations shown on Roseburg are at maximum pool. | |
| PERENNIAL STREAM, LAKE | |
| INTERMITTENT STREAM, LAKE | |
| LOG POND | |
| STREAM MILES (MILES ABOVE MOUTH) | |
| HEAD OF TIDEWATER | |
| STREAM OR CANAL GAGE | |
| CANAL OR DITCH | |
| WATER PIPELINE, SIPHON, FLUME, TUNNEL | |
| DAM, DIKE, JETTY | |
| FALLS, RAPIDS | |
| MARSH, MEADOW | |
| SPRING | |
| WATER TANK | |
| HYDRO POWER PLANT | |
| MINE, QUARRY, GRAVEL PIT | |
| CAVE | |



DOUGLAS CO. CLATSOP CO. WASHINGTON CO. KLAMATH CO.

CRATER LAKE NATIONAL PARK

POLYCONIC PROJECTION

0 1 2 3 4 5 MILES

OREGON WATER RESOURCES DEPARTMENT
SALEM, OREGON
1974

UMPQUA DRAINAGE BASIN
OREGON

HEGGE CALLED:

10-22-92

NO MEETING

HE HAS MORE EVIDENCE - I TOLD HIM TO SEND IT

2 ISSUES 1 = EASEMENT

2 = WR

WRD CAN'T CHANGE JUDGES ORDER

SUGGESTED HE TALK TO ATTORNEY ABOUT
HIS LEGAL OPTIONS - APPEAL ETC.

WRD WILL NOT GRANT EASEMENT

WRD WILL REVIEW CLAIM - EVIDENCE, ETC.

THEY NEED BOTH EASEMENT & WR

WRD CAN ONLY HANDLE WR -

9-29-92

LAW OFFICES OF
RANDOLPH LEE GARRISON, P.C.
ATTORNEYS AT LAW

OFFICE AT 430 S.E. MAIN
MAILING ADDRESS: P.O. BOX 266
ROSEBURG, OR 97470-0049
Phone: (503) 672-4441
Fax: (503) 672-4442

29 September 1992

RECEIVED
OCT 1 1992
FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE

Don Knauer
Adjudication Specialist
Oregon Water Resources Department
3850 Portland Road, N.E.
Salem, Oregon 97310

RE: Creek Bank Farm, Inc.
SWR-47

Dear Mr. Knauer:

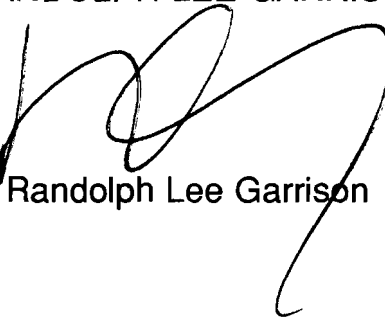
Enclosed please find a copy of the Supplemental Affidavit of Richard C. Bemis.

This Affidavit now completes the information which we wish to submit to you (your letter of 10 September 1992 indicated that a transcript of Case No. 92CV-1350 CC was not necessary at this time).

When you are ready to prepare a proposed Order, please provide us with a copy and an opportunity to comment.

Very truly yours,

RANDOLPH LEE GARRISON, P.C.

By 
Randolph Lee Garrison

RLG:tl
Enclosure
cc: (w/enc.)
Geronimo and Mary Bayard
Darryl E. Johnson
[lknauer2.586]

1 Randolph Lee Garrison, P.C.
OSB No. 76142
2 Attorneys at Law
430 S.E. Main
3 P.O. Box 266
Roseburg, OR 97470-0049
4 Telephone: (503) 672-4441

5 Of Attorneys for Bayards

6 IN THE CIRCUIT COURT OF THE STATE OF OREGON
7 FOR DOUGLAS COUNTY

8 CREEK BANK FARM, INC.,
9 Plaintiff,

Case No. 92CV-1350CC

10 vs.

11 SUPPLEMENTAL AFFIDAVIT OF
12 RICHARD C. BEMIS

11 GERONIMO BAYARD and MARY C.
12 BAYARD, CYNTHIA MANDERO and
13 STEVE MANDERO, Husband
and Wife,
14 Defendants.

LAW OFFICES OF
RANDOLPH LEE GARRISON, P.C.
ATTORNEYS AT LAW
430 S.E. MAIN - P. O. Box 266
ROSEBURG, OREGON 97470-0049
(503) 672-4441

15
16 STATE OF OREGON)
17 County of Douglas)ss.

18 I, RICHARD C. BEMIS, being first duly sworn on oath, depose and say:

19 I make this Affidavit to amplify and supplement my previous Affidavit (2
20 pages) (especially paragraph 10.) which was notarized on November 15, 1991.

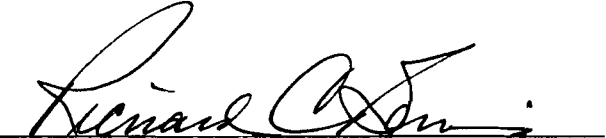
21 1. My knowledge of the Bemis Ranch and of the subject spring does
22 not extend to any period after 1949. Since 1949, I have been on the Bemis Ranch
23 only once (approximately 1990). At that time, I met and spoke with Marvin and
24 Maureen Hegge.
25

26 ///

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2. It has been brought to my attention that Mary Bayard and others have presented Affidavits to the effect that the site of use of the subject spring was not at the Bemis house (the present Hegge house) for three years (June of 1974 until May of 1977) and for six years (December 1977 until July 1983). I have no knowledge or basis upon which to contradict this information.

3. I have no knowledge of the use or the site of use of the subject spring since 1949 (except the one occassion mentioned above when I spoke with Marvin and Maureen Hegge).


Richard C. Bemis

SUBSCRIBED and SWORN to before me this 28 day of Sept. ~~July~~, 1992.




Notary Public for Oregon
My commission expires:

LAW OFFICES OF
RANDOLPH LEE GARRISON, P.C.
ATTORNEYS AT LAW
430 S.E. MAIN - P. O. Box 286
ROSEBURG, OREGON 97470-0049
(803) 672-4441

(SEAL)

9-4-92

LAW OFFICES OF
RANDOLPH LEE GARRISON, P.C.
ATTORNEYS AT LAW

OFFICE AT 430 S.E. MAIN
MAILING ADDRESS: P.O. BOX 266
ROSEBURG, OR 97470-0049
Phone: (503) 672-4441
Fax: (503) 672-4442

3 September 1992

Don Knauer
Adjudication Specialist
Oregon Water Resources Dept.
3850 Portland Road, N.E.
Salem, Oregon 97310

SEP - 4 1992

RE: Creek Bank Farm, Inc.
SWR-47

Dear Mr. Knauer:

As you know, there is presently pending before the Oregon Water Resources Department, Creek Bank Farm's "Pre-1909 Water Right Registration Claim" [ORS 539.010]. In addition to its claim filed in your Department, Creek Bank Farm also commenced an action in the Circuit Court of the State of Oregon for Douglas County (Case No. 92CV-1350 CC). The basis of Creek Bank Farm's Douglas County Circuit Court action, was also its claim to a "Pre-1909 Water Right Registration" [ORS 539.010].

The Douglas County Circuit Court action has now concluded in a Final Judgment. A true copy of the Final Judgment is enclosed. As you will know, the Final Judgment also contains express Findings of Fact and Conclusions of Law.

In substance, after a three-day Trial, the Court found that Creek Bank Farm was *not* entitled to a "Pre-1909 Water Right Registration Claim". The Court expressly concluded that:

"Creek Bank Farm ha[d] failed to present evidence sufficient to find that the subject spring water had actually been applied to a specific beneficial use and Creek Bank Farm ha[d] failed to so present such evidence for at least the following periods: Prior to 1932 and for the period 1933 to 1967. Having failed to present such evidence, Creek Bank Farm ha[d] failed to present evidence sufficient to make a '1909 Vested Rights' claim, pursuant to ORS 539.010."

18-20-23-37 40-2

Don Knauer
3 September 1992
Page 2

See Final Judgment ¶ IV. (a), page 5: 15 - 20. See also ¶ (I), page 3: 16 - 20.

The Court also specifically found that the subject spring was:

-- The exclusive property of the Defendant, Mary C. Bayard. See Final Judgment ¶ II., page 4: 9 - 10.

-- "Private" water, not public water. See Final Judgment ¶ V., page 6: 13 - 14.

We contend that the enclosed decision of the Douglas County Circuit Court bars any further claim by Creek Bank Farm in the Oregon Water Resources Department. The Oregon Supreme Court has specifically held that claim and issue preclusion apply in administrative proceedings. *Drews vs. EBI Companies*, 310 Or 134, at 142 (1990) ["Both issue preclusion and claim preclusion apply to administrative proceedings . . ."].¹ See also *Chavez vs. Boise Cascade Corp.*, 307 Or 632, at 634-635 (1989).

The Oregon Supreme Court has explained the circumstances of claim and issue preclusion as follows:

"If a person has had a full and fair opportunity to litigate a claim to final judgment, most courts (including this one) hold that the decision on a particular issue or determination of fact is determinative in a subsequent action between the parties on the same claim (direct estoppel). See, e.g., *Waxwing Cedar Products vs. Koennecke*, 278 Or 603, 610, 564 P2d 1061, 1064-65 (1977); *Bahler vs. Fletcher*, 257 Or 1, 4, 474 P2d 329, 331 (1970). The judgment generally is conclusive as well in a different action between the parties as to issues actually litigated and determined in the prior

¹The Oregon Supreme Court no longer refers to the terms "Res Judicata" and "Collateral Estoppel". Res Judicata is now referred to as *claim preclusion*. Collateral Estoppel is now referred to as *issue preclusion*. *North Clackamas School District vs. White*, 305 Or 48, at 50 (1988) and *Van De Hey vs. U.S. National Bank*, 313 Or 86, at 90 (1988).

RANDOLPH LEE GARRISON, P.C.

ATTORNEYS AT LAW

Don Knauer
3 September 1992
Page 3

action if their determination was essential to the judgment (collateral estoppel). See, e.g., *Bahler vs. Fletcher, supra*, 257 Or at 4, 474 P2d at 331." *State Farm Fire & Cas. vs. Reuter*, 299 Or 155, at 158 (1985).

The foregoing statement has been again cited with approval in *North Clackamas School Dist. vs. White*, 305 Or 48, at 50 (1988).

The *North Clackamas* Court also emphasized that the "claim preclusion" rules ". . . prevents harassment by successive proceedings and promotes economy of resources in the adjudicatory process." *North Clackamas School Dist. vs. White*, 305 Or at 50-51. See also *Dean vs. Exotic Veneers, Inc.*, 271 Or 188, at 192, 531 P2d 266 (1975).

The Douglas County Circuit Court proceeding found insufficient evidence of Creek Bank Farm's claim. There is *also* insufficient evidence to establish a "Pre-1909 Water Right Registration Claim" in the Affidavits presently before the Water Resources Department. We intend to obtain further Affidavits to supplement and clarify the Affidavits previously submitted by Creek Bank Farm. If necessary, a Transcript of the Circuit Court proceeding can be obtained; but, of course, we would like to avoid the expense of the same.

In any event, the Douglas County Circuit Court proceeding provided each Party with a full and fair opportunity to litigate their claims. Creek Bank Farm failed to present evidence to establish a "Pre-1909 Water Right Registration Claim". Based upon the Circuit Court's Judgment, the Water Resources Department should proceed no further with Creek Bank Farm's Application. To do so, would simply continue Creek Bank Farm's harassment by successive proceedings. The economy of adjudicatory resources requires that this matter now end.

RLG:tls
Enclosure
cc (w/enc):
Geronimo and Mary Bayard
Darryl Johnson
Gary Ball (w/out enc.)

[lwater7.586]

Very truly yours,

RANDOLPH LEE GARRISON, P.C.

By 

Randolph Lee Garrison

RANDOLPH LEE GARRISON, P.C.

ATTORNEYS AT LAW

1 Randolph Lee Garrison, P.C.
OSB No. 76142
2 Attorneys at Law
3 430 S.E. Main
P.O. Box 266
4 Roseburg, OR 97470-0049
Telephone: (503) 672-4441
5
6 Of Attorneys for Bayards

FILED
AT 1:40 O'CLOCK P.M.
SEP 03 1992

7 IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR DOUGLAS COUNTY

8 CREEK BANK FARM, INC.,)
9)
Plaintiff,)

Case No. 92CV-1350CC

10 vs.)

FINDINGS OF FACT

11 GERONIMO BAYARD and MARY C.)
12 BAYARD, CYNTHIA MANDERO and)
13 STEVE MANDERO, Husband)
and Wife,)

CONCLUSIONS OF LAW

14 Defendants.)
15)

FINAL JUDGMENT

16 This matter having regularly come on for Trial on the Parties' claims for a
17 Permanent Injunction on the 28th, 29th and 30th days of July, 1992.

18 Trial was held before William L. Lasswell, Judge, without jury.

19 Plaintiff, Creek Bank Farm, having presented evidence and presented the
20 testimony of the following witnesses: Charles McCord, Cynthia Madero, Robert
21 Speedy, William Smets, Mike Hall, Cayrl Swan, Geronimo Bayard, William Link, Steve
22 Madero, Marvin Hegge, Delia E. Trumbo and Kathleen A. Reed;
23

24 Plaintiff, Creek Bank Farm, having rested Plaintiff's case at the close of the
25 presentation of Plaintiff's evidence and testimony. Pursuant to ORCP 54, at the close
26 of Plaintiff's case, the Defendants having moved the Court for a Directed Verdict,

LAW OFFICES OF
RANDOLPH LEE GARRISON, P.C.
ATTORNEYS AT LAW
430 S.E. MAIN - P.O. Box 266
ROSEBURG, OREGON 97470-0049
Phone: (503) 672-4441

1 Dismissing Plaintiff's case, with prejudice. Defendants' Motion for a Directed Verdict
2 was made on the following grounds and for the following reasons: (a) The facts
3 presented by Plaintiff have not shown that Plaintiff, Creek Bank Farm, has a right to the
4 relief requested; and, (b) the law does not provide Plaintiff with a right to the relief
5 sought by Plaintiff;
6

7 NOW THEREFORE, THE COURT MAKES THE FOLLOWING FINDINGS OF
8 FACT:
9

10 (A) Creek Bank Farm's real property is commonly addressed as 149 Rolling
11 Ridge Road, Oakland, Douglas County, Oregon. Said real property is more particularly
12 described in Exhibit "A", attached to Plaintiff's Complaint.

13 (B) The relationship of a spring located off Creek Bank Farm's property, which
14 is dispute between the Parties, is depicted in the Exhibits admitted into evidence,
15 including Defendants' Exhibits 123 and 117.

16 (C) The subject spring is on real property currently owned by Defendant, Mary
17 C. Bayard.

18 (D) The subject spring water does not flow from or off of the real property
19 owned by Defendant, Mary C. Bayard.

20 (E) Water from the subject spring is apparent only as the same is captured in
21 a "collection box". The spring water does not flow in any particular direction. There is
22 no bank or channel formed by the spring water. The spring water does not form a
23 watercourse.
24

25 ///
26

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1 (F) Creek Bank Farm purchased its real property from Defendant, Cynthia
2 Mandero, in a transaction including documents dated 1 July 1988.

3 (G) At the time Creek Bank Farm purchased its real property, the then Seller,
4 Cynthia Mandero, retained ownership of the real property upon which the subject spring
5 is located. Prior to the filing of Creek Bank Farm's Complaint, Defendant Cynthia
6 Mandero, sold the real property upon which the subject spring is located to Defendant
7 Mary C. Bayard. At the present time, the real property upon which the spring is located
8 is owned by Defendant Mary C. Bayard.

10 (H) At or near the time of the filing of its Complaint, Creek Bank Farm was then
11 using water from the subject spring for livestock and as a source of domestic water to
12 the residence of Marvin and Maureen Hegge. Marvin and Maureen Hegge are the sole
13 shareholders of Plaintiff, Creek Bank Farm, Inc. The residence of Marvin and Maureen
14 Hegge is located on Creek Bank Farm's real property.

16 (I) Despite evidence that the spring had been used as a source of water for
17 the Creek Bank Farm property at various times, particularly in 1932 and from 1967 to
18 1979, the evidence was insufficient to establish that the spring had been used
19 continuously and without any interruption for two years or more during the period from
20 1909 to 1932 and during the period 1932 to 1967.

22 NOW THEREFORE, THE COURT MAKES THE FOLLOWING CONCLUSIONS
23 OF LAW:

24 I. The water which is the subject of this action is a "spring" and not a
25 "watercourse". See:
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1 *Beisell vs. Wood*, 182 Or 66, at 71, 185 P2d 570 (1947). ["A spring . . . may be defined
2 as a place where water issues naturally from the surface of the earth (citations
3 omitted). The water of the spring involved in the present case does not pass from
4 the tract of land upon which it arises, or becomes a source of any watercourse.
It merely seeps or flows directly into a small marsh upon the same tract, having
no perceptible outlet."]

5 *Simmons vs. Winters*, 21 Or 35, 27 P. 7, 28 Am St Rep 727 (1891). [A watercourse
6 " . . . is a stream of water, usually flowing in a particular direction, with well-
7 defined banks and channels, but that the water need not flow continuously -- the
8 channels may sometimes be dry . . . which even to the casual glance bears the
unmistakable impress of the frequent action of running water, and through which
it has flowed from time immemorial . . ."]

9
10 II. The spring subject of this litigation and waters thereof, are the exclusive
11 property of the Defendant, Mary C. Bayard. The water of the spring is not subject to
12 appropriation by Creek Bank Farm. See:

13 *Skinner vs. Silver*, 158 Or 81, at 94, 75 P2d21 (1938), quoting from *Henrici vs.*
14 *Paulson*, 134 Or 222, 293 P. 424 (1930). ["The spring and waters thereof,
15 involved herein, are the exclusive property of defendants. The water of the spring
is not subject to appropriation by the plaintiffs . . ."]

16 *Klamath Development Co. vs. Lewis*, 136 Or 445, at 450, 299 P. 705 (1931). ["A spring
17 whose waters, because of seepage and evaporation, would not follow in any
channel or to or upon adjacent property, is not subject to appropriation by anyone
18 other than the owner of the land."]

19 *Tarduer vs. Dollina and Elliott*, 206 Or 1, at 42 - 43, 288 P2d 796 (1955). ["Where the
20 springs in question did not constitute headwaters of a spring, they belong
exclusively to owners of the land where they arose."]

21 *Morrison vs. Officer*, 48 Or 569, at 570, 87 P. 896 (1906). [" . . . where . . . the admitted
22 quantity is so insignificant that a surface stream is impossible, when spread over
the width of ground . . . the use of the water belongs to the person upon whose
23 land it first arises."]

24 III. A spring is not subject to appropriation by any person other than the
25 landowner. See:
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1 *Beisell vs. Wood*, 182 Or 66, at 71, 185 P2d 570 (1947). [" . . . a spring is not subject
2 to appropriation by any person other than the owner of such land."]

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5 *Fitzstephens vs. Watson*, 218 Or 185, at 194, 344 P2d 221 (1959). ["Where spring
6 waters arising on an owner's land do not flow from the spring in such a manner
7 as to constitute a watercourse, it has been held that the owner is entitled to the
8 exclusive use of such waters as against competing claimants (citations omitted)."]

9 IV. Creek Bank Farm bases its claim on two statutes: ORS 539.010 ["1909
10 Vested Rights"] and ORS 540.510 ["Appurtenancy"].

11 (a) In order to be entitled to a "1909 Vested Right", Creek Bank Farm
12 must show a continuous actual application of water to a specific beneficial use,
13 from February 24, 1909 to present. The continuous actual application of water
14 to the specific beneficial use must not be abandoned for a period of more than
15 two years. Creek Bank Farm has failed to present evidence sufficient to find that
16 the subject spring water had actually been applied to a specific beneficial use and
17 Creek Bank Farm has failed to so present such evidence for at least the following
18 periods: Prior to 1932 and for the period 1933 to 1967. Having failed to present
19 such evidence, Creek Bank Farm has failed to present evidence sufficient to
20 make a "1909 Vested Rights" claim, pursuant to ORS 539.010.

21 (b) Creek Bank Farm also bases its claim upon ORS 540.510
22 ["Appurtenancy"]. This Court concludes that ORS 540.510 does not apply to the
23 facts of this case. The facts of this case involve a "spring", not a watercourse.
24 ORS 540.510 applies to certificated water rights, and the case at bar does not
25 involve a certificated water right, but instead involves a spring. A case similar to
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1 the case at bar is *Dressler vs. Issacs*, 217 Or 586, 343 P2d 714 (1959). In
2 *Dressler*, the Court held the Plaintiff's use of spring water had not been
3 "appurtenant" to plaintiff's land. ORS 540.510 has its origins from Chapter 219,
4 Oregon Laws 1927, but was not discussed in *Dressler*. The Court concludes that
5 ORS 540.510 was not discussed in *Dressler*, because, as in the case at bar,
6 ORS 540.510 does not apply to springs. Finally, the Court also observes that
7 spring and spring water is not "appurtenant" to the land, but rather a part of the
8 land itself. See:

9
10 *Skinner vs. Silver*, 158 Or 81, at 98, 75 P2d 21 (1938). ["It might be said that the
11 springs and water in question are similar to appurtenances, but we do not deem
12 them as appurtenant to the land, but rather a part thereof (citations omitted)."]

13 V. The subject spring and waters therefrom are "private" water, not public
14 water, and not subject to appropriation. See:

15 *Beisell vs. Wood*, 182 Or 66, at 71, 185 P2d 570 (1947). ["It is private water, a part of
16 the land upon which it arises, and belongs to the owner of that land."]

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22 whose waters, because of seepage and evaporation, would not flow in any
23 channel or to or upon the adjacent property, it is not subject to appropriation by
24 anyone other than the owner of the land."]

25 *ORS 537.800*. ["However, the person upon whose lands the seepage or spring waters
26 first arise, shall have the right to the use of such waters."]

VI. Creek Bank Farm's claimed right to the subject spring water is not
"appurtenant" to its property.

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NOW THEREFORE IT IS HEREBY ORDERED AND ADJUDGED that:

(1) Defendants' Motion for a Directed Verdict, Dismissing Creek Bank Farm's Complaint with prejudice, should be and hereby is Granted.

(2) Plaintiff's Complaint should be and hereby is DISMISSED with prejudice, and Plaintiff shall take nothing thereby.

(3) The PRELIMINARY INJUNCTION (and any other similar Orders, including Restraining Orders) entered by the Court on the 10th day of July, 1992 (filed 15 July 1992) should be and hereby is/are TERMINATED and DISSOLVED, and are declared to be of no further force or effect.

(4) Based upon the stipulation of the Parties, the Counterclaim of Defendants is resolved as follows:

(a) That certain "Water Easement", more particularly described in paragraph (2) [pages 2, 3 and 4] of that certain "Property Agreement", dated the 1st day of July, 1988, and recorded in the Deed Records of Douglas County in Book 1026, beginning at Page 601, as Instrument No. 88-09417, should be and hereby is declared to be TERMINATED and EXTINGUISHED, and of no further force or effect. Without limitation of any other provision of their Judgment, the provisions of this subparagraph (a) are expressly declared to be a Final Adjudication of the legal rights, duties and responsibilities between the Parties -- Plaintiff, Creek Bank Farm, Inc. (and their agents), and Defendants, Geronimo Bayard, Mary C. Bayard, Cynthia Mandero and Steve Mandero (and their agents).

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(b) Plaintiff, Creek Bank Farm, Inc., and its agents, including but not limited to Marvin Hegge and Maureen Hegge, expressly acknowledge and the Court declares that neither Plaintiff nor its agents (including but not limited to Marvin Hegge and Maureen Hegge) have any right to be upon Defendants' real property (including any real property owned by Geronimo Bayard, Mary C. Bayard, Cynthia Mandero and/or Steve Mandero) by virtue of an Easement (including but not limited to the "Water Easement") created by that certain "Property Agreement" [including but not limited to paragraph (2) of said Property Agreement], dated the 1st day of July, 1988 and recorded in the Deed Records of Douglas County in Book 1026, beginning at Page 601, as Instrument No. 88-09417. Plaintiff (including but not limited to its agents, Marvin Hegge and Maureen Hegge), further acknowledge and the Court declares that it is unlawful from them to journey upon, traverse upon or otherwise be found upon Defendants' real property (including the real property of Geronimo Bayard, Mary C. Bayard, Cynthia Mandero and/or Steve Mandero), unless such act is done by or under some other specific lawful authority [which lawful authority does not include any right of easement formerly found in the Parties' "Property Agreement", dated 1 July 1988, and recorded in the Deed Records of Douglas County in Book 1026, beginning at Page 601, as Instrument No. 88-09417].

As used in this paragraph, Defendants' property includes that real property described in Exhibit "B" of said Property Agreement, dated 1 July 1988, Deed Records of Douglas County: Book 1026, beginning at Page 601, Instrument No. 88-09417.

1 (5) Defendants' claim for attorney's fees shall be made, heard and considered
2 pursuant to and under the provisions of ORCP 68.

3 DATED and SIGNED this 3 day of September, 1992.

6 WILLIAM L. LASSWELL
7 William L. Lasswell, Judge

8 Approved as to Form:

9 

11 Charles F. Lee
12 of Attorneys for Plaintiff

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Oregon

WATER
RESOURCES
DEPARTMENT

F A X C O V E R S H E E T

Watermaster
District 15

DATE: 9/3/92

TO: Reed Marbut / Don Knauer

DEPT: OWRD

FAX NO.: 378-8130

FROM: Gary Ball

DEPT: WM #15

FAX NO.: 440-4408

PLEASE RESPOND ASAP

10 PAGES, INCLUDING COVER

M E S S A G E

Here it is.

According to Garrison, evidence of 5 years non-use was not presented.

Apparently, it was the Court's view that it was Plaintiff's burden to show continuous use and that the Plaintiff's failed to make that case.

Call to Steve Sanders

RULES

- 1) Spring water P.P.
- 2) K
- 3) If Greek Bank Farm does not appeal - use to reject SWR
(Very persuasive evidence)



Room 103
Justice Bldg.
Roseburg, OR
97470-1719
(503) 440-4255

1 Randolph Lee Garrison, P.C.
 2 OSB No. 76142
 3 Attorneys at Law
 4 430 S.E. Main
 5 P.O. Box 266
 6 Roseburg, OR 97470-0049
 7 Telephone: (503) 672-4441

FILED
 140
 09/03/1992
 SEP 3 1992

8 Of Attorneys for Bayards

9 IN THE CIRCUIT COURT OF THE STATE OF OREGON
 10 FOR DOUGLAS COUNTY

11 CREEK BANK FARM, INC.,

Case No. 92CV-1350CC

12 Plaintiff,

13 vs.

FINDINGS OF FACT

14 GERONIMO BAYARD and MARY C.
 15 BAYARD, CYNTHIA MANDERO and
 16 STEVE MANDERO, Husband
 17 and Wife,

CONCLUSIONS OF LAW

18 Defendants.

FINAL JUDGMENT

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19 This matter having regularly come on for Trial on the Parties' claims for a
 20 Permanent Injunction on the 28th, 29th and 30th days of July, 1992.

21 Trial was held before William L. Lasswell, Judge, without jury.

22 Plaintiff, Creek Bank Farm, having presented evidence and presented the
 23 testimony of the following witnesses: Charles McCord, Cynthia Madero, Robert
 24 Speedy, William Smets, Mike Hall, Cayrl Swan, Geronimo Bayard, William Link, Steve
 25 Madero, Marvin Hegge, Delia E. Trumbo and Kathleen A. Reed;

26 Plaintiff, Creek Bank Farm, having rested Plaintiff's case at the close of the
 presentation of Plaintiff's evidence and testimony. Pursuant to ORCP 54, at the close
 of Plaintiff's case, the Defendants having moved the Court for a Directed Verdict,

1 Dismissing Plaintiff's case, with prejudice. Defendants' Motion for a Directed Verdict
 2 was made on the following grounds and for the following reasons: (a) The facts
 3 presented by Plaintiff have not shown that Plaintiff, Creek Bank Farm, has a right to the
 4 relief requested; and, (b) the law does not provide Plaintiff with a right to the relief
 5 sought by Plaintiff;
 6

7 NOW THEREFORE, THE COURT MAKES THE FOLLOWING FINDINGS OF
 8 FACT:
 9

10 (A) Creek Bank Farm's real property is commonly addressed as 149 Rolling
 11 Ridge Road, Oakland, Douglas County, Oregon. Said real property is more particularly
 12 described in Exhibit "A", attached to Plaintiff's Complaint.

13 (B) The relationship of a spring located off Creek Bank Farm's property, which
 14 is dispute between the Parties, is depicted in the Exhibits admitted into evidence,
 15 including Defendants' Exhibits 123 and 117.

16 (C) The subject spring is on real property currently owned by Defendant, Mary
 17 C. Bayard.

18 (D) The subject spring water does not flow from or off of the real property
 19 owned by Defendant, Mary C. Bayard.

20 (E) Water from the subject spring is apparent only as the same is captured in
 21 a "collection box". The spring water does not flow in any particular direction. There is
 22 no bank or channel formed by the spring water. The spring water does not form a
 23 watercourse.
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1 (F) Creek Bank Farm purchased its real property from Defendant, Cynthia
2 Mandero, in a transaction including documents dated 1 July 1988.

3 (G) At the time Creek Bank Farm purchased its real property, the then Seller,
4 Cynthia Mandero, retained ownership of the real property upon which the subject spring
5 is located. Prior to the filing of Creek Bank Farm's Complaint, Defendant Cynthia
6 Mandero, sold the real property upon which the subject spring is located to Defendant
7 Mary C. Bayard. At the present time, the real property upon which the spring is located
8 is owned by Defendant Mary C. Bayard.
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10 (H) At or near the time of the filing of its Complaint, Creek Bank Farm was then
11 using water from the subject spring for livestock and as a source of domestic water to
12 the residence of Marvin and Maureen Hegge. Marvin and Maureen Hegge are the sole
13 shareholders of Plaintiff, Creek Bank Farm, Inc. The residence of Marvin and Maureen
14 Hegge is located on Creek Bank Farm's real property.
15

16 (I) Despite evidence that the spring had been used as a source of water for
17 the Creek Bank Farm property at various times, particularly in 1932 and from 1967 to
18 1979, the evidence was insufficient to establish that the spring had been used
19 continuously and without any interruption for two years or more during the period from
20 1909 to 1932 and during the period 1932 to 1967.
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22 NOW THEREFORE, THE COURT MAKES THE FOLLOWING CONCLUSIONS
23 OF LAW:

24 I. The water which is the subject of this action is a "spring" and not a
25 "watercourse". See:
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1 *Beisell vs. Wood*, 182 Or 66, at 71, 185 P2d 570 (1947). ["A spring . . . may be defined
 2 as a place where water issues naturally from the surface of the earth (citations
 3 omitted). The water of the spring involved in the present case does not pass from
 4 the tract of land upon which it arises, or becomes a source of any watercourse.
 It merely seeps or flows directly into a small marsh upon the same tract, having
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 8 channels may sometimes be dry . . . which even to the casual glance bears the
 unmistakable impress of the frequent action of running water, and through which
 it has flowed from time immemorial . . ."]

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 10 II. The spring subject of this litigation and waters thereof, are the exclusive
 11 property of the Defendant, Mary C. Bayard. The water of the spring is not subject to
 12 appropriation by Creek Bank Farm. See:

13 *Skinner vs. Silver*, 158 Or 81, at 94, 75 P2d21 (1938), quoting from *Henrici vs.*
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8 exclusive use of such waters as against competing claimants (citations omitted)."]

9 IV. Creek Bank Farm bases its claim on two statutes: ORS 539.010 ["1909
10 Vested Rights"] and ORS 540.510 ["Appurtenancy"].

11 (a) In order to be entitled to a "1909 Vested Right", Creek Bank Farm
12 must show a continuous actual application of water to a specific beneficial use,
13 from February 24, 1909 to present. The continuous actual application of water
14 to the specific beneficial use must not be abandoned for a period of more than
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16 the subject spring water had actually been applied to a specific beneficial use and
17 Creek Bank Farm has failed to so present such evidence for at least the following
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1 the case at bar is *Dressler vs. Issacs*, 217 Or 586, 343 P2d 714 (1959). In
 2 *Dressler*, the Court held the Plaintiff's use of spring water had not been
 3 "appurtenant" to plaintiff's land. ORS 540.510 has its origins from Chapter 219,
 4 Oregon Laws 1927, but was not discussed in *Dressler*. The Court concludes that
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 24 anyone other than the owner of the land."]

25 *ORS 537.800*. ["However, the person upon whose lands the seepage or spring waters
 26 first arise, shall have the right to the use of such waters."]

VI. Creek Blank Farm's claimed right to the subject spring water is not
 "appurtenant" to its property.

1 NOW THEREFORE IT IS HEREBY ORDERED AND ADJUDGED that:

2
3 (1) Defendants' Motion for a Directed Verdict, Dismissing Creek Bank Farm's
4 Complaint with prejudice, should be and hereby is Granted.

5 (2) Plaintiff's Complaint should be and hereby is DISMISSED with prejudice,
6 and Plaintiff shall take nothing thereby.

7 (3) The PRELIMINARY INJUNCTION (and any other similar Orders, including
8 Restraining Orders) entered by the Court on the 10th day of July, 1992 (filed 15 July
9 1992) should be and hereby is/are TERMINATED and DISSOLVED, and are declared
10 to be of no further force or effect.

11
12 (4) Based upon the stipulation of the Parties, the Counterclaim of Defendants
13 is resolved as follows:

14 (a) That certain "Water Easement", more particularly described in
15 paragraph (2) [pages 2, 3 and 4] of that certain "Property Agreement", dated the
16 1st day of July, 1988, and recorded in the Deed Records of Douglas County in
17 Book 1026, beginning at Page 601, as Instrument No. 88-09417, should be and
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19 force or effect. Without limitation of any other provision of their Judgment, the
20 provisions of this subparagraph (a) are expressly declared to be a Final
21 Adjudication of the legal rights, duties and responsibilities between the Parties --
22 Plaintiff, Creek Bank Farm, Inc. (and their agents), and Defendants, Geronimo
23 Bayard, Mary C. Bayard, Cynthia Madero and Steve Madero (and their agents).
24

25 ///

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(b) Plaintiff, Creek Bank Farm, Inc., and its agents, including but not limited to Marvin Hegge and Maureen Hegge, expressly acknowledge and the Court declares that neither Plaintiff nor its agents (including but not limited to Marvin Hegge and Maureen Hegge) have any right to be upon Defendants' real property (including any real property owned by Geronimo Bayard, Mary C. Bayard, Cynthia Madero and/or Steve Madero) by virtue of an Easement (including but not limited to the "Water Easement") created by that certain "Property Agreement" [including but not limited to paragraph (2) of said Property Agreement], dated the 1st day of July, 1988 and recorded in the Deed Records of Douglas County in Book 1026, beginning at Page 601, as Instrument No. 88-09417. Plaintiff (including but not limited to its agents, Marvin Hegge and Maureen Hegge), further acknowledge and the Court declares that it is unlawful from them to journey upon, traverse upon or otherwise be found upon Defendants' real property (including the real property of Geronimo Bayard, Mary C. Bayard, Cynthia Madero and/or Steve Madero), unless such act is done by or under some other specific lawful authority [which lawful authority does not include any right of easement formerly found in the Parties' "Property Agreement", dated 1 July 1988, and recorded in the Deed Records of Douglas County in Book 1026, beginning at Page 601, as Instrument No. 88-09417].

As used in this paragraph, Defendants' property includes that real property described in Exhibit "B" of said Property Agreement, dated 1 July 1988, Deed Records of Douglas County: Book 1026, beginning at Page 601, Instrument No. 88-09417.

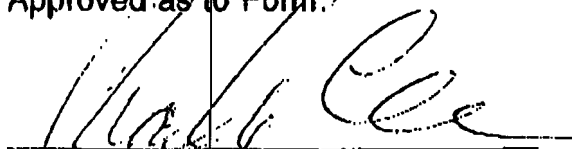
1 (5) Defendants' claim for attorney's fees shall be made, heard and considered
2 pursuant to and under the provisions of ORCP 68.

3 DATED and SIGNED this 3 day of September, 1992.

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WILLIAM L. LASSWELL
William L. Lasswell, Judge

Approved as to Form:)



Charles F. Lee
of Attorneys for Plaintiff

LAW OFFICES OF
RANDOLPH LEE GARRISON, P.C.
ATTORNEYS AT LAW
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ROSBURG, OREGON 97470-0049
Phone: (503) 672-4441

9-2-92 @ 3:45 9-3-92

SEP - 8 1992

CLERK OF DISTRICT COURT

FILED AT 1:40 O'CLOCK P.M.

SEP 03 1992

1 Randolph Lee Garrison, P.C.
OSB No. 76142
2 Attorneys at Law
3 430 S.E. Main
P.O. Box 266
4 Roseburg, OR 97470-0049
Telephone: (503) 672-4441

5
6 Of Attorneys for Bayards

7 IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR DOUGLAS COUNTY

8 CREEK BANK FARM, INC.,
9 Plaintiff,

10 vs.

11 GERONIMO BAYARD and MARY C.
12 BAYARD, CYNTHIA MANDERO and
13 STEVE MANDERO, Husband
and Wife,

14 Defendants.
15

Case No. 92CV-1350CC

FINDINGS OF FACT

CONCLUSIONS OF LAW

FINAL JUDGMENT

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16 This matter having regularly come on for Trial on the Parties' claims for a
17 Permanent Injunction on the 28th, 29th and 30th days of July, 1992.

18 Trial was held before William L. Lasswell, Judge, without jury.

19 Plaintiff, Creek Bank Farm, having presented evidence and presented the
20 testimony of the following witnesses: Charles McCord, Cynthia Madero, Robert
21 Speedy, William Smets, Mike Hall, Cayrl Swan, Geronimo Bayard, William Link, Steve
22 Madero, Marvin Hegge, Delia E. Trumbo and Kathleen A. Reed;
23

24 Plaintiff, Creek Bank Farm, having rested Plaintiff's case at the close of the
25 presentation of Plaintiff's evidence and testimony. Pursuant to ORCP 54, at the close
26 of Plaintiff's case, the Defendants having moved the Court for a Directed Verdict,

1 Dismissing Plaintiff's case, with prejudice. Defendants' Motion for a Directed Verdict
2 was made on the following grounds and for the following reasons: (a) The facts
3 presented by Plaintiff have not shown that Plaintiff, Creek Bank Farm, has a right to the
4 relief requested; and, (b) the law does not provide Plaintiff with a right to the relief
5 sought by Plaintiff;
6

7 NOW THEREFORE, THE COURT MAKES THE FOLLOWING FINDINGS OF
8 FACT:
9

10 (A) Creek Bank Farm's real property is commonly addressed as 149 Rolling
11 Ridge Road, Oakland, Douglas County, Oregon. Said real property is more particularly
12 described in Exhibit "A", attached to Plaintiff's Complaint.

13 (B) The relationship of a spring located off Creek Bank Farm's property, which
14 is dispute between the Parties, is depicted in the Exhibits admitted into evidence,
15 including Defendants' Exhibits 123 and 117.

16 (C) The subject spring is on real property currently owned by Defendant, Mary
17 C. Bayard.

18 (D) The subject spring water does not flow from or off of the real property
19 owned by Defendant, Mary C. Bayard.
20

21 (E) Water from the subject spring is apparent only as the same is captured in
22 a "collection box". The spring water does not flow in any particular direction. There is
23 no bank or channel formed by the spring water. The spring water does not form a
24 watercourse.

25 ///
26

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1 (F) Creek Bank Farm purchased its real property from Defendant, Cynthia
2 Madero, in a transaction including documents dated 1 July 1988.

3 (G) At the time Creek Bank Farm purchased its real property, the then Seller,
4 Cynthia Madero, retained ownership of the real property upon which the subject spring
5 is located. Prior to the filing of Creek Bank Farm's Complaint, Defendant Cynthia
6 Madero, sold the real property upon which the subject spring is located to Defendant
7 Mary C. Bayard. At the present time, the real property upon which the spring is located
8 is owned by Defendant Mary C. Bayard.
9

10 (H) At or near the time of the filing of its Complaint, Creek Bank Farm was then
11 using water from the subject spring for livestock and as a source of domestic water to
12 the residence of Marvin and Maureen Hegge. Marvin and Maureen Hegge are the sole
13 shareholders of Plaintiff, Creek Bank Farm, Inc. The residence of Marvin and Maureen
14 Hegge is located on Creek Bank Farm's real property.
15

16 (I) Despite evidence that the spring had been used as a source of water for
17 the Creek Bank Farm property at various times, particularly in 1932 and from 1967 to
18 1979, the evidence was insufficient to establish that the spring had been used
19 continuously and without any interruption for two years or more during the period from
20 1909 to 1932 and during the period 1932 to 1967.
21

22 NOW THEREFORE, THE COURT MAKES THE FOLLOWING CONCLUSIONS
23 OF LAW:

24 I. The water which is the subject of this action is a "spring" and not a
25 "watercourse". See:
26

1 *Beisell vs. Wood*, 182 Or 66, at 71, 185 P2d 570 (1947). ["A spring . . . may be defined
2 as a place where water issues naturally from the surface of the earth (citations
3 omitted). The water of the spring involved in the present case does not pass from
4 the tract of land upon which it arises, or becomes a source of any watercourse.
It merely seeps or flows directly into a small marsh upon the same tract, having
no perceptible outlet."]

5 *Simmons vs. Winters*, 21 Or 35, 27 P. 7, 28 Am St Rep 727 (1891). [A watercourse
6 " . . . is a stream of water, usually flowing in a particular direction, with well-
7 defined banks and channels, but that the water need not flow continuously -- the
8 channels may sometimes be dry . . . which even to the casual glance bears the
unmistakable impress of the frequent action of running water, and through which
it has flowed from time immemorial . . ."]

9
10 II. The spring subject of this litigation and waters thereof, are the exclusive
11 property of the Defendant, Mary C. Bayard. The water of the spring is not subject to
12 appropriation by Creek Bank Farm. See:

13 *Skinner vs. Silver*, 158 Or 81, at 94, 75 P2d21 (1938), quoting from *Henrici vs.*
14 *Paulson*, 134 Or 222, 293 P. 424 (1930). ["The spring and waters thereof,
15 involved herein, are the exclusive property of defendants. The water of the spring
is not subject to appropriation by the plaintiffs . . ."]

16 *Klamath Development Co. vs. Lewis*, 136 Or 445, at 450, 299 P. 705 (1931). ["A spring
17 whose waters, because of seepage and evaporation, would not follow in any
18 channel or to or upon adjacent property, is not subject to appropriation by anyone
other than the owner of the land."]

19 *Tarduer vs. Dollina and Elliott*, 206 Or 1, at 42 - 43, 288 P2d 796 (1955). ["Where the
20 springs in question did not constitute headwaters of a spring, they belong
exclusively to owners of the land where they arose."]

21 *Morrison vs. Officer*, 48 Or 569, at 570, 87 P. 896 (1906). [" . . . where . . . the admitted
22 quantity is so insignificant that a surface stream is impossible, when spread over
23 the width of ground . . . the use of the water belongs to the person upon whose
land it first arises."]

24 III. A spring is not subject to appropriation by any person other than the
25 landowner. See:
26

1 *Beisell vs. Wood*, 182 Or 66, at 71, 185 P2d 570 (1947). [" . . . a spring is not subject
2 to appropriation by any person other than the owner of such land."]

3 *Klamath Development Co. vs. Lewis*, 136 Or 445, at 450, 299 P. 705 (1931). ["A spring
4 . . . is not subject to appropriation by anyone other than the owner of the land."]

5 *Fitzstephens vs. Watson*, 218 Or 185, at 194, 344 P2d 221 (1959). ["Where spring
6 waters arising on an owner's land do not flow from the spring in such a manner
7 as to constitute a watercourse, it has been held that the owner is entitled to the
8 exclusive use of such waters as against competing claimants (citations omitted)."]

9 IV. Creek Bank Farm bases its claim on two statutes: ORS 539.010 ["1909
10 Vested Rights"] and ORS 540.510 ["Appurtenancy"].

11 (a) In order to be entitled to a "1909 Vested Right", Creek Bank Farm
12 must show a continuous actual application of water to a specific beneficial use,
13 from February 24, 1909 to present. The continuous actual application of water
14 to the specific beneficial use must not be abandoned for a period of more than
15 two years. Creek Bank Farm has failed to present evidence sufficient to find that
16 the subject spring water had actually been applied to a specific beneficial use and
17 Creek Bank Farm has failed to so present such evidence for at least the following
18 periods: Prior to 1932 and for the period 1933 to 1967. Having failed to present
19 such evidence, Creek Bank Farm has failed to present evidence sufficient to
20 make a "1909 Vested Rights" claim, pursuant to ORS 539.010.

21 (b) Creek Bank Farm also bases its claim upon ORS 540.510
22 ["Appurtenancy"]. This Court concludes that ORS 540.510 does not apply to the
23 facts of this case. The facts of this case involve a "spring", not a watercourse.
24 ORS 540.510 applies to certificated water rights, and the case at bar does not
25 involve a certificated water right, but instead involves a spring. A case similar to
26

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1 the case at bar is *Dressler vs. Issacs*, 217 Or 586, 343 P2d 714 (1959). In
2 *Dressler*, the Court held the Plaintiff's use of spring water had not been
3 "appurtenant" to plaintiff's land. ORS 540.510 has its origins from Chapter 219,
4 Oregon Laws 1927, but was not discussed in *Dressler*. The Court concludes that
5 ORS 540.510 was not discussed in *Dressler*, because, as in the case at bar,
6 ORS 540.510 does not apply to springs. Finally, the Court also observes that
7 spring and spring water is not "appurtenant" to the land, but rather a part of the
8 land itself. See:

10 *Skinner vs. Silver*, 158 Or 81, at 98, 75 P2d 21 (1938). ["It might be said that the
11 springs and water in question are similar to appurtenances, but we do not deem
12 them as appurtenant to the land, but rather a part thereof (citations omitted)."]

13 V. The subject spring and waters therefrom are "private" water, not public
14 water, and not subject to appropriation. See:

15 *Beisell vs. Wood*, 182 Or 66, at 71, 185 P2d 570 (1947). ["It is private water, a part of
16 the land upon which it arises, and belongs to the owner of that land."]

17 *Fitzstephens vs. Watson*, 218 Or 185, at 194 - 195, 344 P2d 221 (1959). ["Where
18 spring waters arising on an owner's land do not flow from the spring in such a
19 manner as to constitute a watercourse, it has been held that the owner is entitled
to the exclusive use of the waters as against competing claimants . . ."]

20 *Klamath Development Co. vs. Lewis*, 136 Or 445, at 450, 299 P. 705 (1931). ["A spring
21 whose waters, because of seepage and evaporation, would not flow in any
22 channel or to or upon the adjacent property, it is not subject to appropriation by
anyone other than the owner of the land."]

23 *ORS 537.800*. ["However, the person upon whose lands the seepage or spring waters
24 first arise, shall have the right to the use of such waters."]

25 VI. Creek Bank Farm's claimed right to the subject spring water is not
26 "appurtenant" to its property.

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1 NOW THEREFORE IT IS HEREBY ORDERED AND ADJUDGED that:

2

3 (1) Defendants' Motion for a Directed Verdict, Dismissing Creek Bank Farm's
4 Complaint with prejudice, should be and hereby is Granted.

5 (2) Plaintiff's Complaint should be and hereby is DISMISSED with prejudice,
6 and Plaintiff shall take nothing thereby.

7 (3) The PRELIMINARY INJUNCTION (and any other similar Orders, including
8 Restraining Orders) entered by the Court on the 10th day of July, 1992 (filed 15 July
9 1992) should be and hereby is/are TERMINATED and DISSOLVED, and are declared
10 to be of no further force or effect.

11 (4) Based upon the stipulation of the Parties, the Counterclaim of Defendants
12 is resolved as follows:

13 (a) That certain "Water Easement", more particularly described in
14 paragraph (2) [pages 2, 3 and 4] of that certain "Property Agreement", dated the
15 1st day of July, 1988, and recorded in the Deed Records of Douglas County in
16 Book 1026, beginning at Page 601, as Instrument No. 88-09417, should be and
17 hereby is declared to be TERMINATED and EXTINGUISHED, and of no further
18 force or effect. Without limitation of any other provision of their Judgment, the
19 provisions of this subparagraph (a) are expressly declared to be a Final
20 Adjudication of the legal rights, duties and responsibilities between the Parties --
21 Plaintiff, Creek Bank Farm, Inc. (and their agents), and Defendants, Geronimo
22 Bayard, Mary C. Bayard, Cynthia Manderero and Steve Manderero (and their agents).

25 ///

26

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(b) Plaintiff, Creek Bank Farm, Inc., and its agents, including but not limited to Marvin Hegge and Maureen Hegge, expressly acknowledge and the Court declares that neither Plaintiff nor its agents (including but not limited to Marvin Hegge and Maureen Hegge) have any right to be upon Defendants' real property (including any real property owned by Geronimo Bayard, Mary C. Bayard, Cynthia Madero and/or Steve Madero) by virtue of an Easement (including but not limited to the "Water Easement") created by that certain "Property Agreement" [including but not limited to paragraph (2) of said Property Agreement], dated the 1st day of July, 1988 and recorded in the Deed Records of Douglas County in Book 1026, beginning at Page 601, as Instrument No. 88-09417. Plaintiff (including but not limited to its agents, Marvin Hegge and Maureen Hegge), further acknowledge and the Court declares that it is unlawful from them to journey upon, traverse upon or otherwise be found upon Defendants' real property (including the real property of Geronimo Bayard, Mary C. Bayard, Cynthia Madero and/or Steve Madero), unless such act is done by or under some other specific lawful authority [which lawful authority does not include any right of easement formerly found in the Parties' "Property Agreement", dated 1 July 1988, and recorded in the Deed Records of Douglas County in Book 1026, beginning at Page 601, as Instrument No. 88-09417].

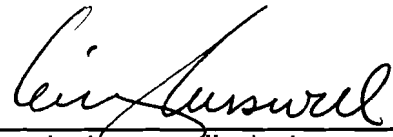
As used in this paragraph, Defendants' property includes that real property described in Exhibit "B" of said Property Agreement, dated 1 July 1988, Deed Records of Douglas County: Book 1026, beginning at Page 601, Instrument No. 88-09417.

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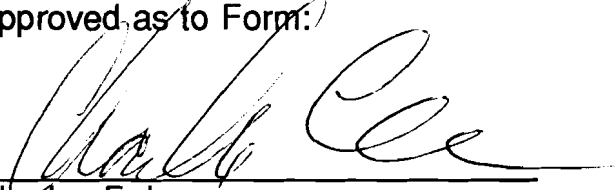
(5) Defendants' claim for attorney's fees shall be made, heard and considered pursuant to and under the provisions of ORCP 68.

DATED and SIGNED this 3 day of September, 1992.



William L. Lasswell, Judge

Approved as to Form:



Charles F. Lee
of Attorneys for Plaintiff

7-23-92

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Fax: (503) 672-4442

28 July 1992

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JUL 31 1992

WATER RESOURCES DEPT.
SALEM, OREGON

Don Knauer
Adjudication Specialist
Oregon Water Resources Dept.
3850 Portland Road, N.E.
Salem, Oregon 97310

RE: Creek Bank Farm, Inc.
SWR-47
Supplemental Affidavit of Kathleen A. Reed

Dear Mr. Knauer:

As anticipated from my last letter sent to you (24 July 1992), enclosed please find a copy of a Supplemental Affidavit from Kathleen A. Reed.

This Affidavit from Kathleen Reed makes clear that she sold the subject property to Bayard (then known as Floto, and her then husband) and to Cynthia A. Mandero (then known as Speedy, and to her then husband) in 1973 (not 1975), as expressed in her prior Affidavit.

Also, Kathleen Reed's Affidavit states that she has no knowledge of the use of the spring after the sale of the property, namely 14 February 1973.

Also enclosed is an Affidavit from Robert K. Speedy.

From the Affidavits which have been given to you, it remains undisputed that the spring has not been used continuously at the Hegge (Creek Bank Farm) house, and there was a lapse in use:

- For three years (from June, 1974 until May, 1977). And,
- For six years (December, 1977 until July, 1983).

See Affidavits of Bayard, Mandero and Smith, previously submitted to you.

Don Knauer
28 July 1992
Page 2

We also anticipate a Supplemental Affidavit from Richard C. Bemis, which will be submitted to you when it is signed.

Very truly yours,

RANDOLPH LEE GARRISON, P.C.

By


Randolph Lee Garrison

RLG:ba
Enclosure
c (w/enc): Geronimo and Mary Bayard
Darryl Johnson
Gary Ball, Watermaster
[lwater6.586]

RANDOLPH LEE GARRISON, P.C.

ATTORNEYS AT LAW

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JUL 31 1992

WATER RESOURCES DEPT.
SALEM, OREGON

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5 Of Attorneys for Geronimo and Mary Bayard

6 BEFORE THE OREGON WATER RESOURCES DEPARTMENT
STATE OF OREGON

7 IN THE MATTER OF)
8)

Case No. SWR-47

9 CREEK BANK FARM, INC.)
10)
11 _____)

SUPPLEMENTAL AFFIDAVIT
OF
KATHLEEN A. REED

12 STATE OF OREGON)
13)

14 County of Douglas)

)ss.

15 I, KATHLEEN A. REED, being first duly sworn on oath, depose and say:

16 (1) My purpose for making this Affidavit is to supplement and correct
17 my previous Affidavit made and signed by me on November 21, 1991.
18

19 (2) My husband (now deceased) and I owned the property upon which
20 Hegges (Creek Bank Farms) now reside from 1969 to February 14, 1973 (not 1975).

21 On February 14, 1973, we sold the subject property to Mary Bayard (then known as
22 Floto, and her then husband) and to Cynthia A. Mandero (then known as Speedy,
23 and to her then husband). A copy of the first page of the Real Estate Contract, is
24 attached to this Affidavit.
25

26 ///

///

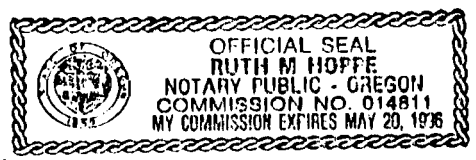
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(503) 672-4441

1 (3) My knowledge of the spring and the use of the spring water on the
2 subject property ended when we sold the property, namely February 14, 1973.

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Kathleen A. Reed
Kathleen A. Reed

SUBSCRIBED and SWORN to before me this 25th day of July, 1992.



(SEAL)

Ruth M Hoffe
Notary Public for Oregon
My commission expires: MAY 20, 1996

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REAL ESTATE CONTRACT

IN THIS CONTRACT, made and entered into this 14th day of February, 1973, KENNETH T. REED and KATHLEEN A. REED, husband and wife, hereinafter designated "Sellers", hereby agree to sell to ROBERT D. FLOTO and MARY C. FLOTO, husband and wife, as tenants by the entirety, an undivided one-half interest, and ROBERT K. SPEEDY and CYNTHIA A. SPEEDY, husband and wife, as tenants by the entirety, an undivided one-half interest, hereinafter designated "Purchasers," who hereby agree to buy from Sellers, in consideration of a purchase price in the amount of Two Hundred Ten Thousand and no/100 Dollars (\$210,000.00), the following described real property situated in Douglas County, Oregon, to-wit:

BEGINNING at the Northwest corner of the Elisha Williamson Donation Land Claim No. 48, Section 12, Township 25 South, Range 6 West, being also the Northwest corner of a parcel of land conveyed to George A. and Della Emma Trumbo described in Volume 100, page 205 of Deed Records of Douglas County, Oregon, and being also a point in the South boundary of a parcel of land conveyed to the said Trumbos as described in Volume 123, page 149 of said records; thence West along the South boundary thereof to the Southwest corner thereof; thence North along the West boundary of said parcel to the Northwest corner thereof; thence East along the North boundary of said parcel to the Southwest corner of that parcel of land conveyed to Verll A. and Hazel M. Martin as described in Volume 126, Page 110, of said records; thence Northerly along the West boundary of said parcel as follows: North 1° West 14.0 chains, North 76° West 2.95 chains, North 36° 45' West 4.02 chains, North 32° 15' West 1.84 chains, North 5° 10' West 8.60 chains; West to a Westerly boundary of the J. L. Gilbert Donation Land Claim No. 61, said Township and Range, at the Southeast corner of Lot 2, Section 1, said Township and Range; and North along said Donation Land Claim boundary and East boundary of said Lot 2 to an angle corner of said Donation Land Claim, being the Northwest corner of said Martin parcel, and also a point in the South boundary of a parcel of land conveyed to W. A. Davidson as described in Volume 58, page 125, of said records; thence West along a South boundary of said Donation Land Claim and a South boundary of said Davidson parcel to a Southwest corner of said Gilbert Donation Land Claim, being also a point in the line between Sections 1 and 2, said Township and Range; thence South along said section line to the quarter corner between said Sections, being also a Southeast corner of said Davidson parcel; thence West along the East-West mid-section line of said Section 2 and along

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WATER RESOURCES DEPT.
SALEM, OREGON

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5 Of Attorneys for Geronimo and Mary Bayard

6 BEFORE THE OREGON WATER RESOURCES DEPARTMENT
STATE OF OREGON

7 IN THE MATTER OF)

Case No. SWR-47

8)
9 CREEK BANK FARM, INC.)

AFFIDAVIT OF ROBERT SPEEDY
ON SPRING DIVERSION

10)
11 _____)
12 STATE OF OREGON)

13 County of Douglas)

)ss.

14 I, ROBERT K. SPEEDY, being first duly sworn on oath, depose and say:

15 (1) I currently reside in Sutherlin, Oregon. I previously resided in what
16 is now one and the same as the Hegge (Creek Bank Farm) residence [149 Rolling
17 Ridge Road, Oakland, Oregon 97462]. I have first hand knowledge of the herein
18 recited facts.
19

20 (2) From 1973 until April of 1987, I lived with my family in what is now
21 one and the same as the Hegge (Creek Bank Farm) residence. During that time,
22 we had adequate domestic water to run the household (up to 5 members) from the
23 existing well near the house. We also ran livestock averaging over 250 head of
24 ewes and 40 head of cattle, and watered them from other wells and ponds.
25

26 (3) From June 1974 to May 1977, the water from the subject spring

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1 located now on the Bayard property was entirely, exclusively and solely used by a
2 mobile home located on the other side of the Ranch. This mobile home was where
3 my sister-in-law, Mary Bayard lived, namely 3285 Highway 138 West, Oakland,
4 Oregon 97462.

5 Between December 1977 and July 1983 the subject spring water was
6 again entirely, solely and exclusively used by the same mobile home. During this
7 time, my father and mother-in-law (Jesse and Lillian Smith) resided in the mobile
8 home [3285 Highway 138 West, Oakland, Oregon 97462]. My sister-in-law, Mary
9 Bayard, also resided in the mobile home from December 1977 until December 1978.
10

11 I am especially aware of the information contained in this Affidavit
12 because I maintained or helped maintain the spring water lines.

13
14
15 Robert K. Speedy
Robert K. Speedy

16 SUBSCRIBED and SWORN to before me this 31st day of July, 1992.



21
22
23
24
25
26

Tacy L. Silva
Notary Public for Oregon
My commission expires: 11-6-95

Route Slip



Date 7/24/92

| TO: | Name | Division/Section | Initial | Date |
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| 1. | <i>Reed Marbut</i> | | | |
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WATER RESOURCES DEPT.
SALEM, OREGON

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My testimony of 6/30/92.

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| FROM: <i>Crany Ball</i> | Phone No. |
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G. Ball - D

1 THE COURT: Have a seat.

2 DIRECT EXAMINATION

3 BY MR. GARRISON:

4 Q. Would you state your full name, sir?

5 A. Gary Lee Ball.

6 Q. And your occupation?

7 A. Water Master of District 15.

8 Q. Does District 15 include Douglas County?

9 A. Yes.

10 Q. Are you familiar with what we've been referring
11 to in this matter as the Hegge property or the Creek Bank
12 Farm property?

13 A. (No response).

14 Q. Are you generally aware of where that property
15 is?

16 A. Correct.

17 Q. And is that in your district?

18 A. Correct.

19 Q. As a Water Master, what do your duties entail?

20 A. My primary function is to distribute water
21 between users in time of short supply.

22 Q. What are your other occupations or what are your
23 other duties?

24 A. To advise the public in their water-related
25 inquires, water-law related inquires.

G. Ball - D

1 Q. Are you general familiar with the water law and
2 regulations?

3 A. Correct.

4 Q. Okay. Is that knowledge generally necessary as a
5 part of your performance of your duties?

6 A. Yes.

7 Q. How long have you been Water Master?

8 A. Since August of 1981.

9 Q. And before that, were you involved in the water
10 department?

11 A. Yes. I was an assistant Water Master from 1977
12 till 1981.

13 Q. Is Water Master the title and do you hold the
14 office of the most senior person in charge of water in
15 Douglas County?

16 A. Well, correct, yes.

17 Q. I'd like you to look at what I believe is
18 Plaintiff's Exhibit 1. Plaintiff's 1. I'm asking you to
19 be handed Plaintiff's Exhibit 1.

20 Have you seen that document before, Mr. Ball?

21 A. Yes.

22 Q. Is that a water right application made by the
23 Hegges or Creek Bank Farm?

24 A. That's a surface water registration statement
25 that was prepared for them, yes.

G. Ball - D

1 Q. To the best of your knowledge, the department has
2 not taken any action to approve or disapprove that
3 registration certificate, correct?

4 A. That's correct.

5 Q. And that registration made by the Hegges is as of
6 yet unadjudicated?

7 A. Correct.

8 Q. So at this point, it is simply an application, is
9 that the correct understanding?

10 A. I guess the proper term would be a claim to an
11 undetermined right, yeah.

12 Q. I'd ask you to be handed Exhibit 111, please.

13 Exhibit 111 has also been put on this mylar so that we
14 can all understand where we're referencing it. Are you
15 generally familiar with this area through your prior
16 experience as Water Master, namely, the Hegge property
17 being owned down in the lower right-hand corner and
18 property owned by Manderos and the Bayards to the north of
19 that?

20 A. I'm familiar through examination of the -- of
21 these documents, correct.

22 Q. Now, I want you to assume for a moment that what
23 is now depicted as the Bayard, Mandero and Hegge property,
24 I want you to assume for a moment that that property was
25 all in one common ownership, okay? And that's, for the

G. Ball - D

1 sake of putting a label on that common ownership, let's
2 call it the Speedy property, okay? And let's assume
3 further that there is a spring approximately in this area
4 here that I'm indicating and on the map that's Exhibit 111.
5 I'm indicating a spring that's anywhere from the X with a
6 zero around it to this other area which is indicated by a
7 circle.

8 Now, if this property were in common ownership and if
9 the spring began and terminated on the same property, would
10 there be any need to obtain -- would there be any need by
11 the property owner to obtain a permit to use that spring
12 water from your office or any other office of the state?

13 A. No.

14 Q. Is that because a landowner has, as a matter of
15 right, and it's not necessary to obtain a permit to use
16 spring water that originates and terminates on their own
17 property?

18 A. That's correct.

19 Q. Stated another way, a permit from the state isn't
20 necessary for spring water that originates and terminates
21 on their own property?

22 A. Correct.

23 Q. Now, let's assume, further, that Speedy, who
24 owned the common ownership, divides off what is now
25 indicated on Exhibit 111 the Hegge property and let's

G. Ball - D

1 assume that when Speedy does that that there is an
2 agreement entered into between her as seller and Hegges as
3 purchaser and in evidence as Exhibit 101, I think, is that
4 agreement.

5 First, are you familiar and have you examined prior to
6 today Exhibit 101, which is an agreement between Speedy and
7 Hegge?

8 A. Yes, I have.

9 Q. Now, the administration of the water laws -- let
10 me start over.

11 In your examination of Exhibit 101, you recognize, do
12 you not, that there was an agreement, portions of the
13 agreement dealt with the use of spring water on the Speedy
14 property by Hegges on the Hegge properties?

15 A. Correct.

16 Q. And that agreement provided limits to which the
17 spring water could be used and also provided a event that
18 the spring water use may be terminated. Do you recognize
19 those elements of the agreement?

20 A. Mm-Mmm (affirmative). Yes, I do.

21 Q. Now, is there anything about your administration
22 of the water laws or in your administration of the water
23 laws that would prevent or prohibit the seller of property,
24 in my example Speedys, or the purchasers of the property,
25 in my example, Hegges, from entering into such an

G. Ball - D

1 agreement?

2 MR. LEE: I'd object, your Honor. It seems to be
3 calling for a legal conclusion, which is a matter for the
4 Court. If there's some law on this, then Mr. Garrison
5 needs to be showing it to you rather than trying to elicit
6 through a lay witness.

7 THE COURT: That's what I was thinking as this
8 line of questioning developed. However, recalling your
9 witness, you asked him a lot of legal questions, did you
10 not?

11 MR. LEE: Not nearly as many as Mr. Garrison did,
12 as I recall, your Honor.

13 THE COURT: Well, I know you --

14 MR. LEE: And more to the point, I don't recall
15 asking -- I was asking what he did.

16 THE COURT: Well, you were asking all kinds of
17 hypotheticals that I thought had some legal content but, of
18 course, that doesn't answer this question.

19 Is there some other way you could ask this question
20 maybe that --

21 MR. GARRISON: I have asked it very carefully and
22 planfully and that I asked this witness in the
23 administration of the water laws, which is specifically his
24 bailiwick as Water Master of this county, whether or not
25 there would be any prohibition in his administration of the

G. Ball - D

1 laws that would recognize this agreement in affecting his
2 administration of the laws. Keep in mind, he's already
3 testified that he is the Water Master, that he administers
4 the water laws in this county and that he advises persons
5 with regard to these rights.

6 More -- not more importantly but equally importantly,
7 Mr. Lee has filed a lengthy memorandum in this matter. I
8 have also filed a points and authorities in this matter.
9 Mr. Lee and I are diametrically opposed. Mr. Lee claims
10 that there is some sort of capital letters in a
11 constitutional sense "statutory water right," quote
12 unquote, and that that statute -- that statutory water
13 right supersedes this agreement and while he hasn't used
14 the words, makes it null and void as to any -- any effect
15 on these people.

16 THE COURT: Okay. Let me ask you a question.
17 Maybe this will get around it, maybe it will cause more
18 problems than if I remain quiet. Assuming that this --
19 you've got this agreement. Does the result of that
20 agreement result in, well, lead to your denial of Hegge's
21 application for water rights on that spring? I mean, in
22 other words, because there is an agreement, do you,
23 therefore, deny their application for water rights?

24 MR. GARRISON: That question does lead to more
25 problems. It leads to more problems because the question

G. Ball - D

1 of access to the water is independent of whether or not
2 there is a water right.

3 MR. LEE: Your Honor, I think also the issue is
4 that Mr. Ball hasn't indicated that he decides water
5 rights. That's an issue that's made administratively
6 through the Water Resources Department, which is what we're
7 trying to get this issue decided.

8 THE COURT: Okay, I don't know, you know -- well,
9 I was trying to make things simple and obviously I didn't
10 but I mean if he were to answer Mr. Garrison's question,
11 where would it lead us? I mean would that clarify the
12 issues? I mean he's simply asking this witness whether
13 these parties can contract -- can enter into a contract
14 concerning his water right. That's what he's asking him,
15 right?

16 MR. GARRISON: Yes. More specifically, whether or
17 not there's anything in the administration of the water
18 laws that would prohibit these parties from contracting
19 regarding this spring.

20 THE COURT: I'm going to let him answer that
21 question. Go ahead.

22 Q. Do you understand the question?

23 A. Yeah. There's nothing in the law that would
24 prevent two parties from making an agreement on a source of
25 water of this nature.

G. Ball - D

1 Q. Okay. Under the example that I just gave to you?

2 A. Right.

3 Q. Now, Mr. Ball, Exhibit 1, which is the water
4 right application, Plaintiff's Exhibit 1, am I referring to
5 that number correctly? Yes.

6 Plaintiff's Exhibit 1, which is the 1909 water right
7 registration, the unadjudicated water application, Mr. Lee
8 has asserted as one of the issues in this case a statute.

9 First, in adjudicating that water right, what factor
10 of ORS will the department which you're a part of use to
11 adjudicate that water right? What Chapter of the ORS?

12 A. 539.

13 Q. And Mr. Lee, during the course of argument in his
14 brief in this case, has referred to a statute 540.510,
15 which I may have provided the Court a copy of before, but
16 I'll provide it to the Court, and I'd also like to provide
17 to Mr. Ball a copy of the statute that I just mentioned,
18 540.510.

19 Now, in the adjudication, in your department's
20 adjudication of that application, which is Plaintiff's
21 Exhibit 1, will 540.510 play any bearing whatsoever?

22 A. No.

23 Q. Why?

24 A. 540.510 refers to a certificated water right, and
25 provides for a method by which one can change the place of

G. Ball - D

1 use, change the point of diversion of a certificated water
2 right. The -- there is no way statutorily one can change
3 the place of the use of a -- of a un-- of a undetermined
4 claim of the use of water.

5 Q. Okay. Now, let's make sure that our terms are
6 accurate here. Plaintiff's Exhibit 1, which is your pre
7 1909 water right application, that is not request of your
8 department for a certificated water right, correct?

9 A. Ultimately, it is. It's a request -- it's a
10 claim at which some later time the department in
11 conjunction with the courts will determine a certificate of
12 water right.

13 Q. Okay. So there is -- there is also a -- another
14 kind of certificated water right and that's the
15 certificated water right that is -- what I refer to as the
16 garden variety right, for example, to go and appropriate
17 water out of a stream?

18 A. Right. You're referring to the standard
19 application permit process.

20 Q. Okay. And, again, for a spring, a certificated
21 right is not necessary for the landlord to apply for a
22 spring that originates and terminates on his own property?

23 A. That's correct.

24 Q. In your department's determination of the pre
25 1909 water right registration, which is Plaintiff's Exhibit

G. Ball - D

1 1, will your department take into account at all whether or
2 not there is access by the applicant to the water that he
3 is applying for.

4 MR. LEE: Your Honor, I might as well for what
5 it's worth, I'd like to have a continuing objection to this
6 question and all these other questions as to the legal
7 import or as to how some other department -- as to how the
8 Water Resources Department would act from this witness.

9 THE COURT: Well, maybe you should clarify. What
10 his connection is with the water resources. He's Water
11 Master.

12 THE WITNESS: I'm an employee of the State of
13 Oregon Water Resources Department.

14 THE COURT: Okay. So I'll let him answer the
15 question.

16 Q. Did you understand the question, sir?

17 A. Would you repeat it, please.

18 Q. Yeah. In the determination of the Plaintiff's
19 Exhibit 1, water right registration, 19 -- pre 1909, what,
20 if anything, will the department take into account, what
21 consideration will it make of access over other person's
22 property by the applicant to get to the water?

23 A. None.

24 Q. In other words, the department will not take into
25 account at all whether or not there is access to the water

G. Ball - D

1 even assuming they said you have a water right?

2 A. They said?

3 Q. Let me restate that. Let's assume that
4 Plaintiff's Exhibit 1 is adjudicated by the Water Resources
5 Department, the person that you're an employee of, the
6 Water Master for this district. Let's assume that that's
7 adjudicated in Mr. and Mrs. Hegge's favor, or Creek Bank
8 Farm's favor. During the course of that adjudication, will
9 they take -- will the Water Resources Department take into
10 account access to the water?

11 A. Yes and no.

12 Q. Explain, please.

13 A. They will need to establish, indeed, that they
14 are using the water or have been using the water. But as
15 far as to whether or not they have a legal agreement to --
16 for their conveyance of the water, the department will not
17 consider that in its deliberation.

18 Q. Okay. And why not? In other words, who else is
19 to consider that, if anyone?

20 A. It's a matter for the parties who own the
21 properties that are involved to, and the courts, to -- to
22 agree to or decide.

23 Q. So in the adjudication of that pre 1909
24 registration, while there will be an adjudication of use of
25 the water, there will be no adjudication of access to it?

G. Ball - D

1 A. Correct.

2 Q. That's a matter for the courts?

3 A. That's correct.

4 Q. Does a water right itself give to the applicant a
5 right of access to the water over another person's
6 property?

7 A. It does not.

8 Q. Armed with a water right, even an adjudicated
9 water right in the applicant's favor, does that water right
10 give the applicant a right to trespass on somebody else's
11 property?

12 A. No.

13 Q. Now, the discussion that we've been having about
14 water, water right applications -- I need to start over,
15 I'm sorry.

16 Have you had conversations with Mrs. Hegge as Water
17 Master of Douglas County?

18 A. I have.

19 Q. And have the substance of what we've been
20 speaking about here today all been discussed with Mrs.
21 Hegge?

22 A. That's correct.

23 Q. So she is not without knowledge from you of the
24 things that you've been telling the Court today?

25 A. That's correct.

G. Ball - X

1 MR. GARRISON: I have nothing further. Thank you
2 very much.

3 CROSS-EXAMINATION

4 BY MR. LEE:

5 Q. Mr. Ball, you're the Water Master. Who is it
6 that decides issues of the validity of water rights claims,
7 particularly pre 1909 water rights claims?

8 A. The Director of the Water Resources Department is
9 empowered to examine the claims and make certain
10 determinations about the claims but ultimately the Court
11 will make the determination as to the existence or the
12 nonexistence of a water right.

13 Q. The division does an administrative adjudication
14 which can then be reviewed or is that reviewed and either
15 confirmed or not confirmed by the Court, is that right?

16 A. That's correct.

17 Q. This scenario that Mr. Garrison keeps reciting,
18 the spring originates and terminates on a single owner's
19 property, have you been out to see that spring?

20 A. No, I haven't.

21 Q. And, quite obviously, you weren't out there and
22 didn't see that spring in 1906, right?

23 A. No, I did not.

24 Q. By statute, all water in the state belongs to the
25 state, is that right?

G. Ball - X

1 A. Correct.

2 Q. And by practice, water which arises from a spring
3 and flows either across the property line or into other
4 waters of the state, that's public water, is that right?

5 A. That's correct.

6 Q. And that question is one that is determined by
7 the status of the water at the time that appropriation is
8 initiated, is that right?

9 A. Hopefully.

10 Q. Okay. In other words, you can't take a bubbling
11 artesian well that flows fifty feet and falls into the
12 river, build a wall around it and suck it all up and say
13 this is no longer government water, this is now my private
14 water, is that right?

15 A. (No response).

16 Q. Or do you know?

17 A. I believe that there was -- I'm not -- I am
18 acquainted with a certain case where it seemed as though
19 someone was prevented from -- who was able to prevent
20 spring waters from leaving his land but I'm not acquainted
21 with the details of that case. But in general, a spring
22 flow -- that flows off the property, then it's public
23 water.

24 Q. If the water from the spring flows off the water
25 -- off the property, absent whatever appropriation takes

G. Ball - X

1 place, is that right?

2 A. Mm-Mmm (affirmative).

3 Q. And as a general notion, any water, whether it
4 belongs to the landowner or not -- well, let me back up for
5 a minute. Water that is appropriated becomes appurtenant
6 to the premises upon which the water is used, is that
7 right?

8 A. That's correct.

9 Q. Okay. Now, if this were a brand new problem and
10 the water from this spring flowed from what's now Bayard's
11 property or allegedly Bayard's property on to Manderos's
12 property, Manderos would need to file an application for a
13 permit to use that water, is that right?

14 A. Correct.

15 Q. Okay. And --

16 MR. GARRISON: Your Honor, this is all very
17 interesting. Mr. Hegge himself has testified that the
18 water from the spring remains on Bayard's property and I
19 guess I'm frustrated with being able to get through this
20 hearing at four-thirty. Mr. Lee is asking abstract
21 questions ad nauseum that have nothing to do with this
22 case.

23 Are we going to be done with this today? I'd like to
24 argue this case. I'd like to be through with it and, you
25 know, if the Court is inclined to grant another temporary

G. Ball - X

1 restraining order, I'm real disturbed over the lengthy
2 cross-examination about nothing to do with this case.

3 THE COURT: Well, whether it has or hasn't, I
4 guess I ultimately decide that, and I -- I'm going to let
5 him ask a few more questions and so go ahead, Mr. Lee.

6 Q. Now, for people to appropriate water from this
7 spring, assuming that it's public water now, requires a
8 water permit, right?

9 MR. GARRISON: Well, that is a fact not in
10 evidence. That's --

11 MR. LEE: Your Honor --

12 MR. GARRISON: -- water now and therefore, I
13 object.

14 MR. LEE: A rising spring, what we have so far has
15 been a hypothetical question about the water from the
16 spring starting and terminating all on the same property as
17 well. I'm asking what I don't think is a hypothetical
18 question but --

19 THE COURT: You're asking more a question
20 connected to what the present status of the property is
21 involved are. I'll let you go ahead.

22 Q. You haven't seen the property, right?

23 A. Well, I've had -- I made no determining right. I
24 never was -- although I do get into making these types of
25 determinations but if a spring in its natural condition

G. Ball - X

1 flows off the property of origin in a water course, then
2 the permit is required to appropriate it, whether you're
3 the owner or -- owner of the property on which it arises or
4 some other user.

5 Q. Other than what the Heggess have done, has anybody
6 filed a permit for use of this water?

7 A. What was that again?

8 Q. Other than what the Heggess have filed has any
9 other party filed an administrative claim?

10 A. I have researched the water right records and I
11 find no -- I found no permits or pending applications for
12 this source.

13 Q. The -- and as I understand it, if the Heggess --
14 the Heggess, having made this claim to the use of the
15 spring, other interested parties have the ability to
16 intervene in the administrative proceeding to show or claim
17 that the Heggess would not be justified in using the water,
18 is that correct?

19 MR. GARRISON: What's that got to do with this
20 emergency request for a temporary restraining order, your
21 Honor? I'm sorry, I'm getting real impatient about getting
22 done today.

23 MR. LEE: Your Honor, the fact that there's a
24 procedure that exists is all I'm going to bring out.

25 THE COURT: Okay. You can answer the question yes

G. Ball - X

1 or no, if you know the answer.

2 A. There is a procedure whereby persons can assert
3 certain things in order that the director might deny or
4 reject the claim. And that's -- those are specified in the
5 administrative rules, Chapter 690.

6 THE COURT: Go ahead.

7 Q. And do you know if that procedure has been begun
8 with the Heggess' claim and apparently some recent
9 objections from the other parties?

10 A. Yes. I guess you could say it's begun because
11 letters were written which ostensibly contest the claim.

12 Q. Now, in what you've been saying to Mr. Garrison,
13 do you hold yourself out as an expert on the historical
14 development of water law in Oregon, including the leap
15 between riparian rights and the appropriation laws,
16 particularly as they develop between 1890 and 1910?

17 MR. GARRISON: Objection, irrelevant.

18 THE COURT: Sustained.

19 MR. LEE: Your Honor, on the question of
20 relevance, whatever the previous opinion testimony they
21 have had depends on large part on familiarity with those
22 legal issues.

23 THE COURT: I disagree.

24 MR. LEE: That's all I'd have.

25 THE COURT: Mr. Johnson.

G. Ball - ReD

1 MR. JOHNSON: No questions, your Honor.

2 THE COURT: Mr. Garrison.

3 REDIRECT EXAMINATION

4 BY MR. GARRISON:

5 Q. Once again, last question, for a spring that
6 arises on your own property and terminates on your own
7 property, is there any need to get a permit from your
8 office?

9 MR. LEE: Again, your Honor, I'd object that this
10 is calling for a question about the interpretation of the
11 water law 1893, 1909 and the present?

12 THE COURT: Okay, overruled.

13 A. Okay. 537.800 essentially authorizes a person to
14 use water from a spring on his own, whoever owns the
15 property, without a permit.

16 Q. So if you looked for a permit in your office for
17 a spring that originated and terminated on a owner's own
18 property, you wouldn't really expect to find one, correct?

19 A. Not necessarily. There are people that don't
20 file water rights, whether or not there's a spring doesn't
21 make (inaudible).

22 MR. GARRISON: No further questions.

23 MR. LEE: Nothing more.

24 THE COURT: Okay. You may step down. May he be
25 excused? Yes, you're excused.



STATE OF OREGON

INTEROFFICE MEMO

TO: Don Knauer, Adjudication Specialist

DATE: 07/24/92

FROM: Gary Ball, Watermaster *GB*

SUBJECT: SWR-47 Field Inspection Report

On July 15, 1992, I accompanied Mr. Geronimo Bayard on an inspection of the spring development on his property which is the source of water for SWR-47.

The development apparently consists of some sort of perforated pipe buried in a depression having the appearance of a swale approximately 1-2 feet wide and 20 to 25 feet long. There was grass and tussock growing in the depression, with no water on the surface of the ground. There were 3 galvanized 1" pipes sticking out of the depression about 4 feet tall whose purpose is unknown. They seemed to be attached to whatever is buried in the depression. There was no evidence of a well defined channel or watercourse * issuing from the depression.

Approximately 20 to 30 feet down the hill from the depression, a 3/4" black plastic pipe comes out of the ground into a collection box. The Hegge's supply line had been removed from the box, and a pencil sized stream of water was coming out the outlet and onto the ground. I estimated the flow to be less than 1 gallon per minute. The water was soaking into the ground immediately below the box, and there was no evidence of a watercourse in this location either.

Approximately 50 feet down the hill from the collection box was a large circular plastic tank (about 4 feet in diameter and 6 feet tall) which Mr. Bayard claimed to have installed for both the Hegge's and the Mandero's use. It was roughly half full. He indicated that the judge had issued an order preventing him from diversion of the spring water, and that he had immediately disconnected the tank from the collection box.

There is no doubt in my mind that the source of water involved here is not subject to appropriation, i.e., a private spring which Mr. Bayard could use on his own property without a permit from the Water Resources Department.

* A watercourse, as defined in Simmons v. Winters, 21 Or. 35 (27 Pac. 7, 28 Am. St. Rep. 727), "is a stream of water, usually flowing in a particular direction, with well-defined banks and channels, but that the water need not flow continuously - the channels may sometimes be dry * * which even to the casual glance bears the unmistakable impress of the frequent action of running water, and through which it has flowed from time immemorial. * *"

1 Randolph Lee Garrison, P.C.
OSB No. 76142
2 Attorneys at Law
430 S.E. Main/P.O. Box 266
3 Roseburg, OR 97470-0049
Telephone: (503) 672-4441

4 Of Attorneys for Bayards

5 IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR DOUGLAS COUNTY

6 CREEK BANK FARM, INC.,
7
8 Plaintiff,
9 vs.
10 GERONIMO BAYARD and MARY C.
BAYARD, CYNTHIA MANDERO and
11 STEVE MANDERO, Husband
and Wife,
12 Defendants.

Case No. 92CV-1350CC

**CIVIL SUBPOENA
(Duces Tecum)**


LAW OFFICES OF
RANDOLPH LEE GARRISON, P.C.
ATTORNEYS AT LAW
430 S.E. MAIN - P. O. Box 266
ROSEBURG, OREGON 97470-0049
(503) 672-4441

13 TO: Gary Ball
Oregon Water Resources Department
Justice Building, Room 103
14 Douglas County Courthouse
Roseburg, Oregon 97470
15 440-4255

16 You are hereby required to appear in the above entitled **Court in Courtroom**
17 **No. "D" (Judge Lasswell)** of the **County Courthouse of Douglas County** in the **City of**
18 **Roseburg, Oregon**, on **Tuesday/Wednesday**, the **28th/29th day of July, 1992**, at **9:30**
19 **o'clock a.m.**, to testify as a witness in the above entitled case on behalf of Defendants,
Geronimo and Mary Bayard, and to remain until the testimony is closed unless you are

20 You are commanded to bring with you any and all books, papers, documents
21 or tangible things related to Creek Bank Farm, Inc., and the above entitled matter, Case
No. 92CV-1350CC.

22 Dated: 17 July 1992
23 Issued By:



Randolph Lee Garrison
Attorney at Law
P.O. Box 266, Roseburg, OR 97470
Telephone: (503) 672-4441

25 I hereby certify that the foregoing is a complete and exact copy of the original
26 Subpoena in the above entitled case as the same appears for service.

Witness/Mileage Fee: _____
Randolph Lee Garrison

7-24-92

LAW OFFICES OF
RANDOLPH LEE GARRISON, P.C.
ATTORNEYS AT LAW

OFFICE AT 430 S.E. MAIN
MAILING ADDRESS: P.O. BOX 266
ROSEBURG, OR 97470-0049
Phone: (503) 672-4441
Fax: (503) 672-4442

24 July 1992

RECEIVED

JUL 27 1992

WATER RESOURCES DEPT.
SALEM, OREGON

Don Knauer
Adjudication Specialist
Oregon Water Resources Dept.
3850 Portland Road, N.E.
Salem, Oregon 97310

RE: Creek Bank Farm, Inc.
SWR-47
Revocation of Delia E. Trumbo's Affidavit

Dear Mr. Knauer:

Marvin and Maureen Hegge (Creek Bank Farm) previously submitted to you in support of their Application for a Pre-1909 Water Right Registration Claim an Affidavit from Delia E. Trumbo.

Enclosed please find a copy of a further Affidavit from Delia E. Trumbo withdrawing and revoking the Affidavit submitted by the Hegges. As you will read in Delia Trumbo's Affidavit, she states that she was "mislead" by the Hegges.

In support of their Claim, Hegges have also submitted Affidavits from Richard C. Bemis and Kathleen A. Reed. I have prepared Supplemental Affidavits for these persons as well. The new Affidavits are in the process of being signed and will be sent to you when we receive them.

As you can see (especially with the revocation of the Trumbo Affidavit submitted by the Hegges), the basis and support upon which Hegges (Creek Bank Farm) are making a Pre-1909 Water Right Registration Claim has been deceptive.

So far, I have submitted five Affidavits to you. From these Affidavits, please observe that it is undisputed that the spring's site of use was diverted away from the Hegges' residence for substantial periods of time:

Don Knauer
24 July 1992
Page 2

- For three years (June of 1974 until May of 1977);
- For six years (December 1977 until July 1983).

Accordingly, there should be no endorsement or approval of Heggess' Water Right Application.

Very truly yours,

RANDOLPH LEE GARRISON, P.C.

By 

Randolph Lee Garrison

RLG:tl
Enclosure
cc (w/enc): Geronimo and Mary Bayard
Darryl Johnson
Gary Ball
Delia E. Trumbo
[lwater5.586]

RANDOLPH LEE GARRISON, P.C.

ATTORNEYS AT LAW

RECEIVED

JUL 27 1992

WATER RESOURCES DEPT.
SALEM, OREGON

1 Randolph Lee Garrison, P.C.
OSB No. 76142
2 Attorneys at Law
430 S.E. Main
3 P.O. Box 266
Roseburg, OR 97470-0049
4 Telephone: (503) 672-4441
5 Of Attorneys for Bayards

6 IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR DOUGLAS COUNTY

7 CREEK BANK FARM, INC.,
8
9 Plaintiff,

Case No. 92CV-1350CC

10 vs.

11 GERONIMO BAYARD and MARY C.
12 BAYARD, CYNTHIA MANDERO and
STEVE MANDERO, Husband
13 and Wife,
14 Defendants.

AFFIDAVIT OF
DELIA C. TRUMBO
REVOKING PRIOR AFFIDAVIT

15 STATE OF OREGON)
16 County of Douglas)ss.

17 I, DELIA C. TRUMBO, being first duly sworn on oath, depose and say:

18 1. It has been brought to my attention that I signed a 1-page Affidavit
19 on November 21, 1991. A copy of this Affidavit is attached.
20

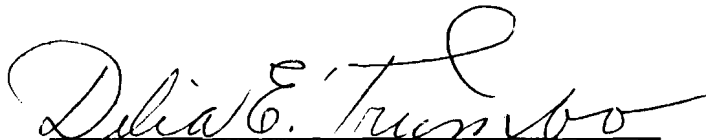
21 2. I hereby withdraw and revoke this Affidavit. I do so because the
22 attached Affidavit is being used by Marvin and/or Maureen Hegge for a purpose
23 other than that which I intended. I feel I was misled by Marvin and Maureen Hegge.

24 3. Mr. Hegge and Mrs. Hegge implied and led me to believe that they
25 own not only the Bemis ranch house but also the property on which the spring
26 source is located. I now know that this is not true.

LAW OFFICES OF
RANDOLPH LEE GARRISON, P.C.
ATTORNEYS AT LAW
430 S.E. MAIN - P. O. Box 266
ROSEBURG, OREGON 97470-0049
(503) 672-4441

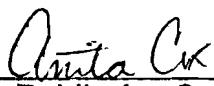
1 4. I did not really understand the Affidavit which Hegges gave me to
2 sign.

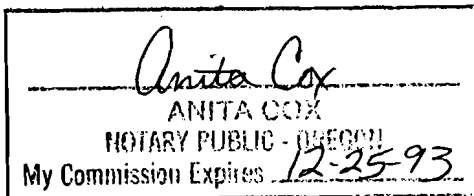
3 5. I have no personal knowledge of the spring or where the spring
4 water has been used after approximately 1915.

5
6 
7 Delia E. Trumbo

8 SUBSCRIBED and SWORN to before me this 23rd day of July, 1991.

9
10
11 (SEAL)

12 
13 Notary Public for Oregon
14 My commission expires: 12-25-93

15 
16
17
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23
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25
26

LAW OFFICES OF
RANDOLPH LEE GARRISON, P.C.
ATTORNEYS AT LAW
430 S.E. MAIN - P. O. BOX 266
ROSEBURG, OREGON 97470-0049
(503) 672-4441

AFFIDAVIT

My name is Delia E. Trumbo. I reside at 102 Rochester Bridge Road, Oakland, Oregon.

I was born in 1905. I have lived in this vicinity all of my life. I am familiar with the source of water that serves the property in Sections 2, 11, and 12, Township 25 South, Range 6 West, W.M. (presently owned by Mr. and Mrs. Marvin Hegge (Bank Farms, Inc.).

The source of water is a spring located on the southeast 1/4 of Section 2. I have first-hand knowledge that it has provided the farm with water for domestic and livestock use from approximately 1917 to the present time. I can remember going to the spring as a child. I can also remember Mr. F. A. Bemis doing maintenance work on the spring as well as Mr. William Link, both of whom owned the property at one time or another.

My earliest memory of the delivery system (approximately 1917) is that of a pipeline from the spring to the house. It is my opinion that the water has been used for domestic and livestock use since 1905, and that the delivery system from 1905 to 1917 was also a pipeline. However, my first-hand knowledge is limited from approximately 1917 to the present time.

Delia E. Trumbo Nov 21, 1991
Delia E. Trumbo Date

Notary Public for State of Oregon

W. J. Jenson Nov 21, 1991
Witness Date

My Commission Expires 3-19-93

RR

RECEIVED

7-15-92

JUL 17 1992

LAW OFFICES OF RANDOLPH LEE GARRISON, P.C. ATTORNEYS AT LAW
WATER RESOURCES DEPT. OFFICE AT 430 S.E. MAIN
M, OREGON MAILING ADDRESS: P.O. BOX 266
ROSEBURG, OR 97470-0049
Phone: (503) 672-4441
Fax: (503) 672-4442

15 July 1992

Don Knauer
Adjudication Specialist
Oregon Water Resources Dept.
3850 Portland Road, N.E.
Salem, Oregon 97310

RE: Creek Bank Farm, Inc.
SWR-47

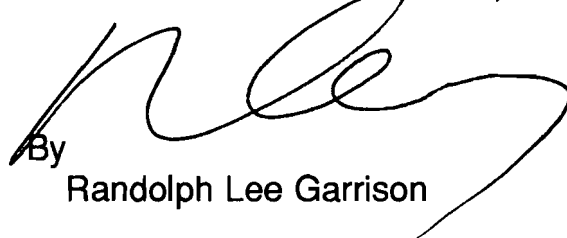
Dear Mr. Knauer:

Enclosed please find a (Second) Affidavit concerning Creek Bank Farm's abandonment of any purported Pre-1909 water right registration claim. This further Affidavit is from Mary Bayard and states that Creek Bank Farm has abandoned use of the subject spring by voluntary agreement.

This and our previously submitted Affidavits express the reasons for our objection to Creek Bank Farm's application for endorsement of a pre-1909 water right registration claim.

Very truly yours,

RANDOLPH LEE GARRISON, P.C.

By 
Randolph Lee Garrison

RLG:ba
Enclosure
c (w/enc): Geronimo and Mary Bayard
Darryl Johnson
Gary Ball
Charles Lee

[Iwater4.586]

RECEIVED

JUL 17 1992

WATER RESOURCES DEPT.
SALEM, OREGON

1 Randolph Lee Garrison, P.C.
OSB No. 76142
2 Attorneys at Law
430 S.E. Main/P.O. Box 266
3 Roseburg, OR 97470-0049
Telephone: (503) 672-4441
4

5 Of Attorneys for Geronimo and Mary Bayard

6 BEFORE THE OREGON WATER RESOURCES DEPARTMENT
STATE OF OREGON

7 IN THE MATTER OF)
8)
9 CREEK BANK FARM, INC.)
10)
11 _____)

Case No. SWR-47

**SECOND AFFIDAVIT
OF MARY BAYARD
ON SPRING ABANDONMENT**

12 STATE OF OREGON)
13 County of Douglas)ss.

14 I, MARY BAYARD, being first duly sworn on oath, depose and say:

15 (1) I have first hand knowledge of the herein recited facts. I make this
16 (Second) Affidavit for the purpose of contesting Creek Bank Farm's application for
17 a Pre-1909 Water Right.
18

19 (2) Attached hereto is a "Property Agreement". This Property
20 Agreement has been signed by Creek Bank Farm and has been recorded in the
21 Deed Records of Douglas County, Book 1026, Beginning at Page 601, as
22 Instrument No. 88-09417.
23

24 By this Agreement, Creek Bank Farm voluntarily abandoned (terminated)
25 any claim it had to the subject spring water, upon the fulfillment of construction of
26 a well on Creek Bank Farm's property.

LAW OFFICES OF
RANDOLPH LEE GARRISON, P.C.
ATTORNEYS AT LAW
430 S.E. MAIN - P. O. BOX 266
ROSEBURG, OREGON 97470-0049
(503) 672-4441

LAW OFFICES OF
RANDOLPH LEE GARRISON, P.C.
ATTORNEYS AT LAW
430 S.E. MAIN - P. O. Box 266
ROSEBURG, OREGON 97470-0049
(503) 672-4441

1 Fulfillment of the obligation to construct a well on Creek Bank Farm's
2 property has been accomplished. Specifically, the well and holding tanks have been
3 installed. Arrangements between the Parties were made to put in connecting pipes.
4 See letter from Creek Bank Farm's Attorney, which is attached and dated 8 May
5 1992. Creek Bank Farm has refused further access to their property to hook up the
6 connecting pipes. A copy of a notice received from Creek Bank Farm is attached.
7 Accordingly, Creek Bank Farm has repudiated, rejected and unequivocally waived
8 any further performance concerning construction of the well.
9

10 In addition, pursuant to the Property Agreement, when Creek Bank Farm
11 had a right to use the water, its right was subordinate to the spring owner's right to
12 water. Creek Bank Farm has had only the right to the "excess water". As the right
13 to water was subordinate, Creek Bank Farm would have no superior right to the
14 spring water, which is what would be necessary in order for Creek Bank Farm's Pre-
15 1909 registration to be endorsed by the Water Resources Board.
16

17 In any event, Paragraph (2)(d) [Page 3] of the Property Agreement
18 provides that Creek Bank Farm's right to use the water and the spring is to cease
19 and terminate, and thereby Creek Bank Farm has in fact voluntarily abandoned and
20 is no longer entitled to use the water from the spring.
21

22 _____
Mary Bayard

23 SUBSCRIBED and SWORN to before me this ____ day of July, 1992.
24

25
26 (SEAL)

Notary Public for Oregon
My commission expires:

LAW OFFICES OF
RANDOLPH LEE GARRISON, P.C.
ATTORNEYS AT LAW
450 S.E. MAIN - P. O. BOX 266
ROSEBURG, OREGON 97470-0049
(503) 672-4441

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15 1909 registration to be endorsed by the Water Resources Board.
16

17 In any event, Paragraph (2)(d) [Page 3] of the Property Agreement
18 provides that Creek Bank Farm's right to use the water and the spring is to cease
19 and terminate, and thereby Creek Bank Farm has in fact voluntarily abandoned and
20 is no longer entitled to use the water from the spring.
21

22 
23 Mary Bayard

24 SUBSCRIBED and SWORN to before me this 16th day of July, 1992.



27 
28 Notary Public for Oregon
29 My commission expires: 11-6-95

(2)

PROPERTY AGREEMENT

(Including Easements and Right of First Refusal)

1978

UNION TITLE & ESTATE SERVICES

THIS AGREEMENT is hereby made and entered into on the date hereinafter provided, by and between CREEK BANK FARM, INC., an Oregon Corporation (hereinafter referred to as "Creek Bank Farm"), and CYNTHIA A. SPEEDY (hereinafter referred to as "Speedy"):

WHEREAS, Speedy has sold (or intends to sell) to Creek Bank Farm certain real property, which real property is more particularly described in the attached Exhibit "A", which Exhibit is made a part hereof as if recited verbatim herein;

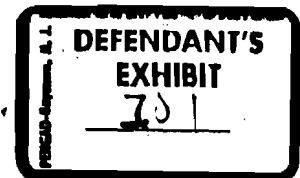
WHEREAS, after the sale of said property from Speedy to Creek Bank Farm (described in the attached Exhibit "A"), Speedy will retain and remain the owner of the real property described in the attached Exhibit "B", which Exhibit is made a part hereof as if recited verbatim herein;

WHEREAS, Speedy intends to grant to Creek Bank Farm an easement for the use of water from a spring as more particularly described herein;

WHEREAS, Creek Bank Farm intends to grant Speedy an easement for water lines, more particularly described herein;

WHEREAS, Speedy intends to grant a "Right of First Refusal" concerning the real property described in Exhibit "B";

NOW THEREFORE, THE PARTIES AGREE UPON THE FOLLOWING TERMS, CONDITIONS AND COVENANTS:



(1) RECITALS: The above recitals are true.

(2) WATER EASEMENT: Speedy hereby grants to Creek Bank Farm a nonexclusive easement for the use of water from the currently existing and currently developed spring, which spring is located on the real property described in the attached Exhibit "B". The right of easement granted in this paragraph (2) shall be limited as follows:

(a) Creek Bank Farm shall have a right to use only that water which is in excess of the water used by Speedy. As used in this subparagraph (2)(a), the term "excess" means that Creek Bank Farm has the right to use said water from said spring, but only when either:

- (i) The flow of water to Speedy is greater than four gallons per minute; or
- (ii) Speedy's holding tanks are more than one-half full.

Whenever Speedy's flow of water is less than four gallons per minute and Speedy's holding tanks are less than one-half full, then Creek Bank Farm shall have no right to the use of said water from said spring.

(b) The right of easement granted to Creek Bank Farm in this paragraph (2), includes:

- (i) The right to use said water from the currently existing and currently developed spring;
- (ii) The right of ingress and egress over the real property more particularly described in Exhibit "B", but only for the purpose of access to and from the currently existing and currently developed spring, and development, maintenance, repair, installation, construction, reconstruc-

tion, improvement and/or use of the currently existing pipeline running thereto; and

- (iii) The right to use the currently existing and currently developed pipeline which currently exists over and across the real property described in the attached Exhibit "A" [which pipeline is more particularly described in paragraph (3), below], but only for the purpose of gaining access to said water from the currently existing and currently developed spring, as well as the right (but not the obligation) to maintain, repair, install, construct, reconstruct, improve and use said pipeline.

(c) Speedy and Creek Bank Farm shall have the right (but not the obligation) to maintain, repair, install, construct, reconstruct, improve and use the pipeline described in this paragraph (2) and the following paragraph (3). Neither Speedy nor Creek Bank Farm shall have a right to contribution or indemnity from the other for any sums expended or materials used in connection with the maintenance, repair, installation, construction, reconstruction, improvement or use of the pipeline described in this paragraph (2) and the following paragraph (3).

(d) Creek Bank Farm's right of easement described in this paragraph (2) shall cease and terminate upon the fulfillment of Speedy's obligation described in paragraph (4) [WELL], below.

(e) The easement granted in this paragraph shall be the privilege of Creek Bank Farm, only, and shall not be assigned, conveyed, released or otherwise alienated to any other person or entity.

///

(f) The provisions of this paragraph (2) [WATER EASEMENT] shall be binding upon Speedy's heirs, devisees, successors and assigns.

(3) PIPE EASEMENT: In connection with the conveyance of the property described in Exhibit "A" from Speedy to Creek Bank Farm, Speedy reserves and retains unto herself (her heirs, devisees and assigns), and Creek Bank Farm, as owner of the real property described in the attached Exhibit "A", does hereby convey to Speedy (her heirs, devisees and assigns) (herein referred to as "Speedy"), a perpetual easement 40 feet in width over the real property more particularly described in Exhibit "A", the centerline of which easement is the currently existing and currently developed pipeline, the beginning point of which easement is approximately 855 feet South 57° 49' 49" East of the Northwest corner of the real property more particularly described in Exhibit "A", and the ending point of which easement is approximately 35 feet North 80° 00' 00" East from a point which is South 00° 00' 00" West 2040.17 feet from the Northwest corner of the real property more particularly described in Exhibit "A". The easement and pipeline described herein is also described on the map which is attached hereto and marked Exhibit "C", which map is made a part hereof as if recited verbatim herein. The easement described in this paragraph (3) [Pipe Easement] shall be exclusive to Speedy with regard to the pipe and water, however shall be nonexclusive with regard to the land.

The easement described in this paragraph (3) [Pipe Easement] shall be for the following purposes:

- (a) To maintain, repair, install, construct, reconstruct, improve and use the existing and any future water line servicing or in connection with the water supply used by the real property more described in Exhibit "B". The right granted herein shall be to maintain, repair, install, construct, reconstruct, improve and use a singular water line. A water line may be abandoned or replaced, but there shall be only one operating and operable water line within the easement area. When maintaining, repairing, installing, constructing, reconstructing, improving or using said water line, Speedy shall perform all work so as to minimize any waste or disruption to the real property described in the attached Exhibit "A". And
- (b) For the unlimited and uninhibited access, ingress and egress, including but not limited to access by any and all vehicles and equipment, over the real property described in Exhibit "A", so long as such access, ingress and egress is used for or in connection with the water supply of the real property more particularly described in Exhibit "B", and so long as such access, ingress and egress does not unreasonably interfere with Creek Bank Farm's use and occupancy of the real property more particularly described in the attached Exhibit "A".

Except in case of an emergency, Speedy shall give to Creek Bank Farm not less than 48 hours notice prior to entering the real property described in Exhibit "A" for the purpose described in this paragraph (3) [PIPE EASEMENT].

Any expense incurred by Speedy in connection with or arising out of the grant of this easement described in this paragraph shall be paid for and borne by Speedy.

The easement described in this paragraph shall be appurtenant to Speedy's real property, which real property is more

particularly described in the attached Exhibit "B". The dominant estate shall be Speedy's real property, more particularly described in the attached Exhibit "B". The servient estate shall be the real property more particularly described in the attached Exhibit "A". The terms, conditions and easement contained in this paragraph (3) (EASEMENT) shall bind and/or benefit the heirs, devisees, successors and assigns of the parties.

(4) WELL: Not later than 31 December 1989, Speedy shall pay for, provide, construct or cause to be constructed a well(s) for the benefit of Creek Bank Farm. Said well(s) shall be located on the real property more particularly described in the attached Exhibit "A". As used in this paragraph (4) (WELL), the term "well" or "well(s)" includes the construction, digging, casing and topping, and all pumps and other apparatus necessary for the delivery of water from one or more wells in such a manner and to such places more particularly described hereinafter.

Speedy shall construct or cause to be constructed said well(s), such that on the dates hereinafter provided, the water from said well(s) shall be potable water and have a flow of not less than 300 gallons within a 24 hour period. The minimum flow described in the foregoing sentence shall be determined, measured and established on either the 1st day of August, 1988, or the 1st day of July, 1989, which date shall be chosen at the sole and exclusive election of Speedy.

The location of said well shall be in the sole and exclusive discretion of Speedy, so long as said well is located on the real property more particularly described in the attached Exhibit "A". Speedy shall also pay for, provide and construct, or cause to be constructed, pumps and pipelines such that the water from said well(s) is delivered to either the currently existing holding tanks or such other holding tank(s) as may be mutually agreed upon between the parties at the time of the construction of said well.

The well, pumps and apparatus described herein shall be built and constructed in accordance with all applicable laws, rules and regulations.

The provisions of this paragraph (4) (WELL) shall be binding upon the heirs, devisees, successors and assigns of Speedy.

(5) FIRST RIGHT TO PURCHASE: Speedy shall offer the sale of all or part of the real property more particularly described in the attached Exhibit "B" to Creek Bank Farm, more particularly as follows:

(a) During the period provided for hereinbelow, if, and in the event that Speedy shall choose to consider to sell all or part of the real property more particularly described in Exhibit "B", then Speedy shall first give written notice to Creek Bank Farm stating the terms of any proposed sale;

(b) As used in this paragraph (5) (FIRST RIGHT TO PURCHASE), the term "sell or "sale" shall include any sale,

gift, lease, or rental of all or part of the real property more particularly described in the attached Exhibit "B".

(c) Creek Bank Farm shall accept the terms and conditions proposed by Speedy by giving written notice to Speedy:

- (i) Within not more than 10 weekdays after receipt of Speedy's notice to Creek Bank Farm in the event of a rental or lease of the pasture lands; or
- (ii) Within not more than 30 days in all other cases.

(d) Creek Bank Farm's right of first refusal described in this paragraph shall at all times be conditioned upon:

- (i) Creek Bank Farm not being in default under any of the other terms of this agreement; and
- (ii) Creek Bank Farm not being in default under the terms of a Promissory Note and/or a Trust Deed, which Promissory Note and Trust Deed are from Creek Bank Farm and in favor of Speedy, and in the principal amount of \$9,800.00.

(e) In the event that Creek Bank Farm does accept the terms and conditions of the sale as proposed by Speedy, then said sale shall be closed as soon as may be practicable and reasonable under the circumstances then and there existing.

(f) In the event that Creek Bank Farm does not accept or shall fail to timely respond to or shall fail to close the proposed sale, then Speedy may thereafter proceed to sell the real property described in the attached Exhibit "B", to any other person or purchaser, as recited in and consistent with the terms of the proposed sale as presented to Creek Bank Farm. Provided however, if Speedy offers the sale of all or part of the real property more particularly described in the attached

Exhibit "B", under terms or conditions which are materially different than those terms and conditions offered to Creek Bank Farm, then Speedy shall again first offer to Creek Bank Farm the sale of the real property more particularly described in the attached Exhibit "B", and so forth, the right of Creek Bank Farm to accept said proposed sale and the right of Speedy to offer the sale of all or part of said real property to a third person or purchaser to be governed as provided above.

(g) The "First Right to Purchase" granted herein by Speedy to Creek Bank Farm shall terminate, expire and be of no further force or effect not later than the expiration of fifteen years from the date of this agreement.

(h) The "First Right to Purchase" contained in this paragraph (5) shall be personal and be the personal privilege of Creek Bank Farm; said First Right to Purchase shall not be assigned, conveyed, released or otherwise alienated to any other person or party. Speedy's obligations under this paragraph (5) shall be only so long as Speedy shall own the real property more particularly described in the attached Exhibit "B". Speedy's obligations under this paragraph (5) [FIRST RIGHT TO PURCHASE] shall be binding upon Speedy's heirs, devisees under a will of Speedy, and Speedy's donees (however, but shall not otherwise be binding upon Speedy's successors, purchasers or assigns).

(i) As of the date of this Agreement, Speedy represents and warrants that she has not rented or leased to any other person or entity the pasture land on the real property more

particularly described in the attached Exhibit "B".

(6) STOCK WATER RIGHTS: Speedy does hereby grant to Creek Bank Farm all of the Stock Water Rights which Speedy may have and which may be in connection with the real property more particularly described in the attached Exhibit "A". Speedy shall execute any and all further documents necessary to carry into full force and effect her grant to Creek Bank Farm of all of the Stock Water Rights which Speedy may have to convey.

(7) "AS IS": Speedy's conveyance of the real property more particularly described in the attached Exhibit "A" to Creek Bank Farm, is made by Speedy and accepted by Creek Bank Farm, "as is", "where is", and "with all faults". Except as expressly provided herein, Speedy makes no warranty or representation concerning the condition of the property, or any buildings or structures thereon, and the parties expressly agree that Speedy has made no warranty or representation concerning the condition, use, or availability of water on the property more particularly described in the attached Exhibit "A".

(8) MERGER: In connection with the sale and conveyance of the real property more particularly described in the attached Exhibit "A" from Speedy to Creek Bank Farm, the parties have signed and executed the following documents and instruments:

- (a) This document, instrument and agreement;
- (b) A Special Warranty Deed;
- (c) A Promissory Note (in the principal amount of \$9,800.00);

///

- (d) A Trust Deed securing the payment of the Promissory Note described above (in the principal amount of \$9,800.00);
- (e) Documents, agreements and instruments in connection with the assumption by Creek Bank Farm of Speedy's ODVA mortgage.

Except as may be provided in the above documents, there have been no warranties, representations or other agreements entered into between the parties, their agents or representatives. The documents, instruments and agreements listed in this paragraph represent and constitute the entire and integrated agreement between the parties and these documents shall expressly supercede all prior negotiations, representations or agreements (whether written or oral). The documents, instruments and agreements described in this paragraph shall expressly supercede and cancel the Earnest Money Receipt, Offer and Acceptance entered into between the parties (dated 13 March 1987), and all addenda thereto. The agreements, documents and instruments described in this paragraph may be amended only by a written document, signed by the parties.

(9) LITIGATION EXPENSE: In the event a dispute should arise between the parties, the unsuccessful party, his/their/its heirs, devisees and assigns, agrees to pay to the prevailing party all of the prevailing party's litigation expense. Litigation expense includes, but is not limited to:

- (a) Reasonable attorney's fees, whether incurred before, during or after litigation, or before, during or after an appeal;
- (b) The expense of title reports and policies; and

(c) The expense of experts, including but not limited to the expense of surveyors and the expense of investigators.

DATED and SIGNED this 1st day of July, 1988.

CREEK BANK FARM, INC.

Cynthia A. Speedy
Cynthia A. Speedy

By Maureen M. Hegge, Pres
Maureen Hegge, President

By Marvin E. Hegge, Sec
Marvin Hegge, Secretary

STATE OF OREGON)
) ss.
County of Douglas)

Personally appeared before me the above named Cynthia A. Speedy, and acknowledged the foregoing instrument to be her voluntary act and deed, before me this 1st day of July, 1988.

(SEAL)

Alvina D. Silbald
Notary Public for Oregon
My commission expires: 4-16-89

STATE OF OREGON)
) ss.
County of Douglas)

Personally appeared before me the above named MAUREEN HEGGE, who is the President, and MARVIN HEGGE, who is the Secretary, of CREEK BANK FARM, INC., an Oregon corporation, and acknowledged the foregoing instrument to be its voluntary act and deed, before me this 1st day of July, 1988.

(SEAL)

Alvina D. Silbald
Notary Public for Oregon
My commission expires: 4-16-89

EXHIBIT A

A parcel of land located in Sections 2, 11 and 12 of Township 25 South, Range 6 West, Willamette Meridian, being a portion of that parcel of land described in a deed to Robert D. and Mary C. Fiote and Robert K. and Cynthia A. Spady as recorded in Instrument No. 77-0203 of the Records of Douglas County, Oregon and being more particularly described as follows:

BEGINNING at the Northwest corner of the Elisha Williamson Donation Land Claim No. 48, Section 12, Township 25 South, Range 6 West, Willamette Meridian, being also the Northwest corner of that parcel of land conveyed to George A. and Velin Emma Trumbo as recorded in Volume 100, Page 205 of the Deed Records of Douglas County, Oregon; thence South 0° 11' 40" East on the Westerly line of said Donation Land Claim No. 48 and also the Westerly line of said Volume 100, Page 205, 780.97 feet to a 5/8 inch iron rod on the Westerly right of way line of County Road No. 76, as relocated; thence the following courses along said Westerly right of way line:

191.47 feet along the arc of a 1462.40 foot radius curve left (the long chord bears South 14° 16' 24" West, 191.33 feet) to a 5/8 inch iron rod, South 10° 31' 21" West, 361.33 feet to a 5/8 inch iron rod, South 16° 23' 31" West, 99.06 feet to a 5/8 inch iron rod, 289.33 feet along the arc of a 914.93 foot radius curve right (the long chord bears South 19° 35' 06" West, 288.12 feet) to a 5/8 inch iron rod, South 26° 10' 22" West, 101.47 feet to a 5/8 inch iron rod, South 34° 55' 45" West, 132.94 feet to a 5/8 inch iron rod on the Westerly line of said Donation Land Claim No. 48; thence North 08° 54' 42" West along said Westerly line and leaving the Westerly right of way line of County Road No. 76, 271.14 feet to a 3/4 inch iron pipe at the most Westerly Northwest corner of said Donation Land Claim No. 48; thence South 0° 13' 49" West continuing along the West line of Donation Land Claim No. 48, 395.60 feet to a 5/8 inch iron rod on the Westerly right of way line of County Road No. 76; thence South 35° 55' 45" West leaving said Westerly line of Donation Land Claim No. 48 and along said Westerly right of way line, 345.10 feet to a 5/8 inch iron rod; thence continuing along said Westerly right of way line, 195.53 feet along the arc of a 208.73 foot radius curve right (the long chord bears South 61° 44' 46" West, 188.46 feet) to a 5/8 inch iron rod 30 feet right of Engineer's centerline station "A" 2+23.61 of County Road No. 76, said point also being 30 feet right of Engineer's centerline station 5+00.00 of County Road No. 10; thence leaving the Westerly right of way line of County Road No. 76 and along the Northerly right of way line of County Road No. 10 the following courses:

Exhibit "A" Continued
Order No. 19178

Exhibit "A" Continued
Order No. 19178
Page 2

South 89° 12' 08" West, 365.41 feet to a point, North 81° 55' 46" West, 132.02 feet to a point, North 83° 28' 23" West, 145.83 feet to a point, North 84° 56' 56" West, 98.05 feet to a point, 214.84 feet along the arc of a 1602.20 foot radius curve right (the long chord bears North 73° 30' 22" West, 214.67 feet) to a point, North 59° 35' 50" West, 257.43 feet to a point, 292.32 feet along the arc of a 557.46 foot radius curve left (the long chord bears North 84° 41' 13" West, 288.99 feet) to a point, North 85° 04' 55" West, 71.50 feet to a point; thence North 14° 26' 24" West leaving said Northernly right of way line and along an existing fence line, 312.27 feet to a 5/8 inch iron rod; thence North 31° 21' 58" West continuing along said fence line, 462.74 feet to a 5/8 inch iron rod; thence North 0° 03' 24" West continuing along said fence line, 674.15 feet to a 5/8 inch iron rod; thence North 12° 46' 04" West leaving said fence line, 765.71 feet to a nail and brass washer set in top of a fence corner post; thence North 6° 46' 33" West, 371.60 feet to a nail and brass washer set in top of a fence corner post; thence North 50° 46' 34" East, 285.75 feet to a 5/8 inch iron rod; thence North 4° 44' 52" West, 117.10 feet to a 5/8 inch iron rod; thence South 80° 00' 00" West, 214.94 feet to a 5/8 inch iron rod; thence North 20° 40.17 feet to a 5/8 inch iron rod; thence South 57° 49' 49" East, 2608.33 feet to a 5/8 inch iron rod; thence South 79° 51' 07" East, 612.66 feet to a 5/8 inch iron rod on the Westerly line of that parcel of land described in a deed to George A. and Delia Emma Trumbo as recorded in Volume 123, Page 149 of the Deed Records of Douglas County, Oregon; thence South 0° 06' 48" East along said Westerly line, 905.00 feet to a 5/8 inch iron rod at the Southwest corner of said Volume 123, Page 149; thence North 89° 32' 20" East along the South line of said Volume 123, Page 149, 237.40 feet to the point of beginning.

EXHIBIT "B"

A parcel of land located in Sections 1, 2, 11 and 12 of Township 25 South, Range 6 West, Willamette Meridian, Douglas County, Oregon, and being more particularly described as follows:

BEGINNING at the Northwest corner of the Elisha Williamson Donation Land Claim No. 48, Section 12, Township 25 South, Range 6 West, being also the Northwest corner of a parcel of land conveyed to George A. and Della Emma Trumbo described in Volume 100, Page 205 of Deed Records of Douglas County, Oregon, and being also a point in the South boundary of a parcel of land conveyed to the said Trumbos as described in Volume 123, Page 149 of said records; thence West along the South boundary thereof to the Southwest corner thereof; thence North along the West boundary of said parcel to the Northwest corner thereof; thence East along the North boundary of said parcel to the Southwest corner of that parcel of land conveyed to Veril A. and Hazel N. Martin as described in Volume 126, Page 110, of said records; thence Northerly along the West boundary of said parcel as follows: North 1° West 14.0 chains, North 76° West 2.95 chains, North 36° 45' West 4.02 chains, North 32° 15' West 1.84 chains, North 5° 10' West 8.60 chains; West to a Westerly boundary of the J.L. Gilbert Donation Land Claim No. 61, said township and range, at the Southeast corner of Lot 2, Section 1, said township and range, and North along said Donation Land Claim boundary and East boundary of said Lot 2 to an angle corner of said Donation Land Claim, being the Northwest corner of said Martin parcel, and also a point in the South boundary of a parcel of land conveyed to W.A. Davidson as described in Volume 58, Page 125, of said records; thence West along a South boundary of said Donation Land Claim and a South boundary of said Davidson parcel to a Southwest corner of said Gilbert Donation Land Claim, being also a point in the line between Sections 1 and 2, said township and range; thence South along said section line to the quarter corner between said sections, being also a Southeast corner of said Davidson parcel; thence West along the East-West mid-section line of said Section 2, and along said South line of Davidson parcel to a point in the East line of a parcel of land conveyed to W.D. Whitehead as described in Volume 138, Page 285, of said Records, being the Northwest corner of the Northeast quarter of Southwest quarter of said Section 2; thence South along said property line and the West line of said Northeast quarter of Southwest quarter to the Southwest corner thereof, being a Southeast corner of said Whitehead parcel; thence West along a South boundary of said parcel and the North line of the Southwest quarter of Southwest quarter to the line between Sections 2 and 3 said township and range; thence South along said line to the corner to Sections 2, 3, 10 and 11 said township and range, and continuing South along the line between Sections 10 and 11 to the most Northerly corner of a parcel conveyed to said W.D. Whitehead as described in Volume 138, Page 285, of said records;

Exhibit B Continued
Page 2

thence along the East boundary of said parcel as follows: South 55° 26' East 5.44 chains, South 20° 53' East 4.91 chains, South 43° 13' East 4.21 chains, South 22° 35' East 7.65 chains and South 7° 57' East 10.31 chains to the Southeast corner thereof, being also a point in the North boundary of that parcel of land conveyed to Evelyn E. Rose as described in Volume 223, Pages 613 and 615 of said records; thence East along the North boundary of said parcel to the Northeast corner thereof; thence along the East boundary of said parcel as follows: South 24.50 chains, South 57° 45' East 4.25 chains, South 60° 30' East 10.7 chains, South 3° 15' East 6.97 chains to the center line of the Calapooya Creek; thence along said center line of Creek upstream as follows: North 44° East 1.20 chains, North 77° 15' East 1.00 chains, North 87° 30' East 2.95 chains, North 69° East 5.30 chains North 48° 45' East 2.86 chains, and North 67° 15' East 3.63 chains; thence North 74° East 3.63 chains to the Northwest corner of that parcel of land conveyed to C.A. and Madge H. Miller as described in Volume 93, Page 405, of said records; thence along the North boundary of said Miller parcel as follows: South 78° 15' East 7.75 chains, South 80° 15' East 1.82 chains, North 88° 15' East 10.84 chains, and North 46° East 4.12 chains to the Northeast corner thereof being also a point in the West boundary of Elisha Williamson Donation Land Claim No. 48, said township and range; thence along the boundaries of said Donation Land Claim as follows: North 9.0 chains to a Northwest corner thereof, East 9.50 chains to an interior angle corner thereof, and North 28.46 chains to the place of beginning. Excepting therefrom any portion of the parcel of land conveyed to Oregon State Highway Commission described in Volume 173, Page 294, of said records, contained within the above description, all in Sections 1, 2, 11 and 12, Township 25 South, Range 6 West, Willamette Meridian, Douglas County, Oregon.

ALSO the Southeast quarter of the Northwest quarter, Section 2, Township 25 South, Range 6 West, Willamette Meridian, Douglas County, Oregon.

LESS AND EXCEPTING those portions of the above described property released by Instrument Nos. 77-9129, 78-19902, 80-16941, 83-2845 and 87-9230, Deed Records, Douglas County, Oregon.

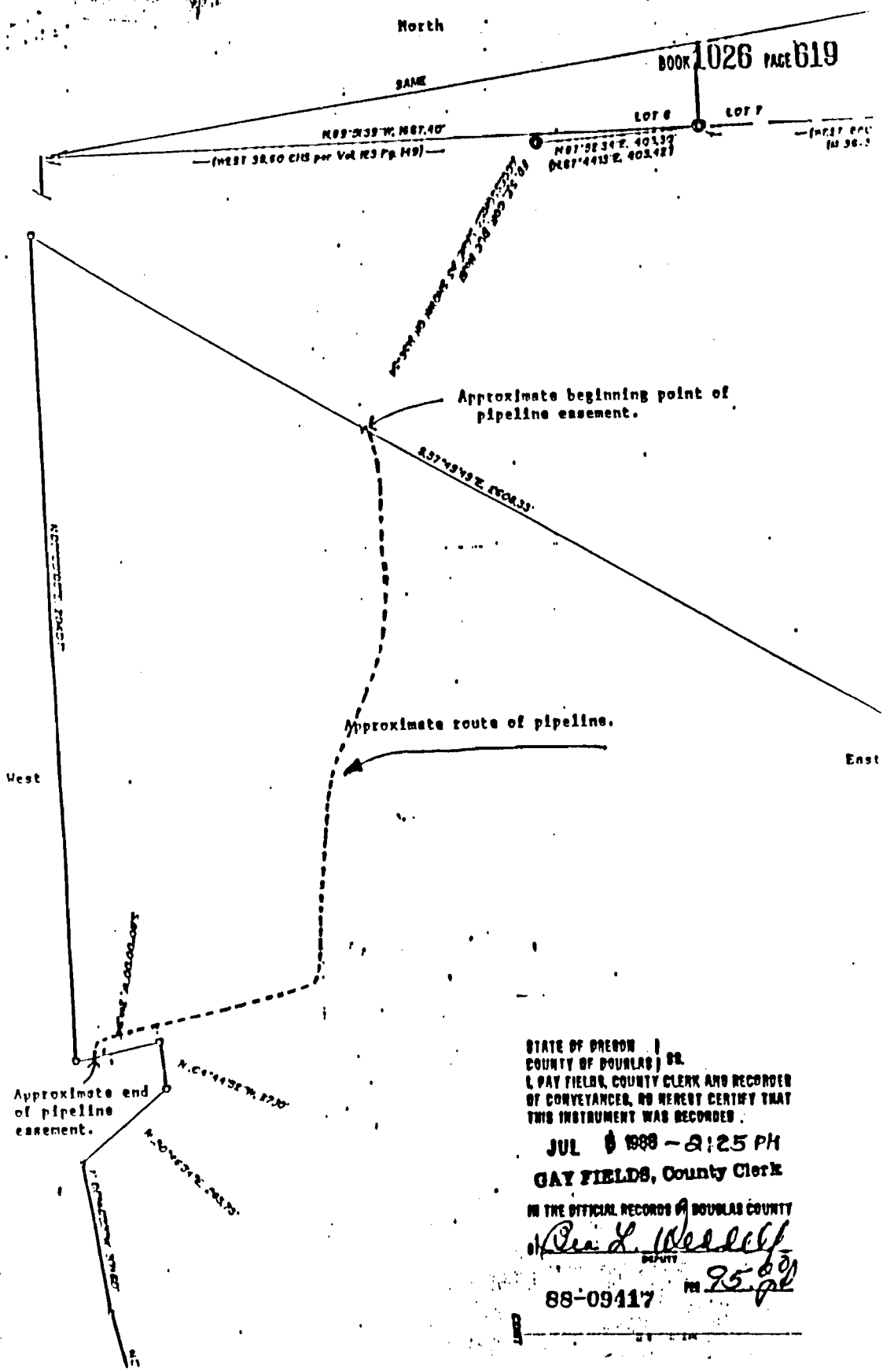
ALSO LESS AND EXCEPTING THE FOLLOWING:

A parcel of land located in Sections 2, 11 and 12 of Township 25 South, Range 6 West, Willamette Meridian, being a portion of that parcel of land described in a deed to Robert D. and Mary C. Floto and Robert K. and Cynthia A. Speedy as recorded in Instrument No. 77-0203 of the Records of Douglas County, Oregon and being more particularly described as follows:

BEGINNING at the Northwest corner of the Elisha Williamson Donation Land Claim No. 48, Section 12, Township 25 South, Range 6 West, Willamette Meridian, being also the Northwest corner of that parcel of land conveyed to George A. and Delia Emma Trumbo as recorded in Volume 100, Page 203 of the Deed Records of Douglas County, Oregon; thence South $0^{\circ} 11' 40''$ East on the Westerly line of said Donation Land Claim No. 48 and also the Westerly line of said Volume 100, Page 203, 780.97 feet to a $5/8$ inch iron rod on the Westerly right of way line of County Road No. 76, as relocated; thence the following courses along said Westerly right of way line: 191.47 feet along the arc of a 1462.40 foot radius curve left (the long chord bears South $14^{\circ} 16' 24''$ West, 191.33 feet) to a $5/8$ inch iron rod, South $10^{\circ} 31' 21''$ West, 361.33 feet to a $5/8$ inch iron rod, South $16^{\circ} 23' 31''$ West, 99.06 feet to a $5/8$ inch iron rod, 289.33 feet along the arc of a 914.93 foot radius curve right (the long chord bears South $19^{\circ} 37' 06''$ West, 288.12 feet) to a $5/8$ inch iron rod, South $26^{\circ} 10' 22''$ West, 101.47 feet to a $5/8$ inch iron rod, South $34^{\circ} 55' 45''$ West, 132.94 feet to a $5/8$ inch iron rod on the Westerly line of said Donation Land Claim No. 48; thence North $88^{\circ} 54' 42''$ West along said Westerly line and leaving the Westerly right of way line of County Road No. 76, 271.14 feet to a $3/4$ inch iron pipe at the most Westerly Northwest corner of said Donation Land Claim No. 48; thence South $0^{\circ} 13' 49''$ West continuing along the West line of Donation Land Claim No. 48, 395.60 feet to a $5/8$ inch iron rod on the Westerly right of way line of County Road No. 76; thence South $35^{\circ} 55' 45''$ West leaving said Westerly line of Donation Land Claim No. 48 and along said Westerly right of way line, 345.10 feet to a $5/8$ inch iron rod; thence continuing along said Westerly right of way line, 195.53 feet along the arc of a 208.73 foot radius curve right (the long chord bears South $61^{\circ} 44' 46''$ West, 188.46 feet to a $5/8$ inch iron rod 30 feet right of Engineer's centerline station "A" 2+23.61 of the County Road No. 76, said point also being 30 feet right of Engineer's centerline station 5+00.00 of County Road No. 10; thence leaving the Westerly right of way line of County Road No. 76 and along the Northerly right of way line of County Road No. 10 the following courses: South $89^{\circ} 12' 08''$ West, 365.41 feet to a point, North $81^{\circ} 55' 46''$ West, 132.02 feet to a point, North $83^{\circ} 28' 23''$ West, 145.83 feet to a point, North $84^{\circ} 56' 56''$ West, 98.05 feet to a point, 214.84 feet along the arc of a 1602.20 foot radius curve right (the long chord bears North $73^{\circ} 30' 22''$ West, 214.67 feet) to a point, North $59^{\circ} 35' 50''$ West, 257.43 feet to a point, 292.32 feet along the arc of a 557.46 foot radius curve left (the long chord bears North $84^{\circ} 41' 13''$ West, 288.99 feet) to a point, North $85^{\circ} 04' 55''$ West, 71.50 feet to a point; thence North $14^{\circ} 26' 24''$ West leaving said Northerly right of way line and along an existing fence line, 312.27 feet to a $5/8$ inch iron rod; thence North $31^{\circ} 21' 58''$ West continuing along said fence line, 462.74 feet to a $5/8$ inch iron rod; thence North $0^{\circ} 03' 24''$ West continuing along said fence line, 674.15 feet to a $5/8$ inch iron rod;

Exhibit B Continued
Page 4

thence North 12° 46' 04" West leaving said fence line, 765.71 feet to a nail and brass washer set in top of a fence corner post; thence North 6° 46' 33" West, 371.60 feet to a nail and brass washer set in top of a fence corner post; thence North 50° 46' 34" East, 285.75 feet to a 5/8 inch iron rod; thence North 4° 44' 52" West, 117.10 feet to a 5/8 inch iron rod; thence South 80° 00' 00" West, 214.94 feet to a 5/8 inch iron rod; thence North 20° 40' 17" East, 2608.33 feet to a 5/8 inch iron rod; thence South 57° 49' 49" East, 612.66 feet to a 5/8 inch iron rod on the Westerly line of that parcel of land described in a deed to George A. and Della Emma Trumbo as recorded in Volume 123, Page 149 of the Deed Records of Douglas County, Oregon; thence South 0° 06' 48" East along said Westerly line, 905.00 feet to a 5/8 inch iron rod at the Southwest corner of said Volume 123, Page 149; thence North 89° 32' 20" East along the South line of said Volume 123, Page 149, 237.40 feet to the point of beginning.



BOOK 1026 PAGE 619

North

SAME

LOT 6

LOT 7

N 89° 21' 33\"/>

— (WEST 38.60 CHS per Vol. 123 Pg. 149) —

N 87° 52' 34\"/>

— (WEST 60' IN 38.5

Approximate beginning point of pipeline easement.

Approximate route of pipeline.

West

East

Approximate end of pipeline easement.

STATE OF OREGON)
 COUNTY OF DOUGLAS) SS.
 I, GAY FIELDS, COUNTY CLERK AND RECORDER
 OF CONVEYANCES, DO HEREBY CERTIFY THAT
 THIS INSTRUMENT WAS RECORDED.

JUL 8 1988 - 2:25 PM
 GAY FIELDS, County Clerk

IN THE OFFICIAL RECORDS OF DOUGLAS COUNTY

Gay L. Woodell
 DEPUTY

88-09117 *95-601*

Parsons Lee & Kaser Ltd

ATTORNEYS AT LAW

Richard E. Parsons *Attorney*
Charles F. Lee *Attorney*
Stephen W. Kaser *Attorney*

505 S.E. Main / P.O. Box 1226
Roseburg, Oregon 97470-0308
(503) 672-1611
FAX # (503) 673-6537

Marian Howe *Legal Assistant*
Carrie D. Brock *Legal Assistant*
Pamela M. Burge *Legal Assistant*

May 8, 1992

HAND DELIVERED

DARRYL JOHNSON
ATTORNEY AT LAW
840 SE ROSE
ROSEBURG OR 97470

RE: My File No. L90-118
HEGGE v. MANDERO

Dear Mr. Johnson:

Mr. and Mrs. Hegge do not consent to a change of the pipeline construction date from June 1 to May 11. The property is not ready for the extensive interference with operations required by construction, and could not be made ready by May 11. Further, the property is to be toured on May 27 by officials from OSU, and doing the construction project early is incompatible with that. Our expectation remains that construction will begin June 1.

Your April 29 letter did not contain the sketch of the proposed construction location. It did have two pages of enclosures headed "Umpqua Research Company."

Sincerely yours,

PARSONS, LEE & KASER, Ltd


Charles F. Lee

CFL/cdb

5/8/92

Charlie:

Enclosed is copy of sketch showing proposed construction location.



Mr. Bayard
Highway 138
Oakland, Or 97452

June 1, 1992

Dear Mr. Bayard,

Go away.

Sincerely,



M. Hegge

President
Creek Bank Farm, Inc.
Rolling Ridge Road
Oakland, Or 97462

Julie Jones
Attorney at Law
865 So. Main St.
Myrtle Creek, OR 97457
(503) 863-4340

RECEIVED
FEB - 1 1993
WATER RESOURCES DEPT.
SALEM, OREGON

January 26, 1993

Don Knauer
Adjudication Specialist
Oregon Water Resources Dept.
3850 Portland Rd. NE
Salem, Oregon 97310

Re: Creek Bank Farm, Inc. SWR-47

Dear Mr. Knauer:

I am now representing Geronimo and Mary Bayard. As you know in addition to Creek Bank Farm's claim with your department there have been three other lawsuits between Bayards/Manderos and Creek Bank Farm/Hegges. In settlement of those lawsuits Creek Bank Farm has agreed to discontinue their claim for any water rights on land belonging to Bayards or Manderos. I am enclosing a copy of that agreement. I ask that you close the claim by Creek Bank Farm for water rights to the spring on Bayards or Manderos land.

Sincerely,

Julie Jones
Julie Jones
Attorney at Law

Parsons Lee & Kaser PC

RECEIVED

ATTORNEYS AT LAW

FEB - 1 1993

Richard E. Parsons *Attorney*
Charles F. Lee *Attorney*
Stephen W. Kaser *Attorney*

505 S.E. Main / P.O. Box 1226
Roseburg, Oregon 97470-0301
(503) 672-1611
FAX # (503) 673-6537

Marian Howe *Legal Assistant*
Carrie D. Brock *Legal Assistant*
Pamela M. Burge *Legal Assistant*
WATER RESOURCES DEPT.
SALEM, OREGON

December 29, 1992

JULIE JONES
ATTORNEY AT LAW
865 S MAIN ST
MYRTLE CREEK OR 97457

RE: **My File No. L90-118**
CREEK BANK FARM v. BAYARD/MANDERO

Dear Ms. Jones:

We are accepting your proposal in the settlement agreement dated December 28, 1992, a copy of which is attached hereto, with the exception that paragraph 3 is too vague to understand.

In lieu of paragraph 3 we offer the following language:

3) Mr. and Mrs. Hegge and Creek Bank Farm declare that they have no interest in any real or personal property belonging to or in the possession of Mr. and Mrs. Bayard, or either of them, or in any real or personal property belonging to Mr. and Mrs. Madero or either of them. Mr. and Mrs. Hegge specifically renounce all claims to the spring water previously in controversy.

Enclosed with this counter offer is a Creek Bank Farm check for \$1,327.39, 20% of the figure set by Mr. Garrison in his letter of December 7. You may negotiate the check upon mailing me a copy of this agreement bearing the signatures of Mr. and Mrs. Madero and Mr. and Mrs. Bayard.

Sincerely yours,

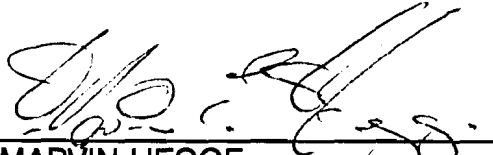
PARSONS, LEE & KASER, P.C.



Charles F. Lee

CFL/cb

THIS IS OUR OFFER.



MARVIN HEGGE

Dated: Dec 29 1992



MAUREEN HEGGE

Dated: 12-29-92

THIS OFFER IS ACCEPTED.



GERONIMO BAYARD

Dated: 12-30-92



MARY BAYARD

Dated: December 30, 1992



STEVE MANDERO

Dated: 12 30 92



CYNTHIA MANDERO

Dated: 12-30-92

SETTLEMENT AGREEMENT

December 28, 1992

1. This agreement is to be entered as a stipulated judgement in all the pending cases between the Heggess/Creek Bank Farm and the Bayards/ Manderos, specifically case numbers: 92CV1350CC/Appeals #76920, 91CV1101CC, 91CV1773CC, for the purpose of giving all the parties the ability to enforce the agreement by civil contempt procedures.

2. All pending law suits, all pending administrative actions, all disputes now existing involving Bayards, Manderos, Speedys or their agents and Heggess, Creek Bank Farm or their agents are settled in this agreement. There will be no disagreements, liens suits, or discussions about any activities or issues originating or existing prior to the date of this agreement.

3. Heggess/Creek Bank Farm declare that they have no interest whatsoever in any real or personal property belonging to, in the possession of, or claimed by the Bayards or Manderos. Heggess/Creek Bank Farm further agree they will not attempt in the future to make any claims monetarily, judicially.

administratively or in any other way on any real or personal property belonging to, in the possession of, or claimed by the Bayards or Manderos based on any present or prior involvement or interest.

Property includes, but is not limited to, any spring, runoff water, water of any other source or type, timber, mineral rights, fencing, land, animals, and buildings.

4. Heggess/Creek Bank Farm's "right of first purchase" granted in the Purchase Agreement to purchase any portion of the real property owned by Manderos is terminated.

5. Heggess/Creek Bank Farm will not contact in any manner any federal, state, county or local governmental agency of any kind, including but not limited to Forest Service, Soil Conservation Service, Fire Departments, Watermasters Office, Department of Environmental Quality, LCDC, Planning Commission, State Water Resources Department public records of any kind, concerning the Bayards/Manderos or their agents and representatives.

6. Heggess/Creek Bank Farm will remove any liens or encumbrances they have placed on any property belonging to Bayards or Manderos.

11

7. Bayards are not forgiving the second Trust Deed now owned by them on Creek Bank Farm's real property. Bayards retain all of the rights given them under the second Trust Deed.

8. The Heggess/Creek Bank Farm are restrained from having any further contact with Bayards/Manderos. This includes but is not limited to personal contact, telephone contact, and written contact.

9. Any required permitted contact between the parties shall be conducted through their respective attorneys.

10. Heggess/Creek Bank Farm must pay the existing judgement rendered by Judge Lasswell on November 19, 1992 in case no. 92CV1350CC, as prepared by Mr. Garrison. Twenty (20) percent of the judgement must be paid as the acceptance of this agreement, no other form of acceptance is possible. The balance of the judgement is due within ten (10) days of acceptance of this agreement. If the balance is not paid within the time allowed, then the settlement agreement is null and void. However, in that case Heggess/Creek Bank Farm forfeit their 20% acceptance payment and Bayards may keep it.

11. This offer is good for two days only. If acceptance of the

offer is not in the law office of Julie Jones by December 30, 1992 at 5pm. this offer expires. This offer will not be extended, modified nor renewed.

12. The intent of this Settlement Agreement is to remove and prevent involvement of Hegges/Creek Bank Farm in the past, present and future business and personal affairs of Bayards/Manderos except as required to pay off the aforementioned second Trust Deed, the current judgement, and to remove any liens or encumbrances as mentioned in Item #6.

AGREED:

MARVIN HEGGE date

MAUREEN HEGGE date

1 PARSONS, LEE & KASER, P.C.
2 Charles F. Lee, Attorney
3 505 SE Main /PO Box 1226
4 Roseburg OR 97470-0301
5 (503) 672-1611
6 OSB #74187

7 IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR DOUGLAS COUNTY

8 CREEK BANK FARM, INC.,) Case No. 92-CV-1350CC
9)
10 Plaintiff,)
11)
12 v.) MOTION TO TRANSFER
13)
14 GERONIMO BAYARD AND MARY BAYARD,)
15 CYNTHIA MANDERO AND STEVE)
16 MANDERO,)
17)
18 Defendants.)

19 Plaintiff moves the court for an order transferring this action to the director of
20 the Water Resources Department to determine rights to the use of the water in
21 question, as provided in ORS 539.012²¹(2).

22 This motion is well founded in law and is not for purposes of delay.

23 DATED this 7th day of July, 1992.

24 PARSONS, LEE & KASER, P.C.
CHARLES F. LEE

25
26 By: CHARLES F. LEE
27 Attorney for Plaintiff
28 OSB #74187

1 PARSONS, LEE & KASER, P.C.
2 Charles F. Lee, Attorney
3 505 SE Main /PO Box 1226
4 Roseburg OR 97470-0301
5 (503) 672-1611
6 OSB #74187

7 IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR DOUGLAS COUNTY

| | | | |
|----|---|---|------------------------------|
| 8 | CREEK BANK FARM, INC., |) | Case No. 92-CV-1350CC |
| 9 | |) | |
| 10 | Plaintiff, |) | |
| 11 | |) | MEMORANDUM IN SUPPORT |
| 12 | v. |) | OF MOTION TO TRANSFER |
| 13 | |) | |
| 14 | GERONIMO BAYARD AND MARY BAYARD, |) | |
| 15 | CYNTHIA MANDERO AND STEVE |) | |
| 16 | MANDERO, |) | |
| 17 | |) | |
| 18 | Defendants. |) | |

19 The proper resolution of this motion is illuminated by Oregon Lumber Co. v.
20 East Fork Irrigation Dist., 80 Or 568, 157 P 963 (1916).

21 That case, like this, involved vested water rights dating before 1909, and the
22 problem of the proper assignment of the right to use water between two claimants.
23 That case involved the right to use water from the east fork of Hood River. The
24 plaintiff lumber company claimed to have dammed the river in 1905 and to have
25 then begun appropriating 340 second-feet of water. The lumber company sought
26 a court injunction to keep the defendant irrigation district from diverting water above
27 the lumber company's dam, in a quantity sufficient to irrigate 13,000 acres. The
28 lumber company said that diversion would deny the lumber company adequate
29 water all through the growing season. The irrigation district, on the other hand,
30 claimed that its right to the water dated back to 1895, through a claim posted by a
31 predecessor private irrigation company.

1 The Circuit Court heard evidence and denied the Injunction, and the lumber
2 company appealed. It is not clear from the opinion when the injunction suit was
3 filed.

4 The Supreme Court, on reviewing the case on appeal, took note of the referral
5 statute which is now ORS 539.021(2). The consensus of the opinion of all the
6 members of the Supreme Court was that water issues are sufficiently complicated,
7 and may involve so many collateral issues, that they are very difficult to try in court.
8 The Supreme Court noted that the predecessor to the Water Resources Department
9 was equipped to:

10 "ascertain and determine water rights in the first instance
11 far more accurately and efficiently than any court can in
12 the ordinary method based upon the usual pleadings and
13 manner of taking testimony."

14 The Supreme Court then reversed the trial court and remanded the case to
15 the Circuit Court with directions to transfer the case to the water board for
16 determination, even though no party had previously requested such a transfer. The
17 Supreme Court felt the administrative procedure, with subsequent court confirmation,
18 was so superior to trying water rights issues in court that it vacated the trial court's
19 decision, even without finding there had been error.

20 In this case the volume of water in question is less than the volume of water
21 in Oregon Lumber Co., but the issues are just as complex, and made more difficult
22 by the passage of time since the water from the spring was first appropriated. To
23 the extent that testimony of Cynthia Mandero suggested that water had previously
24 been appropriated to the property now owned by the neighbors named Smets, there
25 may be other potential claimants to the water. The rights of those potential

1 claimants can be determined administratively, but not in the context of this lawsuit
2 without making all potential claimants parties.

3 This case also may raise issues affecting the water policies of the state, so
4 that those issues are best addressed in an administrative forum. Defendants
5 themselves tried to raise such administrative issues at the evidentiary hearing on the
6 preliminary injunction, asking witnesses how the department would rule in various
7 hypothetical situations.

8 Proceeding with this case in its present posture, without referral to the Water
9 Resources Department, creates the risk of a great deal of wasted energy, since the
10 Supreme Court on appeal of this case might well follow the precedent it set in
11 Oregon Lumber Co. and simply vacate any judgment of this court for the more
12 accurate and efficient fact finding procedure available administratively.

13 **Respectfully Submitted,**
14 **PARSONS, LEE & KASER, P.C.**

CHARLES F. LEE

15
16 **By: CHARLES F. LEE**
17 **Attorney for Plaintiff**
18 **OSB #74187**

LAW OFFICES OF
RANDOLPH LEE GARRISON, P.C.
ATTORNEYS AT LAW

7-7-92
OFFICE AT 430 S.E. MAIN
MAILING ADDRESS: P.O. BOX 266
ROSEBURG, OR 97470-0049
Phone: (503) 672-4441
Fax: (503) 672-4442

7 July 1992

Don Knauer
Adjudication Specialist
Oregon Water Resources Dept.
3850 Portland Road, N.E.
Salem, Oregon 97310

RECEIVED

JUL - 8 1992

WATER RESOURCES DEPT.
SALEM, OREGON

RE: Creek Bank Farm, Inc.
SWR-47

Dear Mr. Knauer:

Enclosed please find Affidavits from the following persons:

- (1) Mary Bayard.
- (2) Cynthia Mander. And,
- (3) Jesse Smith.

Each of these Affidavits demonstrate that water from the subject spring has been used at locations other than the Hegge (Creek Bank Farm) residence, for periods in excess of two years.

For these and other reasons expressed in my previous correspondence, Hegge's (Creek Bank Farm's) application for a Pre-1909 Water Right should be denied.

If these Affidavits do not so resolve this matter, we continue to request a Hearing on this matter.

Very truly yours,

RANDOLPH LEE GARRISON, P.C.

Randolph Lee Garrison

By *by +ls*
Randolph Lee Garrison

RLG:tl/Enclosures
cc: (w/enc.)
Geronimo and Mary Bayard
Darryl Johnson
Gary Ball
[[knauer.586]]

RECEIVED

JUL 08 1992

WATER RESOURCES DEPT.
SALEM, OREGON

1 Randolph Lee Garrison, P.C.
2 OSB No. 76142
3 Attorneys at Law
4 430 S.E. Main/P.O. Box 266
5 Roseburg, OR 97470-0049
6 Telephone: (503) 672-4441

7 Of Attorneys for Geronimo and Mary Bayard

8 BEFORE THE OREGON WATER RESOURCES DEPARTMENT
9 STATE OF OREGON

10 IN THE MATTER OF)

Case No. SWR-47

11 CREEK BANK FARM, INC.)

AFFIDAVIT OF MARY BAYARD
ON SPRING DIVERSION

12 STATE OF OREGON)

13 County of Douglas)

)ss.

14 I, MARY BAYARD, being first duly sworn on oath, depose and say:

15 (1) I have first hand knowledge of the herein recited facts. I make this

16 Affidavit for the purpose of contesting Creek Bank Farm's application for a Pre-1909
17 Water Right.

18 (2) From June 1974 until May 1977 and then again from December
19 1977 until December 1978, I resided in a mobile home on the other side of the
20 Rolling Ridge Ranch, namely at 3285 Highway 138 West, Oakland, Oregon 97462.
21 At the present time, this is one and the same address as is now the residence for
22 Robert and Sherri Smets. During this time, water from the spring which is the
23 subject of Creek Bank Farm's application was completely and entirely diverted for
24 my use, exclusively. I primarily put the water to use for domestic, agricultural and
25 ranching purposes. During this time, none of the water was diverted to what is now
26

LAW OFFICES OF
RANDOLPH LEE GARRISON, P.C.
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ROSEBURG, OREGON 97470-0049
(503) 672-4441

1 the Hegge (Creek Bank Farm) residence. During this time, Cynthia Madero (fka
2 Speedy) resided in one and the same home now occupied by Heggess (Creek Bank
3 Farm).

4 My parents (Jesse and Lillian Smith) resided with me from December
5 1977 until December 1978. After December 1978 and until July 1983, my parents
6 (Jesse and Lillian Smith) resided (alone) in the same mobile home, 3285 Highway
7 138 West, Oakland, Oregon 97462. During this period of time, the water from the
8 subject spring was used completely, exclusively and totally by my parents (Jesse
9 and Lillian Smith). None of the water was used by Cynthia Madero (fka Speedy),
10 who was then living in one and the same residence now presently occupied by
11 Heggess (Creek Bank Farm).

12 (3) From 1974 through 1982, I spent a great deal of time in my sister's
13 (Cynthia Madero, fka Speedy) home, one and the same house now owned by
14 Heggess (Creek Bank Farm). I observed that the then Speedy household (up to 5
15 persons) had more than adequate potable water (for domestic use) without the use
16 of the spring, and in fact did not use water from the spring. The source of domestic
17 water for the then Speedy household was from an existing well near the house.
18 Livestock was watered from the same and other existing wells and ponds.

19 (4) From the above, water was not used from the subject spring (at
20 all) by the now Hegge (Creek Bank Farm) [149 Rolling Ridge Road, Oakland,
21 Oregon 97462] household:

- 22 -- For three years (June of 1974 until May of 1977); and,
23 -- For six years (December 1977 until July 1983).

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(5) For these reasons, Creek Bank Farm is not entitled to a Pre-1909 Water Right.

Mary Bayard

Mary Bayard

SUBSCRIBED and SWORN to before me this 7th day of July, 1992.



Betty Anderson

Notary Public for Oregon
My commission expires: 8-14-94

LAW OFFICES OF
RANDOLPH LEE GARRISON, P.C.
ATTORNEYS AT LAW
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ROSEBURG, OREGON 97470-0049
(503) 672-4441

RECEIVED

JUL 08 1992

WATER RESOURCES DEPT.
SALEM, OREGON

1 Randolph Lee Garrison, P.C.
OSB No. 76142
2 Attorneys at Law
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3 Roseburg, OR 97470-0049
Telephone: (503) 672-4441

4
5 Of Attorneys for Geronimo and Mary Bayard

6 BEFORE THE OREGON WATER RESOURCES DEPARTMENT
STATE OF OREGON

7 IN THE MATTER OF)
8)
9 CREEK BANK FARM, INC.)
10)
11 _____)

Case No. SWR-47

AFFIDAVIT OF JESSE SMITH
ON SPRING DIVERSION

12 STATE OF OREGON)
13 County of Douglas)ss.

14 I, JESSE M. SMITH, being first duly sworn on oath, depose and say:

15 (1) I am a retired Major from the United States Air Force. I currently
16 reside in Myrtle Creek, Oregon. I previously resided at 3285 Highway 138 West,
17 Oakland, Oregon 97462. This is presently the Robert and Sherri Smets' residence.
18 I have first hand knowledge of the herein recited facts.

19 (2) My wife, Lillian Smith, is presently deceased. In December 1977,
20 my wife, Lillian Smith, moved into a mobile home located at 3285 Highway 138
21 West, Oakland, Oregon 97462 on the Rolling Ridge Ranch property. In March of
22 1978, I moved into the same mobile home. We resided continuously in the mobile
23 home through July 1983. During this entire time (December 1977 through July
24 1983), our water source was the subject spring, now located on the Bayard property.
25 The subject spring was solely, exclusively and only used by us at our mobile home
26

LAW OFFICES OF
RANDOLPH LEE GARRISON, P.C.
ATTORNEYS AT LAW
430 S.E. MAIN - P. O. BOX 266
ROSEBURG, OREGON 97470-0049
(503) 672-4441

1 [3285 Highway 138 West, Oakland, Oregon 97462]. During this time, the subject
2 spring was not used by anyone else.

3 (3) I am especially aware of the above facts because myself (together
4 with Robert Speedy) maintained the water line which carried the spring water to the
5 mobile home in which I resided.

6
7 Jesse Smith
8 Jesse Smith

9 SUBSCRIBED and SWORN to before me this 6th day of July, 1992.

LAW OFFICES OF
RANDOLPH LEE GARRISON, P.C.
ATTORNEYS AT LAW
430 S.E. MAIN - P. O. BOX 266
ROSEBURG, OREGON 97470-0049
(503) 672-4441



13
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Tacy L. Silva
Notary Public for Oregon
My commission expires: Nov. 6, 1995

RECEIVED

JUL 08 1992

WATER RESOURCES DEPT.
SALEM, OREGON

1 Randolph Lee Garrison, P.C.
OSB No. 76142
2 Attorneys at Law
430 S.E. Main/P.O. Box 266
3 Roseburg, OR 97470-0049
Telephone: (503) 672-4441
4

5 Of Attorneys for Geronimo and Mary Bayard

6 BEFORE THE OREGON WATER RESOURCES DEPARTMENT
STATE OF OREGON

7 IN THE MATTER OF)
8)
9)

Case No. SWR-47

10 CREEK BANK FARM, INC.)
11)
12 _____)

AFFIDAVIT OF
CYNTHIA MANDERO
ON SPRING DIVERSION

13 STATE OF OREGON)
14 County of Douglas)
15)
16)
17)
18)
19)
20)
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22)
23)
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25)
26)

I, CYNTHIA MANDERO, being first duly sworn on oath, depose and say:

(1) I have first hand knowledge of the herein recited facts.

(2) From 1973 until April 1987, I resided in the residence which is one

and the same residence now occupied by Hegges (Creek Bank Farm). This residence is addressed as: 149 Rolling Ridge Road, Oakland, Oregon 97462.

From June 1974 to May 1977, the water from the subject spring (now located on Bayard's property) was totally, exclusively and completely diverted to and used by a mobile home on the other side of my ranch. The mobile home was the residence of my sister, Mary Bayard, 3285 Highway 138 West, Oakland, Oregon 97462. The subject spring was her only source of water. She used it exclusively. None of the spring water was used by me at my residence, which is now one and the same

LAW OFFICES OF
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ATTORNEYS AT LAW
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ROSEBURG, OREGON 97470-0049
(503) 672-4441

1 residence of Heggess (Creek Bank Farm), 149 Rolling Ridge Road, Oakland, Oregon
2 97462.

3 From December 1977 to July 1983, my parents, Jesse and Lillian Smith,
4 resided in the mobile home, 3285 Highway 138 West, Oakland, Oregon 97462. My
5 parents resided with my sister (Mary Bayard) from December 1977 until December
6 1978, and then resided at the mobile home alone from December 1978 until July
7 1983. During the period of time from December 1977 to July 1983, the subject
8 spring was entirely, exclusively and only used by the mobile home, 3285 Highway
9 138 West, Oakland, Oregon 97462.
10

11 During the years that I lived in what is now one and the same home as
12 the Hegge (Creek Bank Farm) home [149 Rolling Ridge Road, Oakland, Oregon
13 97462], we had adequate potable water for domestic use from a well near the
14 house. This well adequately serviced a household of up to five members. The
15 water supply was adequate even during the years in which the spring water was
16 used exclusively by the mobile home [3285 Highway 138 West, Oakland, Oregon
17 97462]. We also ran an average of over 250 head of ewes and 40 cattle and had
18 ample water from the other existing well and ponds.
19

20 (3) Accordingly, from the above, water was not used from the subject
21 spring (at all) by the now Hegge (Creek Bank Farm) [149 Rolling Ridge Road,
22 Oakland, Oregon 97462] household:
23

- 24 -- For three years (June of 1974 until May of 1977); and,
- 25 -- For six years (December 1977 until July 1983).

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For these reasons, Creek Bank Farm is not entitled to a Pre-1909 Water Right.

Cynthia M. Mander
Cynthia Mander

SUBSCRIBED and SWORN to before me this 7th day of July, 1992.



Tacy L. Silva
Notary Public for Oregon
My commission expires: 11/6/95

LAW OFFICES OF
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3 July 1992

Don Knauer
Adjudication Specialist
Oregon Water Resources Dept.
3850 Portland Road NE
Salem, OR 97310

Re: Creek Bank Farm, Inc.
SWR-47

Dear Mr. Knauer:

Thank you for your letter, dated 1 July 1992.

I understand your letter to attempt to make clarification of the issues involved in Creek Bank Farm's application for a Pre-1909 Water Registration.

The following statements are intended to be a clarification and correction to the understandings set forth in your letter.

- (1) Yes, Bayard owns the property on which the spring arises.
- (2) Yes, Creek Bank Farm's pipeline crosses over Bayard's property.
- (3) Creek Bank Farm's pipeline also crosses over two other properties before it gets to its property.

You have misread and misinterpreted the color coded map and key. Both Bayard and Mandero have used and continue to want to use the spring water. The color coded map was simply intended to show where the spring water has been diverted during the times that the subject area was in the common ownership of Mandero and how the water has been used when the Mandero property was parcelled.

Do they
HAVE A
WATER
RIGHT?

Don Knauer
3 July 1992
Page 2

ABANDONMENT
OR
NON-USE
?

(4) As expressed in my previous letters, we do intend to present further evidence that the spring water was used for a period of more than two continuous years, not at Creek Bank Farm's residence. We are in the process of preparing and having signed at least two affidavits to this effect. When the affidavits are signed, they will be submitted to you.

(5) The 1 July 1988 Property Agreement entered into by Creek Bank Farm directly affects the Department's determination. This is because the Department cannot grant a Pre-1909 Water Right to an applicant, who, by written agreement has expressly provided for the termination of the use of that water. This is particularly important to us. Creek Bank Farm and its attorney have expressly stated and contended in Court that their Pre-1909 Water Application and any subsequent recognition by your Department, by itself and as a matter of law, gives Creek Bank Farm a superior right to the water (over the landowner) and a right to trespass upon the landowner's land to appropriate the water. These false and incorrect statements made by Creek Bank Farm have added to considerable confusion inside and outside of the Courts. Quite frankly, it is quite inadequate for you to say that the issues raised by our objections are "private party matters" and the "department does not get involved with private party matters". This is because Creek Bank Farm claims much more by its "application" for a Pre-1909 Water Right, than the law allows. Your clarification of these issues is crucial. Otherwise, Creek Bank Farm will continue to misuse and abuse the authority of your Department's decisions.

WE MAY
SET A
HEARING

(6) We have in the past, and do once again, specifically request a full and fair hearing. At the hearing, we intend to present evidence that Creek Bank Farm's application is not consistent with the facts or the law.

COPIES

(7) We are not clear about the information you are acting upon. We specifically request copies of all items which you are taking into account in making decisions.

RLG:ba
c: Charles Lee
c: (w/7/1/92 ltr):
Mary Bayard
Darryl Johnson
c: Gary L. Ball, Watermaster District No. 15

Very truly yours,
RANDOLPH LEE GARRISON, P.C.

By 
Randolph Lee Garrison

[water3.586]

RANDOLPH LEE GARRISON, P.C.

ATTORNEYS AT LAW

JUN 27 1992
WATER RESOURCES DEPT.
SALEM, OREGON

June 18, 1992

Oregon Water Resources Dept.
3850 Portland Rd. N.E.
Salem, OR 97310
Attention: Mr. Don Knauer

RE: SWR-47 (CREEK BANK FARM, INC.)

Dear Mr. Knauer:

This will acknowledge receipt of your letter of June 9, 1992.

My clients Cynthia and Steve Mandero owned the property upon which the spring is located together with the adjoining property Creek Bank Farm, Inc. purchased from them by agreement in July of 1988. Those parcels have been sold. They continue to own property adjoining Creek Bank Farm, Inc. across which a waterline runs to the within described spring. They presently have an agreement for the use of the spring water with the land owners upon which the spring is located. That is the reason for their involvement in this proceeding since any granting of a water right would assumably use the waterline on their property.

INTEREST
EASEMENT
PRIVATE
AGREEMENT

Their position is as follows:

1. Creek Bank gave up all right, title or interest in the spring and any water flowing therefrom in the July, 1988 Land Purchase Agreement. Please refer to the agreement previously mailed to you by attorney Randolph Garrison.

PRIVATE
AGREEMENT

2. My clients diverted the spring water for a considerable period of time to other adjoining property and continue to have the first right to the spring water thereafter per their agreement with the landowners of the spring.

PRIVATE
AGREEMENT

PERMIT? CERTIFICATE?

3. Pursuant to the agreement they have with Creek Bank (a copy of which was enclosed by attorney Garrison) my clients wish to continue using the spring water in perpetuity.

PRIVATE
AGREEMENT
INTEREST

PERMIT? CERTIFICATE?

4. It is doubtful that Creek Bank can show its property used water continuously from the spring for the required period of time due to the diversion for an extended period of time as mentioned above.

WATER?

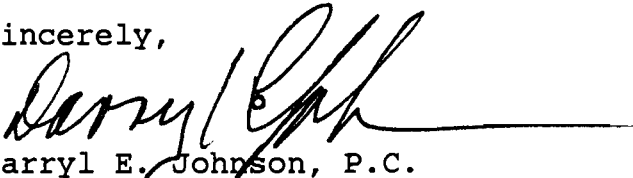
5. Creek Bank presently has an action pending against my clients for not constructing and installing a waterline from a well drilled for Creek Bank pursuant to the above Land Purchase Agreement. As indicated in attorney Garrison's letter the obligation to construct has been fulfilled and no longer exists.

6. No easement or license has ever been granted to Creek Bank to enter upon the lands owned by my clients or Mr. and Mrs. Bayard nor will one ever be granted in the future.

Obviously my clients were somewhat surprised when they learned of the surreptitious application for a water right located on land which they have no easement to. The application was based on information gathered through trespasses both by the applicant and the water rights examiner.

My clients continue to object to the application filed by Creek Bank for the reasons set forth above. It is our position that your department or the Water Resources Commission should be able to deny Creek Bank's application without further information. However, should additional investigation or a hearing be scheduled please contact us so that we can be present to present evidence and additional information.

Sincerely,



Darryl E. Johnson, P.C.

cmc

cc: Mr. and Mrs. Steve Mandero
Mr. Randolph Lee Garrison, P.C.

LAW OFFICES OF
RANDOLPH LEE GARRISON, P.C.
ATTORNEYS AT LAW

OFFICE AT 430 S.E. MAIN
MAILING ADDRESS: P.O. BOX 266
ROSEBURG, OR 97470-0049
Phone: (503) 672-4441
Fax: (503) 672-4442

JUN - 9 1992
WATER RESOURCES DEPT
Salem, OR 97331

5 June 1992
Certified Mail No. P 062 146 991

Don Knauer
State of Oregon
Water Resources Department
3850 Portland Road NE
Salem, OR 97310

RE: Application No. SWR # 47
Creek Bank Farm, Inc.
149 Rolling Ridge Road
Oakland, OR 97462

Dear Mr. Knauer:

This office represents Mary Bayard, who is the owner of property on Green Valley Road, upon which a spring is located. Mary Bayard is the successor in interest of Cynthia A. Speedy, nka Mandero.

The purpose of this letter is to contest and object to any application for a water right, including but not limited to the "Surface Water Registration Statement Pre-1909 Vested Water Right Claim", made by Creek Bank Farm, Inc., and any other application, permit, statement or claim to said spring made by Creek Bank Farm, Inc., Marvin Hegge and/or Maureen Hegge.

ORS 537.139 (1) and ORS 537.140 (1)(a)(E) require that the applicant have a written authorization or an easement permitting access to the land upon which the spring is located.

No such permission or easement currently exists.

Enclosed please find a true copy of a "Property Agreement" entered into with Creek Bank Farm (Hegges), Recorded in Book 1026, Beginning at Page 601 of the Deed Records of Douglas County, as Instrument No. 88-09417.

Don Knauer
5 June 1992
Page 2

Please observe that the right given to Creek Bank Farm was a temporary right, for a limited use of water for a limited period of time. The right was limited in use, because Hegges had only a right to use water in excess of Speedy's use of water. See Property Agreement Paragraph (2)(a). The right was limited in time and temporary, because the easement to the water ceased and terminated upon Speedy's fulfillment of her obligation to construct a well. See Property Agreement Paragraph (2)(d). Importantly, the right to use water given to Creek Bank Farm was not appurtenant to the land, because the right was given to Creek Bank Farm, only, and was not to be assigned, conveyed, released or otherwise alienated to any other person or entity. See Property Agreement Paragraph (2)(e).

The obligation to put in the well (water system) has now been fulfilled. Creek Bank Farm's temporary easement is now terminated and expired.

Mary Bayard specifically requests notice and an opportunity to be heard concerning her objection to Creek Bank Farm's request.

Please acknowledge this letter and give us some indication as to when this matter will be considered (we do not request any expedited procedure).

Very truly yours,

RANDOLPH LEE GARRISON, P.C.

Randolph Lee Garrison /Ba

By

Randolph Lee Garrison

RLG:ba

Enclosures: Property Agreement; Speedy to Bayard Deed

c (w/enc): Gary L. Ball, Watermaster, District No. 15

(w/o enc): Mary Bayard

(w/o enc): Darryl Johnson

(w/o enc): Charles Lee

[lwater.586]

RANDOLPH LEE GARRISON, P.C.

ATTORNEYS AT LAW

LAW OFFICES OF
RANDOLPH LEE GARRISON, P.C.
ATTORNEYS AT LAW

JUN 30 1992
OFFICE AT 430 S.E. MAIN
MAILING ADDRESS: P.O. BOX 266
ROSEBURG, OR 97470-0049
Phone: (503) 672-4441
Fax: (503) 672-4442

29 June 1992

Don Knauer
Adjudication Specialist
Oregon Water Resources Dept.
3850 Portland Road NE
Salem, OR 97310

Re: Creek Bank Farm, Inc.
SWR-47

Dear Mr. Knauer:

Thank you for your letter, dated 10 June 1992.

INTEREST
Both this letter and my prior 5 June 1992 letter were/are intended to submit to you written notification of the interest of Mary Bayard in the claim to the spring on her property and the grounds for her contest and objection to the application of Creek Bank Farm, Inc. For your ease in reference, my 5 June 1992 letter is enclosed. Also, I enclose a copy of correspondence from Attorney Darryl Johnson, who represents Cynthia Mandero. All of these letters state our objections to the application of Creek Bank Farm, Inc.

PROPERTY AGREEMENT
PROPERTY AGREEMENT
INTEREST
On 1 July 1988, Creek Bank Farm purchased its property from Cynthia Mandero (fka Speedy). As a part of the property transaction, the parties entered into a "Property Agreement". A copy of the Property Agreement was enclosed to you in my 5 June 1992 letter. The spring which is the subject of Creek Bank Farm's application SWR-47 is not located on Creek Bank Farm's property. This same spring is the subject of said "Property Agreement". The spring is located on property now owned by Mary Bayard.

Said Property Agreement gave Creek Bank Farm a limited right to use a limited amount of water for a limited period of time. See Paragraph (2) of the Property Agreement. Specifically, Creek Bank Farm was allowed to use only the "excess" water (excess as defined in the Agreement). Creek Bank Farm's right to use the water was the personal privilege of Creek Bank Farm, only, and was not

Don Knauer
29 June 1992
Page 2

to be assigned, conveyed, released or otherwise alienated to any other person or entity. In other words, the right was not appurtenant to the land.

PROPERTY AGREEMENT
Most importantly, Creek Bank Farm's right to use the water terminated upon fulfillment of a well obligation [described in Paragraph (4) of the Property Agreement]. The obligation to construct a well has now been fulfilled [in part because the well has been installed and in part because Creek Bank Farm and its agents have waived, relinquished and released any further obligation to construct the well by refusing, denying, frustrating and repudiating any further construction of the well and its related obligations].

SEE ORS 539
Accordingly, Creek Bank Farm has no right to use water which has not been sold to them nor is a part of their land. See ORS 537.139 and 537.140 (1)(e)(E).

NON-USE?
We also comment, in addition, that the use of the spring and its destination has been changed and interrupted on several occasions. An explanation of this is provided on the enclosed color-coded pages (3).

If you have any further questions, comments or concerns, please feel free to contact me further.

Very truly yours,

RANDOLPH LEE GARRISON, P.C.

By 
Randolph Lee Garrison

RLG:ba/tls
Enclosures
cc: Gary L. Ball, Watermaster District No. 15
Mary Bayard
Darryl Johnson
Charles Lee
[lwater2.586]

RANDOLPH LEE GARRISON, P.C.

ATTORNEYS AT LAW

JUN 30 1992

WATER RESOURCES DEPT.

Property parcels owned by Speedy/Mandero until:





- 1 - Hegge - 1988
- 2 - Rob Smets - 1987 - first as a homesite in 1974 - Floto, Smith + various renters until Smets
- 3 - Bill Smets - 1989 - first as a homesite in April, 1987 for Speedy until Smets
- 4 - Bayard - 1991 - no homesite to date
- 5 - Speedy/Mandero current residence

Homesite Water Sources:

- 1 - Spring "X"
 - Well "A" - Used by Speedy prior to Sale
 - Well "B" - Put in 8/8/88 for Hegge per sale agreement
- 2 - Spring "X" - 1974 to April 1987 - only domestic source
 - Well "D" - April 1987 - put in by Smets - end spring use
- 3 - Spring "X" - April 1987 through July 1989 - only source
 - Wells "E" + "F" - July 1989 - end spring use
- 4 - Spring "X" - only water source
- 5 - Well "G" 1989
 - Spring "X" - Alternate/additional under development currently

Stock water sources as known by Bayards + Manderos:



- 1 - 4 ponds
 - Well "C"
 - Calapooya Creek stock water rights
- 2 - 2 ponds
- 3 - 1 pond
- 4 - None
- 5 - Williams Creek - seasonal flow




| Legend | |
|-------------|---|
| Houses |  |
| Ponds |  |
| Creek Water |  |
| Wells |  |

Spring origin - parcel  4 

Spring line to Hegge home through easement
as per contract.  to  1


Spring diverted to Rob Smets parcel  2
1974 - 1987 

Spring kept by Speedy - water taken to  3
(Bill Smets currently) - April 1987 - July 1989


Spring line proposed + starting construction
for use by Bayard / Manderero parcels
 4 +  5 

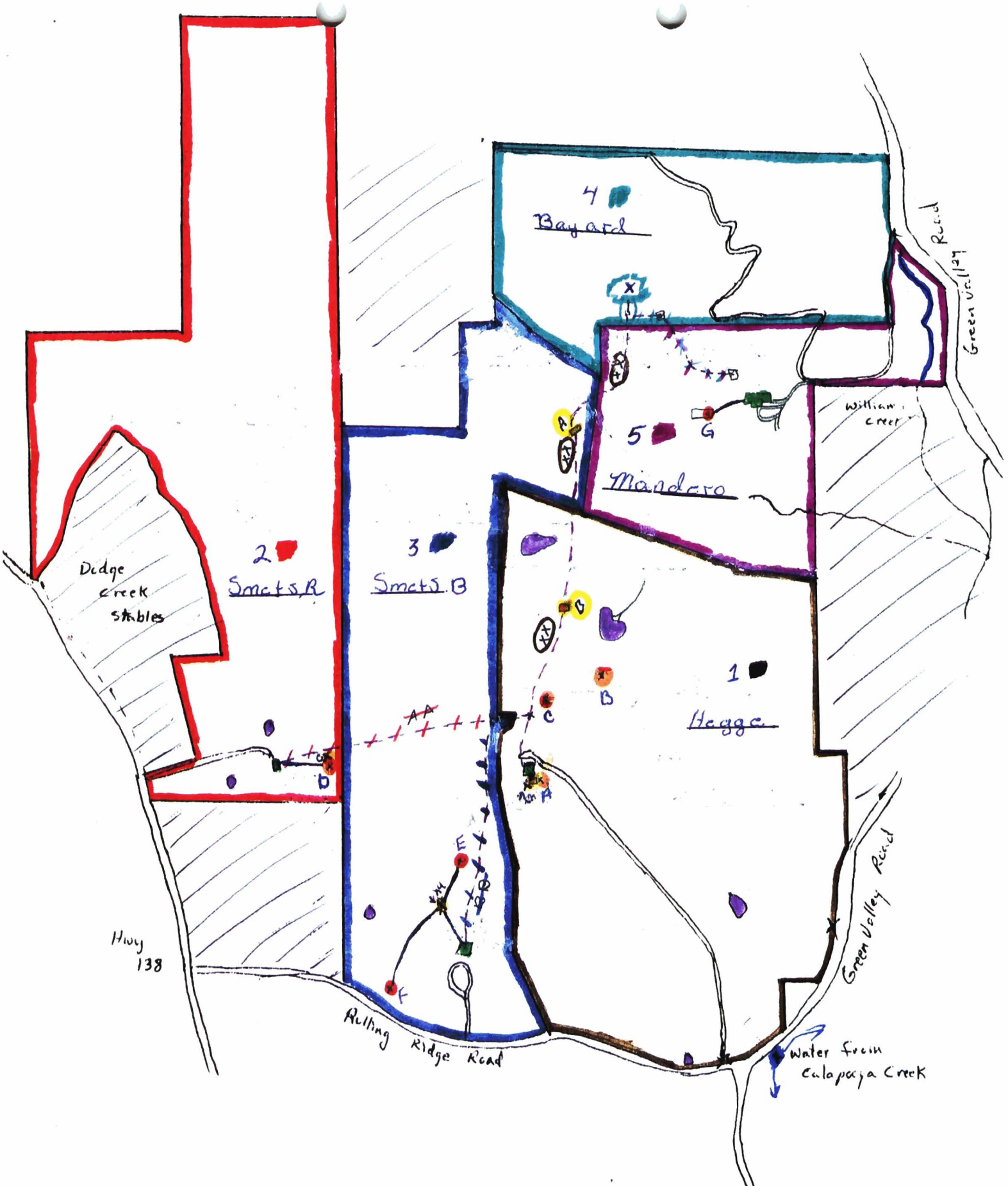
Holding tanks - old from easement
- new put in by Hegge
- all other storage tanks





Ponds  

Houses  



Rolling Ridge Ranch - 910 acres before division

June 18, 1992

Oregon Water Resources Dept.
3850 Portland Rd. N.E.
Salem, OR 97310
Attention: Mr. Don Knauer

COPY

RE: SWR-47 (CREEK BANK FARM, INC.)

Dear Mr. Knauer:

This will acknowledge receipt of your letter of June 9, 1992.

My clients Cynthia and Steve Mandero owned the property upon which the spring is located together with the adjoining property Creek Bank Farm, Inc. purchased from them by agreement in July of 1988. Those parcels have been sold. They continue to own property adjoining Creek Bank Farm, Inc. across which a waterline runs to the within described spring. They presently have an agreement for the use of the spring water with the land owners upon which the spring is located. That is the reason for their involvement in this proceeding since any granting of a water right would assumably use the waterline on their property.

Their position is as follows:

1. Creek Bank gave up all right, title or interest in the spring and any water flowing therefrom in the July, 1988 Land Purchase Agreement. Please refer to the agreement previously mailed to you by attorney Randolph Garrison.
2. My clients diverted the spring water for a considerable period of time to other adjoining property and continue to have the first right to the spring water thereafter per their agreement with the landowners of the spring.
3. Pursuant to the agreement they have with Creek Bank (a copy of which was enclosed by attorney Garrison) my clients wish to continue using the spring water in perpetuity.
4. It is doubtful that Creek Bank can show its property used water continuously from the spring for the required period of time due to the diversion for an extended period of time as mentioned above.

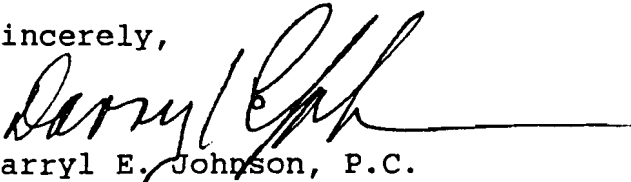
5. Creek Bank presently has an action pending against my clients for not constructing and installing a waterline from a well drilled for Creek Bank pursuant to the above Land Purchase Agreement. As indicated in attorney Garrison's letter the obligation to construct has been fulfilled and no longer exists.

6. No easement or license has ever been granted to Creek Bank to enter upon the lands owned by my clients or Mr. and Mrs. Bayard nor will one ever be granted in the future.

Obviously my clients were somewhat surprised when they learned of the surreptitious application for a water right located on land which they have no easement to. The application was based on information gathered through trespasses both by the applicant and the water rights examiner.

My clients continue to object to the application filed by Creek Bank for the reasons set forth above. It is our position that your department or the Water Resources Commission should be able to deny Creek Bank's application without further information. However, should additional investigation or a hearing be scheduled please contact us so that we can be present to present evidence and additional information.

Sincerely,



Darryl E. Johnson, P.C.

cmc

cc: Mr. and Mrs. Steve Mandero
Mr. Randolph Lee Garrison, P.C.

LAW OFFICES OF
RANDOLPH LEE GARRISON, P.C.
ATTORNEYS AT LAW

OFFICE AT 430 S.E. MAIN
MAILING ADDRESS: P.O. BOX 266
ROSEBURG, OR 97470-0049
Phone: (503) 672-4441
Fax: (503) 672-4442

5 June 1992
Certified Mail No. P 062 146 991

Don Knauer
State of Oregon
Water Resources Department
3850 Portland Road NE
Salem, OR 97310

RE: Application No. SWR # 47
Creek Bank Farm, Inc.
149 Rolling Ridge Road
Oakland, OR 97462

Dear Mr. Knauer:

This office represents Mary Bayard, who is the owner of property on Green Valley Road, upon which a spring is located. Mary Bayard is the successor in interest of Cynthia A. Speedy, nka Madero.

The purpose of this letter is to contest and object to any application for a water right, including but not limited to the "Surface Water Registration Statement Pre-1909 Vested Water Right Claim", made by Creek Bank Farm, Inc., and any other application, permit, statement or claim to said spring made by Creek Bank Farm, Inc., Marvin Hegge and/or Maureen Hegge.

SEE
539
ORS 537.139 (1) and ORS 537.140 (1)(a)(E) require that the applicant have a written authorization or an easement permitting access to the land upon which the spring is located.

No such permission or easement currently exists.

Enclosed please find a true copy of a "Property Agreement" entered into with Creek Bank Farm (Hegges), Recorded in Book 1026, Beginning at Page 601 of the Deed Records of Douglas County, as Instrument No. 88-09417.

Don Knauer
5 June 1992
Page 2

Please observe that the right given to Creek Bank Farm was a temporary right, for a limited use of water for a limited period of time. The right was limited in use, because Hegges had only a right to use water in excess of Speedy's use of water. See Property Agreement Paragraph (2)(a). The right was limited in time and temporary, because the easement to the water ceased and terminated upon Speedy's fulfillment of her obligation to construct a well. See Property Agreement Paragraph (2)(d). Importantly, the right to use water given to Creek Bank Farm was not appurtenant to the land, because the right was given to Creek Bank Farm, only, and was not to be assigned, conveyed, released or otherwise alienated to any other person or entity. See Property Agreement Paragraph (2)(e).

The obligation to put in the well (water system) has now been fulfilled. Creek Bank Farm's temporary easement is now terminated and expired.

Mary Bayard specifically requests notice and an opportunity to be heard concerning her objection to Creek Bank Farm's request.

Please acknowledge this letter and give us some indication as to when this matter will be considered (we do not request any expedited procedure).

Very truly yours,

RANDOLPH LEE GARRISON, P.C.

Randolph Lee Garrison

By
Randolph Lee Garrison

RLG:ba

Enclosures: Property Agreement; Speedy to Bayard Deed

c (w/enc): Gary L. Ball, Watermaster, District No. 15

(w/o enc): Mary Bayard

(w/o enc): Darryl Johnson

(w/o enc): Charles Lee

[water.586]

RANDOLPH LEE GARRISON, P.C.

ATTORNEYS AT LAW

PROPERTY AGREEMENT

(Including Easements and Right of First Refusal)

JUN - 9 1992

RECEIVED
CLERK OF DISTRICT COURT

THIS AGREEMENT is hereby made and entered into on the date hereinafter provided, by and between CREEK BANK FARM, INC., an Oregon Corporation [hereinafter referred to as "Creek Bank Farm"], and CYNTHIA A. SPEEDY [hereinafter referred to as "Speedy"]:

19178

WHEREAS, Speedy has sold (or intends to sell) to Creek Bank Farm certain real property, which real property is more particularly described in the attached Exhibit "A", which Exhibit is made a part hereof as if recited verbatim herein;

WHEREAS, after the sale of said property from Speedy to Creek Bank Farm (described in the attached Exhibit "A"), Speedy will retain and remain the owner of the real property described in the attached Exhibit "B", which Exhibit is made a part hereof as if recited verbatim herein;

WHEREAS, Speedy intends to grant to Creek Bank Farm an easement for the use of water from a spring as more particularly described herein;

WHEREAS, Creek Bank Farm intends to grant Speedy an easement for water lines, more particularly described herein;

WHEREAS, Speedy intends to grant a "Right of First Refusal" concerning the real property described in Exhibit "B";

NOW THEREFORE, THE PARTIES AGREE UPON THE FOLLOWING TERMS, CONDITIONS AND COVENANTS:

UMPOVA TITLE & ESTATE SERVICES

Property Agreement

(1) RECITALS: The above recitals are true.

(2) WATER EASEMENT: Speedy hereby grants to Creek Bank Farm a nonexclusive easement for the use of water from the currently existing and currently developed spring, which spring is located on the real property described in the attached Exhibit "B". The right of easement granted in this paragraph (2) shall be limited as follows:

(a) Creek Bank Farm shall have a right to use only that water which is in excess of the water used by Speedy. As used in this subparagraph (2)(a), the term "excess" means that Creek Bank Farm has the right to use said water from said spring, but only when either:

- (i) The flow of water to Speedy is greater than four gallons per minute; or
- (ii) Speedy's holding tanks are more than one-half full.

Whenever Speedy's flow of water is less than four gallons per minute and Speedy's holding tanks are less than one-half full, then Creek Bank Farm shall have no right to the use of said water from said spring.

(b) The right of easement granted to Creek Bank Farm in this paragraph (2), includes:

- (i) The right to use said water from the currently existing and currently developed spring;
- (ii) The right of ingress and egress over the real property more particularly described in Exhibit "B", but only for the purpose of access to and from the currently existing and currently developed spring, and development, maintenance, repair, installation, construction, reconstruc-

tion, improvement and/or use of the currently existing pipeline running thereto; and

- (iii) The right to use the currently existing and currently developed pipeline which currently exists over and across the real property described in the attached Exhibit "A" [which pipeline is more particularly described in paragraph (3), below], but only for the purpose of gaining access to said water from the currently existing and currently developed spring, as well as the right (but not the obligation) to maintain, repair, install, construct, reconstruct, improve and use said pipeline.

(c) Speedy and Creek Bank Farm shall have the right (but not the obligation) to maintain, repair, install, construct, reconstruct, improve and use the pipeline described in this paragraph (2) and the following paragraph (3). Neither Speedy nor Creek Bank Farm shall have a right to contribution or indemnity from the other for any sums expended or materials used in connection with the maintenance, repair, installation, construction, reconstruction, improvement or use of the pipeline described in this paragraph (2) and the following paragraph (3).

(d) Creek Bank Farm's right of easement described in this paragraph (2) shall cease and terminate upon the fulfillment of Speedy's obligation described in paragraph (4) [WELL], below.

(e) The easement granted in this paragraph shall be the privilege of Creek Bank Farm, only, and shall not be assigned, conveyed, released or otherwise alienated to any other person or entity.

///

The easement described in this paragraph (3) [Pipe Easement] shall be for the following purposes:

- (a) To maintain, repair, install, construct, reconstruct, improve and use the existing and any future water line servicing or in connection with the water supply used by the real property more described in Exhibit "B". The right granted herein shall be to maintain, repair, install, construct, reconstruct, improve and use a singular water line. A water line may be abandoned or replaced, but there shall be only one operating and operable water line within the easement area. When maintaining, repairing, installing, constructing, reconstructing, improving or using said water line, Speedy shall perform all work so as to minimize any waste or disruption to the real property described in the attached Exhibit "A". And
- (b) For the unlimited and uninhibited access, ingress and egress, including but not limited to access by any and all vehicles and equipment, over the real property described in Exhibit "A", so long as such access, ingress and egress is used for or in connection with the water supply of the real property more particularly described in Exhibit "B", and so long as such access, ingress and egress does not unreasonably interfere with Creek Bank Farm's use and occupancy of the real property more particularly described in the attached Exhibit "A".

Except in case of an emergency, Speedy shall give to Creek Bank Farm not less than 48 hours notice prior to entering the real property described in Exhibit "A" for the purpose described in this paragraph (3) [PIPE EASEMENT].

Any expense incurred by Speedy in connection with or arising out of the grant of this easement described in this paragraph shall be paid for and borne by Speedy.

The easement described in this paragraph shall be appurtenant to Speedy's real property, which real property is more

particularly described in the attached Exhibit "B". The dominant estate shall be Speedy's real property, more particularly described in the attached Exhibit "B". The servient estate shall be the real property more particularly described in the attached Exhibit "A". The terms, conditions and easement contained in this paragraph (3) [EASEMENT] shall bind and/or benefit the heirs, devisees, successors and assigns of the parties.

(4) WELL: Not later than 31 December 1989, Speedy shall pay for, provide, construct or cause to be constructed a well(s) for the benefit of Creek Bank Farm. Said well(s) shall be located on the real property more particularly described in the attached Exhibit "A". As used in this paragraph (4) [WELL], the term "well" or "well(s)" includes the construction, digging, casing and topping, and all pumps and other apparatus necessary for the delivery of water from one or more wells in such a manner and to such places more particularly described hereinafter.

Speedy shall construct or cause to be constructed said well(s), such that on the dates hereinafter provided, the water from said well(s) shall be potable water and have a flow of not less than 300 gallons within a 24 hour period. The minimum flow described in the foregoing sentence shall be determined, measured and established on either the 1st day of August, 1988, or the 1st day of July, 1989, which date shall be chosen at the sole and exclusive election of Speedy.

UDR LL -
12/31/89

The location of said well shall be in the sole and exclusive discretion of Speedy, so long as said well is located on the real property more particularly described in the attached Exhibit "A". Speedy shall also pay for, provide and construct, or cause to be constructed, pumps and pipelines such that the water from said well(s) is delivered to either the currently existing holding tanks or such other holding tank(s) as may be mutually agreed upon between the parties at the time of the construction of said well.

The well, pumps and apparatus described herein shall be built and constructed in accordance with all applicable laws, rules and regulations.

The provisions of this paragraph (4) [WELL] shall be binding upon the heirs, devisees, successors and assigns of Speedy.

(5) FIRST RIGHT TO PURCHASE: Speedy shall offer the sale of all or part of the real property more particularly described in the attached Exhibit "B" to Creek Bank Farm, more particularly as follows:

(a) During the period provided for hereinbelow, if, and in the event that Speedy shall choose to consider to sell all or part of the real property more particularly described in Exhibit "B", then Speedy shall first give written notice to Creek Bank Farm stating the terms of any proposed sale;

(b) As used in this paragraph (5) [FIRST RIGHT TO PURCHASE], the term "sell or "sale" shall include any sale,

gift, lease, or rental of all or part of the real property more particularly described in the attached Exhibit "B".

(c) Creek Bank Farm shall accept the terms and conditions proposed by Speedy by giving written notice to Speedy:

(i) Within not more than 10 weekdays after receipt of Speedy's notice to Creek Bank Farm in the event of a rental or lease of the pasture lands; or

(ii) Within not more than 30 days in all other cases.

(d) Creek Bank Farm's right of first refusal described in this paragraph shall at all times be conditioned upon:

(i) Creek Bank Farm not being in default under any of the other terms of this agreement; and

(ii) Creek Bank Farm not being in default under the terms of a Promissory Note and/or a Trust Deed, which Promissory Note and Trust Deed are from Creek Bank Farm and in favor of Speedy, and in the principal amount of \$9,800.00.

(e) In the event that Creek Bank Farm does accept the terms and conditions of the sale as proposed by Speedy, then said sale shall be closed as soon as may be practicable and reasonable under the circumstances then and there existing.

(f) In the event that Creek Bank Farm does not accept or shall fail to timely respond to or shall fail to close the proposed sale, then Speedy may thereafter proceed to sell the real property described in the attached Exhibit "B", to any other person or purchaser, as recited in and consistent with the terms of the proposed sale as presented to Creek Bank Farm. Provided however, if Speedy offers the sale of all or part of the real property more particularly described in the attached

Exhibit "B", under terms or conditions which are materially different than those terms and conditions offered to Creek Bank Farm, then Speedy shall again first offer to Creek Bank Farm the sale of the real property more particularly described in the attached Exhibit "B", and so forth, the right of Creek Bank Farm to accept said proposed sale and the right of Speedy to offer the sale of all or part of said real property to a third person or purchaser to be governed as provided above.

(g) The "First Right to Purchase" granted herein by Speedy to Creek Bank Farm shall terminate, expire and be of no further force or effect not later than the expiration of fifteen years from the date of this agreement.

(h) The "First Right to Purchase" contained in this paragraph (5) shall be personal and be the personal privilege of Creek Bank Farm; said First Right to Purchase shall not be assigned, conveyed, released or otherwise alienated to any other person or party. Speedy's obligations under this paragraph (5) shall be only so long as Speedy shall own the real property more particularly described in the attached Exhibit "B". Speedy's obligations under this paragraph (5) FIRST RIGHT TO PURCHASE shall be binding upon Speedy's heirs, devisees under a will of Speedy, and Speedy's donees (however, but shall not otherwise be binding upon Speedy's successors, purchasers or assigns).

(i) As of the date of this Agreement, Speedy represents and warrants that she has not rented or leased to any other person or entity the pasture land on the real property more

particularly described in the attached Exhibit "B".

(6) STOCK WATER RIGHTS: Speedy does hereby grant to Creek Bank Farm all of the Stock Water Rights which Speedy may have and which may be in connection with the real property more particularly described in the attached Exhibit "A". Speedy shall execute any and all further documents necessary to carry into full force and effect her grant to Creek Bank Farm of all of the Stock Water Rights which Speedy may have to convey.

(7) "AS IS": Speedy's conveyance of the real property more particularly described in the attached Exhibit "A" to Creek Bank Farm, is made by Speedy and accepted by Creek Bank Farm, "as is", "where is", and "with all faults". Except as expressly provided herein, Speedy makes no warranty or representation concerning the condition of the property, or any buildings or structures thereon, and the parties expressly agree that Speedy has made no warranty or representation concerning the condition, use, or availability of water on the property more particularly described in the attached Exhibit "A".

(8) MERGER: In connection with the sale and conveyance of the real property more particularly described in the attached Exhibit "A" from Speedy to Creek Bank Farm, the parties have signed and executed the following documents and instruments:

- (a) This document, instrument and agreement;
- (b) A Special Warranty Deed;
- (c) A Promissory Note (in the principal amount of \$9,800.00);

///

- (d) A Trust Deed securing the payment of the Promissory Note described above (in the principal amount of \$9,800.00);
- (e) Documents, agreements and instruments in connection with the assumption by Creek Bank Farm of Speedy's ODVA mortgage.

Except as may be provided in the above documents, there have been no warranties, representations or other agreements entered into between the parties, their agents or representatives. The documents, instruments and agreements listed in this paragraph represent and constitute the entire and integrated agreement between the parties and these documents shall expressly supercede all prior negotiations, representations or agreements (whether written or oral). The documents, instruments and agreements described in this paragraph shall expressly supercede and cancel the Earnest Money Receipt, Offer and Acceptance entered into between the parties (dated 13 March 1987), and all addenda thereto. The agreements, documents and instruments described in this paragraph may be amended only by a written document, signed by the parties.

(9) LITIGATION EXPENSE: In the event a dispute should arise between the parties, the unsuccessful party, his/their/its heirs, devisees and assigns, agrees to pay to the prevailing party all of the prevailing party's litigation expense. Litigation expense includes, but is not limited to:

- (a) Reasonable attorney's fees, whether incurred before, during or after litigation, or before, during or after an appeal;
- (b) The expense of title reports and policies; and

(c) The expense of experts, including but not limited to the expense of surveyors and the expense of investigators.

DATED and SIGNED this 1st day of July, 1988.

CREEK BANK FARM, INC.

Cynthia A. Speedy
Cynthia A. Speedy

By Maureen M. Hegge, Pres
Maureen Hegge, President

By Maryin C. Hegge, Sec.
Maryin Hegge, Secretary

STATE OF OREGON)
) ss.
County of Douglas)

Personally appeared before me the above named Cynthia A. Speedy, and acknowledged the foregoing instrument to be her voluntary act and deed, before me this 1st day of July, 1988.

(SEAL)

Shirley D. Silbald
Notary Public for Oregon
My commission expires: 4-16-89

STATE OF OREGON)
) ss.
County of Douglas)

Personally appeared before me the above named MAUREEN HEGGE, who is the President, and MARVIN HEGGE, who is the Secretary, of CREEK BANK FARM, INC., an Oregon corporation, and acknowledged the foregoing instrument to be its voluntary act and deed, before me this 1st day of July, 1988.

(SEAL)

Shirley D. Silbald
Notary Public for Oregon
My commission expires: 4-16-89

EXHIBIT A

A parcel of land located in Sections 2, 11 and 12 of Township 25 South, Range 6 West, Willamette Meridian, being a portion of that parcel of land described in a deed to Robert D. and Mary C. Floto and Robert K. and Cynthia A. Speedy as recorded in Instrument No. 77-0203 of the Records of Douglas County, Oregon and being more particularly described as follows:

BEGINNING at the Northwest corner of the Elisha Williamson Donation Land Claim No. 48, Section 12, Township 25 South, Range 6 West, Willamette Meridian, being also the Northwest corner of that parcel of land conveyed to George A. and Delia Emma Trumbo as recorded in Volume 100, Page 205 of the Deed Records of Douglas County, Oregon; thence South 0° 11' 40" East on the Westerly line of said Donation Land Claim No. 48 and also the Westerly line of said Volume 100, Page 205, 780.97 feet to a 5/8 inch iron rod on the Westerly right of way line of County Road No. 76, as relocated; thence the following courses along said Westerly right of way line:

191.47 feet along the arc of a 1462.40 foot radius curve left (the long chord bears South 14° 16' 24" West, 191.33 feet) to a 5/8 inch iron rod, South 10° 31' 21" West, 361.33 feet to a 5/8 inch iron rod, South 16° 23' 31" West, 99.06 feet to a 5/8 inch iron rod, 289.33 feet along the arc of a 914.93 foot radius curve right (the long chord bears South 19° 35' 06" West, 288.12 feet) to a 5/8 inch iron rod, South 26° 10' 22" West, 101.47 feet to a 5/8 inch iron rod, South 34° 55' 45" West, 132.94 feet to a 5/8 inch iron rod on the Westerly line of said Donation Land Claim No. 48; thence North 88° 54' 42" West along said Westerly line and leaving the Westerly right of way line of County Road No. 76, 271.14 feet to a 3/4 inch iron pipe at the most Westerly Northwest corner of said Donation land Claim No. 48; thence South 0° 13' 49" West continuing along the West line of Donation Land Claim No. 48, 395.60 feet to a 5/8 inch iron rod on the Westerly right of way line of County Road No. 76; thence South 35° 55' 45" West leaving said Westerly line of Donation land Claim No. 48 and along said Westerly right of way line, 345.10 feet to a 5/8 inch iron rod; thence continuing along said Westerly right of way line, 195.53 feet along the arc of a 208.73 foot radius curve right (the long chord bears South 61° 44' 46" West, 188.46 feet to a 5/8 inch iron rod 30 feet right of Engineer's centerline station "A" 2+23.61 of County Road No. 76, said point also being 30 feet right of Engineer's centerline station 5+00.00 of County Road No. 10; thence leaving the Westerly right of way line of County Road No. 76 and along the Northerly right of way line of County Road No. 10 the following courses:

Exhibit "A" Continued
Order No. 19178

Exhibit "A" Continued
Order No. 19178
Page 2

South 89° 12' 08" West, 365.41 feet to a point, North 81° 55' 46" West, 132.02 feet to a point, North 83° 28' 23" West, 145.83 feet to a point, North 84° 56' 56" West, 98.05 feet to a point, 214.84 feet along the arc of a 1602.20 foot radius curve right (the long chord bears North 73° 30' 22" West, 214.67 feet) to a point, North 59° 35' 50" West, 257.43 feet to a point, 292.32 feet along the arc of a 557.46 foot radius curve left (the long chord bears North 84° 41' 13" West, 288.99 feet) to a point, North 85° 04' 55" West, 71.50 feet to a point; thence North 14° 26' 24" West leaving said Northerly right of way line and along an existing fence line, 312.27 feet to a 5/8 inch iron rod; thence North 31° 21' 58" West continuing along said fence line, 462.74 feet to a 5/8 inch iron rod; thence North 0° 03' 24" West continuing along said fence line, 674.15 feet to a 5/8 inch iron rod; thence North 12° 46' 04" West leaving said fence line, 765.71 feet to a nail and brass washer set in top of a fence corner post; thence North 6° 46' 33" West, 371.60 feet to a nail and brass washer set in top of a fence corner post; thence North 50° 46' 34" East, 285.75 feet to a 5/8 inch iron rod; thence North 4° 44' 52" West, 117.10 feet to a 5/8 inch iron rod; thence South 80° 00' 00" West, 214.94 feet to a 5/8 inch iron rod; thence North 2040.17 feet to a 5/8 inch iron rod; thence South 57° 49' 49" East, 2608.33 feet to a 5/8 inch iron rod; thence South 79° 51' 07" East, 612.66 feet to a 5/8 inch iron rod on the Westerly line of that parcel of land described in a deed to George A. and Delia Emma Trumbo as recorded in Volume 123, Page 149 of the Deed Records of Douglas County, Oregon; thence South 0° 06' 48" East along said Westerly line, 905.00 feet to a 5/8 inch iron rod at the Southwest corner of said Volume 123, Page 149; thence North 89° 32' 20" East along the South line of said Volume 123, Page 149, 237.40 feet to th point of beginning.

EXHIBIT "B"

A parcel of land located in Sections 1, 2, 11 and 12 of Township 25 South, Range 6 West, Willamette Meridian, Douglas County, Oregon, and being more particularly described as follows:

BEGINNING at the Northwest corner of the Elisha Williamson Donation Land Claim No. 48, Section 12, Township 25 South, Range 6 West, being also the Northwest corner of a parcel of land conveyed to George A. and Delia Emma Trumbo described in Volume 100, Page 205 of Deed Records of Douglas County, Oregon, and being also a point in the South boundary of a parcel of land conveyed to the said Trumbos as described in Volume 123, Page 149 of said records; thence West along the South boundary thereof to the Southwest corner thereof; thence North along the West boundary of said parcel to the Northwest corner thereof; thence East along the North boundary of said parcel to the Southwest corner of that parcel of land conveyed to Veril A. and Hazel M. Martin as described in Volume 126, Page 110, of said records; thence Northerly along the West boundary of said parcel as follows: North 1° West 14.0 chains, North 76° West 2.95 chains, North 36° 45' West 4.02 chains, North 32° 15' West 1.84 chains, North 5° 10' West 8.60 chains; West to a Westerly boundary of the J.L. Gilbert Donation Land Claim No. 61, said township and range, at the Southeast corner of Lot 2, Section 1, said township and range, and North along said Donation Land Claim boundary and East boundary of said Lot 2 to an angle corner of said Donation Land Claim, being the Northwest corner of said Martin parcel, and also a point in the South boundary of a parcel of land conveyed to W.A. Davidson as described in Volume 58, Page 125, of said records; thence West along a South boundary of said Donation Land Claim and a South boundary of said Davidson parcel to a Southwest corner of said Gilbert Donation Land Claim, being also a point in the line between Sections 1 and 2, said township and range; thence South along said section line to the quarter corner between said sections, being also a Southeast corner of said Davidson parcel; thence West along the East-West mid-section line of said Section 2, and along said South line of Davidson parcel to a point in the East line of a parcel of land conveyed to W.D. Whitehead as described in Volume 138, Page 285, of said Records, being the Northwest corner of the Northeast quarter of Southwest quarter of said Section 2; thence South along said property line and the West line of said Northeast quarter of Southwest quarter to the Southwest corner thereof, being a Southeast corner of said Whitehead parcel; thence West along a South boundary of said parcel and the North line of the Southwest quarter of Southwest quarter to the line between Sections 2 and 3 said township and range; thence South along said line to the corner to Sections 2, 3, 10 and 11 said township and range, and continuing South along the line between Sections 10 and 11 to the most Northerly corner of a parcel conveyed to said W.D. Whitehead as described in Volume 138, Page 285, of said records;

Exhibit B Continued
Page 2

thence along the East boundary of said parcel as follows: South 55° 26' East 5.44 chains, South 20° 53' East 4.91 chains, South 43° 13' East 4.21 chains, South 22° 35' East 7.65 chains and South 7° 57' East 10.31 chains to the Southeast corner thereof, being also a point in the North boundary of that parcel of land conveyed to Evelyn E. Rose as described in Volume 223, Pages 613 and 615 of said records; thence East along the North boundary of said parcel to the Northeast corner thereof; thence along the East boundary of said parcel as follows: South 24.50 chains, South 57° 45' East 4.25 chains, South 60° 30' East 10.7 chains, South 3° 15' East 6.97 chains to the center line of the Calapooya Creek; thence along said center line of Creek upstream as follows: North 44° East 1.20 chains, North 77° 15' East 1.80 chains, North 87° 30' East 2.95 chains, North 69° East 5.30 chains North 48° 45' East 2.86 chains, and North 67° 15' East 3.63 chains; thence North 74° East 3.63 chains to the Northwest corner of that parcel of land conveyed to C.A. and Madge N. Miller as described in Volume 93, Page 485, of said records; thence along the North boundary of said Miller parcel as follows: South 78° 15' East 7.75 chains, South 80° 15' East 1.82 chains, North 88° 15' East 10.84 chains, and North 46° East 4.12 chains to the Northeast corner thereof being also a point in the West boundary of Elisha Williamson Donation Land Claim No. 48, said township and range; thence along the boundaries of said Donation Land Claim as follows: North 9.0 chains to a Northwest corner thereof, East 9.50 chains to an interior angle corner thereof, and North 28.46 chains to the place of beginning. Excepting therefrom any portion of the parcel of land conveyed to Oregon State Highway Commission described in Volume 173, Page 294, of said records, contained within the above description, all in Sections 1, 2, 11 and 12, Township 25 South, Range 6 West, Willamette Meridian, Douglas County, Oregon.

ALSO the Southeast quarter of the Northwest quarter, Section 2, Township 25 South, Range 6 West, Willamette Meridian, Douglas County, Oregon.

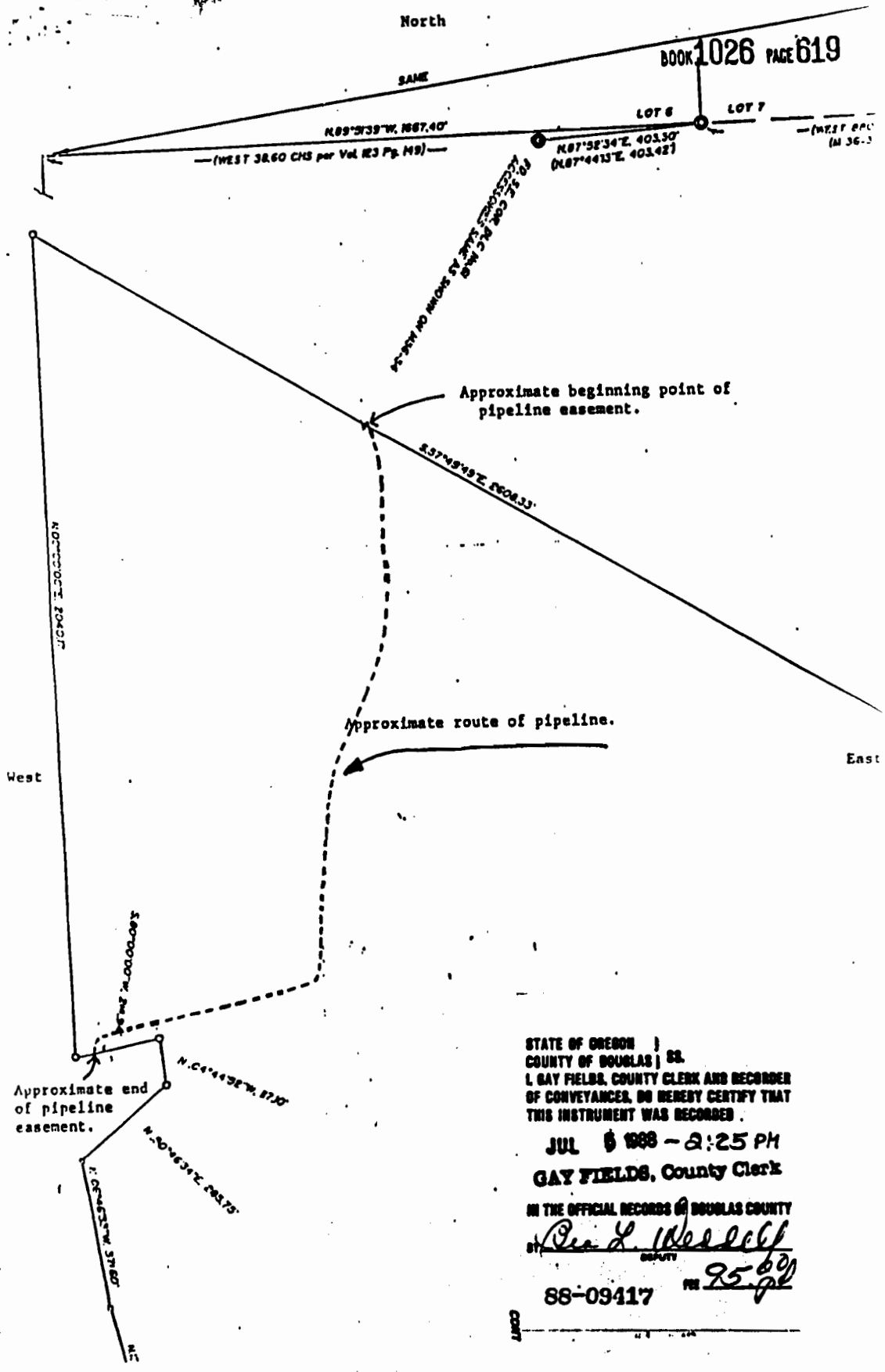
LESS AND EXCEPTING those portions of the above described property released by Instrument Nos. 77-9129, 78-19902, 80-16941, 83-2845 and 87-9230, Deed Records, Douglas County, Oregon.

ALSO LESS AND EXCEPTING THE FOLLOWING:

A parcel of land located in Sections 2, 11 and 12 of Township 25 South, Range 6 West, Willamette Meridian, being a portion of that parcel of land described in a deed to Robert D. and Mary C. Floto and Robert K. and Cynthia A. Speedy as recorded in Instrument No. 77-0203 of the Records of Douglas County, Oregon and being more particularly described as follows:

BEGINNING at the Northwest corner of the Elisha Williamson Donation Land Claim No. 48, Section 12, Township 25 South, Range 6 West, Willamette Meridian, being also the Northwest corner of that parcel of land conveyed to George A. and Delia Emma Trumbo as recorded in Volume 100, Page 205 of the Deed Records of Douglas County, Oregon; thence South 0° 11' 40" East on the Westerly line of said Donation Land Claim No. 48 and also the Westerly line of said Volume 100, Page 205, 780.97 feet to a 5/8 inch iron rod on the Westerly right of way line of County Road No. 76, as relocated; thence the following courses along said Westerly right of way line: 191.47 feet along the arc of a 1462.40 foot radius curve left (the long chord bears South 14° 16' 24" West, 191.33 feet) to a 5/8 inch iron rod, South 10° 31' 21" West, 361.33 feet to a 5/8 inch iron rod, South 16° 23' 31" West, 99.06 feet to a 5/8 inch iron rod, 289.33 feet along the arc of a 914.93 foot radius curve right (the long chord bears South 19° 35' 06" West, 288.12 feet) to a 5/8 inch iron rod, South 26° 10' 22" West, 101.47 feet to a 5/8 inch iron rod, South 34° 55' 45" West, 132.94 feet to a 5/8 inch iron rod on the Westerly line of said Donation Land Claim No. 48; thence North 88° 54' 42" West along said Westerly line and leaving the Westerly right of way line of County Road No. 76, 271.14 feet to a 3/4 inch iron pipe at the most Westerly Northwest corner of said Donation Land Claim No. 48; thence South 0° 13' 49" West continuing along the West line of Donation Land Claim No. 48, 395.60 feet to a 5/8 inch iron rod on the Westerly right of way line of County Road No. 76; thence South 35° 55' 45" West leaving said Westerly line of Donation Land Claim No. 48 and along said Westerly right of way line, 345.10 feet to a 5/8 inch iron rod; thence continuing along said Westerly right of way line, 195.53 feet along the arc of a 208.73 foot radius curve right (the long chord bears South 61° 44' 46" West, 188.46 feet to a 5/8 inch iron rod 30 feet right of Engineer's centerline station "A" 2+23.61 of the County Road No. 76, said point also being 30 feet right of Engineer's centerline station 5+00.00 of County Road No. 10; thence leaving the Westerly right of way line of County Road No. 76 and along the Northerly right of way line of County Road No. 10 the following courses: South 89° 12' 08" West, 365.41 feet to a point, North 81° 55' 46" West, 132.02 feet to a point, North 83° 28' 23" West, 145.83 feet to a point, North 84° 56' 56" West, 98.05 feet to a point, 214.84 feet along the arc of a 1602.20 foot radius curve right (the long chord bears North 73° 30' 22" West, 214.67 feet) to a point, North 59° 35' 50" West, 257.43 feet to a point, 292.32 feet along the arc of a 557.46 foot radius curve left (the long chord bears North 84° 41' 13" West, 288.99 feet) to a point, North 85° 04' 55" West, 71.50 feet to a point; thence North 14° 26' 24" West leaving said Northerly right of way line and along an existing fence line, 312.27 feet to a 5/8 inch iron rod; thence North 31° 21' 58" West continuing along said fence line, 462.74 feet to a 5/8 inch iron rod; thence North 0° 03' 24" West continuing along said fence line, 674.15 feet to a 5/8 inch iron rod;

thence North 12° 46' 04" West leaving said fence line, 765.71 feet to a nail and brass washer set in top of a fence corner post; thence North 6° 46' 33" West, 371.60 feet to a nail and brass washer set in top of a fence corner post; thence North 50° 46' 34" East, 285.75 feet to a 5/8 inch iron rod; thence North 4° 44' 52" West, 117.10 feet to a 5/8 inch iron rod; thence South 80° 00' 00" West, 214.94 feet to a 5/8 inch iron rod; thence North 2040.17 feet to a 5/8 inch iron rod; thence South 57° 49' 49" East, 2608.33 feet to a 5/8 inch iron rod; thence South 79° 51' 07" East, 612.66 feet to a 5/8 inch iron rod on the Westerly line of that parcel of land described in a deed to George A. and Delia Emma Trumbo as recorded in Volume 123, Page 149 of the Deed Records of Douglas County, Oregon; thence South 0° 06' 48" East along said Westerly line, 905.00 feet to a 5/8 inch iron rod at the Southwest corner of said Volume 123, Page 149; thence North 89° 32' 20" East along the South line of said Volume 123, Page 149, 237.40 feet to the point of beginning.



BOOK 1026 PAGE 619

North

SAME

LOT 6

LOT 7

N. 89° 21' 33" W. 1887.40'

(WEST 38.60 CHS per Vol. 123 Pg. 119)

N. 87° 52' 34" E. 403.30'
 (N. 87° 44' 13" E. 403.42')

(WEST 38.60 CHS per Vol. 123 Pg. 119)

N. 70° 10' 10" W. 1000.00'
 (N. 70° 10' 10" W. 1000.00')

Approximate beginning point of pipeline easement.

S. 57° 49' 49" E. 2008.33'

Approximate route of pipeline.

N. 0° 00' 00" E. 2000.00'

West

East

S. 67° 00' 00" W. 2000.00'

Approximate end of pipeline easement.

N. 64° 44' 32" W. 87.00'

N. 20° 43' 32" E. 200.00'

7' GRASSY STRIP

N.E.

STATE OF OREGON)
 COUNTY OF DOUGLAS) CL.
 I, GAY FIELDS, COUNTY CLERK AND RECORDER
 OF CONVEYANCES, DO HEREBY CERTIFY THAT
 THIS INSTRUMENT WAS RECORDED.

JUL 6 1988 - 2:25 PM

GAY FIELDS, County Clerk

IN THE OFFICIAL RECORDS OF DOUGLAS COUNTY

BY *Dea L. Woodell*
 DEPUTY

88-09417

PER *25.60*

CONT

CYNTHIA A. MANDERO (fka CYNTHIA A. SPEEDY) [hereinafter referred to as "Grantor"] hereby conveys to MARY C. BAYARD [hereinafter referred to as "Grantee"] all of Mandero's right, title and interest in the real property described in Exhibit "A", which description is attached hereto and made a part hereof as if recited verbatim herein.

The Parties intend this Conveyance to be a "Bargain & Sale Deed", to have the same force and effect as the same is described in ORS 93.860.

The consideration for this Conveyance by Grantor to Grantee is Grantee's discharge, release and satisfaction of sums owed by Grantor to Grantee. Said sums are more particularly described as follows:

| | | |
|---------------------------|-------------------|--------------------|
| Ranch payments | | |
| February 1984: | \$4,000.00 | |
| Interest: | <u>\$2,633.00</u> | \$6,633.00 |
| November 1985: | \$14,553.00 | |
| Interest: | <u>\$7,322.00</u> | \$21,875.00 |
| October 1986: | \$16,120.00 | |
| Interest: | <u>6,864.00</u> | \$22,984.00 |
| February 1987: | \$15,000.00 | |
| Interest: | <u>\$5,894.00</u> | \$20,894.00 |
| Advertising sale of ranch | | |
| 1986: | \$335.30 | |
| 1987: | <u>\$614.24</u> | \$949.54 |
| Legal Fees: | | \$5,496.00 |
| Pump: | | \$138.00 |
| Personal Loan: | | \$1,000.00 |
| Fence Materials: | | \$231.00 |
| Well Drilling: | | \$2,462.00 |
| Loan: | | \$1,500.00 |
| Car Rental: | | <u>\$1,000.00</u> |
| TOTAL: | | <u>\$85,162.54</u> |

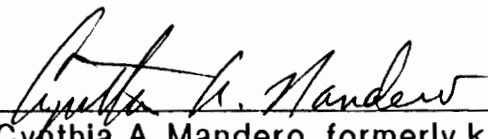
This Conveyance is intended to be absolute, unconditional and without any precondition or condition precedent. Provided however: This Conveyance is made subject to a certain "Property Agreement" (including the terms and conditions thereof), and particularly the "First Right to Purchase"

contained in said Property Agreement. Said Property Agreement is dated July, 1988, and is by and between Grantor and Creek Bank Farm, Inc.

This conveyance is intended to be and Grantee shall accept said Real Property "as is", "where is", "with all faults". There have been no representations nor warranties made to the Grantee in connection with this transaction. Grantee takes this conveyance subject to all zoning law difficulties, claims or disputes.

ORS 93.040 Notice: "THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES."

"THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES."

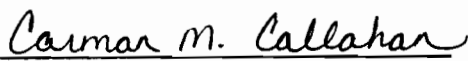

 Cynthia A. Manderero, formerly known as Cynthia A. Speedy

STATE OF OREGON)
)ss.
 County of Douglas)

Personally appeared before me the above named CYNTHIA A. MANDERO, and she did acknowledge the foregoing instrument to be her voluntary act and deed.

Before me this 28th day of June, 1991.




 Notary Public for Oregon
 My commission expires: 5-20-95

Until further notice,
 all tax notices should
 be sent to:

Mary C. Bayard
 3739 Highway 138 West
 Oakland, OR 97462

The following described property lying in Sections 1 and 2, Township 25 South, Range 6 West, W.M., Douglas County, Oregon: Beginning at a point on the Westerly right of way line of County Road No. 23, that bears South 73° 11' 11" East 2090.67 feet from the quarter section corner between Sections 1 and 2, Township 25 South, Range 6 West, W.M., Douglas County, Oregon; thence Northerly along the Westerly right of way line of said County Road No. 23 to its intersection with the Northerly line of the property conveyed to Robert D. Floto, et al, recorded in Book 621, Page 261, records of Douglas County, Oregon, Recorder's No. 77-0203; which point is due East of the Southeast corner of Lot 2, in Section 1, Township 25 South, Range 6 West, W.M.; thence due West to a Westerly boundary of the J.L. Gilbert DLC No. 61, said township and range, and the Southeast corner of Lot 2, Section 1, said township and range; thence due West along the South line of Lot 2 and Lot 1, said township and range, and the North line of the Northeast quarter of the Southeast quarter of Section 2, to the Northwest corner of the Northeast quarter of the Southeast quarter of said Section 2, said township and range; thence Southerly along the West line of the Northeast quarter of the Southeast quarter of said Section 2 to a point that bears North 56° 26' 20" West of the point of beginning of that property conveyed to William E. Smets, et ux, by deed recorded in Book 1060, Page 993, records of Douglas County, Oregon, Recorder's No. 89-07767; thence along said Smets Northerly property line South 56° 26' 20" East to a 5/8" iron rod, at the point of beginning of said Smets property, South 68° 30' 44" East 431.10 feet to a 5/8" iron rod and South 67° 05' 02" East 197.54 feet to a 5/8" iron rod; thence leaving said Smets Northerly property line and running due North to a point on the South line of the Northeast quarter of the Southeast quarter of Said Section 2; thence running on a line due East to a Westerly line of the said Gilbert DLC #61 in Section 1, said township and range, and continuing due East 600 feet more or less to its intersection with the center line of the easement as set forth in instrument recorded in Book 823, Page 201, records of Douglas County, Oregon, Recorder's No. 82-07220; thence Northerly along the center line of said easement to the point of beginning.

STATE OF OREGON)
 COUNTY OF DOUGLAS) SS.
 I, GAY FIELDS, COUNTY CLERK AND RECORDER
 OF CONVEYANCES, DO HEREBY CERTIFY THAT
 THIS INSTRUMENT WAS RECORDED

91-10286

HANDED

1991 JUL -8 PM 2: 52

GAY FIELDS
 DOUGLAS COUNTY CLERK
 IN THE OFFICIAL RECORDS OF DOUGLAS COUNTY

BY *Nancy B. Drummond*
 DEPUTY

FEE 35 00
 82 5 00
 40 00

Exhibit "A" Continued
Order No. 19178
Page 2

South 89° 12' 08" West, 365.41 feet to a point, North 81° 55' 46" West, 132.02 feet to a point, North 83° 28' 23" West, 145.83 feet to a point, North 84° 56' 56" West, 98.05 feet to a point, 214.84 feet along the arc of a 1602.20 foot radius curve right (the long chord bears North 73° 30' 22" West, 214.67 feet) to a point, North 59° 35' 50" West, 257.43 feet to a point, 292.32 feet along the arc of a 557.46 foot radius curve left (the long chord bears North 84° 41' 13" West, 288.99 feet) to a point, North 85° 04' 55" West, 71.50 feet to a point; thence North 14° 26' 24" West leaving said Northerly right of way line and along an existing fence line, 312.27 feet to a 5/8 inch iron rod; thence North 31° 21' 58" West continuing along said fence line, 462.74 feet to a 5/8 inch iron rod; thence North 0° 03' 24" West continuing along said fence line, 674.15 feet to a 5/8 inch iron rod; thence North 12° 46' 04" West leaving said fence line, 765.71 feet to a nail and brass washer set in top of a fence corner post; thence North 6° 46' 33" West, 371.60 feet to a nail and brass washer set in top of a fence corner post; thence North 50° 46' 34" East, 285.75 feet to a 5/8 inch iron rod; thence North 41° 44' 52" West, 117.10 feet to a 5/8 inch iron rod; thence South 80° 00' 00" West, 214.94 feet to a 5/8 inch iron rod; thence North 2040.17 feet to a 5/8 inch iron rod; thence South 57° 49' 49" East, 2608.33 feet to a 5/8 inch iron rod; thence South 79° 51' 07" East, 612.66 feet to a 5/8 inch iron rod on the Westerly line of that parcel of land described in a deed to George A. and Delia Emma Trumbo as recorded in Volume 123, Page 149 of the Deed Records of Douglas County, Oregon; thence South 0° 06' 48" East along said Westerly line, 905.00 feet to a 5/8 inch iron rod at the Southwest corner of said Volume 123, Page 149; thence North 89° 32' 20" East along the South line of said Volume 123, Page 149, 237.40 feet to th point of beginning.

STATE OF OREGON)
COUNTY OF DOUGLAS) SS.
I, GAY FIELDS, COUNTY CLERK AND RECORDER
OF CONVEYANCES, DO HEREBY CERTIFY THAT
THIS INSTRUMENT WAS RECORDED

1991 JUL -8 PM 2:56

GAY FIELDS
DOUGLAS COUNTY CLERK
IN THE OFFICIAL RECORDS OF DOUGLAS COUNTY

BY Nancy B. Downport
DEPUTY

FEE 50.00 pd

STATE OF OREGON)
COUNTY OF DOUGLAS) SS.
I, GAY FIELDS, COUNTY CLERK AND RECORDER
OF CONVEYANCES, DO HEREBY CERTIFY THAT
THIS INSTRUMENT WAS RECORDED

JUL 5 1988 2:24 PM
GAY FIELDS, County Clerk

IN THE OFFICIAL RECORDS OF DOUGLAS COUNTY

BY Dee L. Weddell
DEPUTY

88-09416

FEE 20.00 pd

DARRYL E. JOHNSON, P.C.
ATTORNEY AT LAW

840 S.E. Rose Street
Roseburg, Oregon 97470
(503) 673-4466 or (503) 672-5404

June 2, 1992

JUN 10 1992

WATER RIGHTS DEPT
SALEM, OR

Water Resources Department
3850 Portland Rd. N.E.
Salem, OR 97310

RE: CREEK BANK FARM, INC. WATER RIGHT CLAIM

*Registration
statement*

On behalf of Cynthia and Steve Mandero, adjoining property owners to the above registrant, who claim an interest in the water rights presently being applied for, please be advised that we contest the claim being filed. Please provide me with notice of time and place of hearing by director.

Sincerely,


Darryl E. Johnson, P.C.

cmc

cc: Mr. and Mrs. Steve Mandero

RECEIVED
WATER RESOURCES DEPARTMENT
SALE, OREGON

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

**SURFACE WATER REGISTRATION STATEMENT
PRE-1909 VESTED WATER RIGHT CLAIM**

1. Name of Registrant: Creek Bank Farm, Incorporated
Mailing Address: 149 Rolling Ridge Road
Oakland, Oregon 97462 Telephone No: 459-5909

2. Source of water: a spring.
Tributary to: Calapooya Creek

3. Purpose(s) for which water is used: Domestic and stockwater.
(Irrigation, Stockwater, Domestic, Hydroelectric power, Industrial, Etc.)
If irrigation, total number of acres irrigated: _____

4. Priority Date
a) Date of first use: June 30, 1905
b) Date water use development first initiated: April 1905
c) Name of party who initiated development: F. A. Bemis

5. Amount of water claimed: 0.01, in CFS
(Water put to beneficial use)

(Handwritten signature and initials)

6. Location of place of use:
2, 11 & 12 Sections, Township 25 S, Range 6 W.
____ Sections, Township ____ N/S, Range ____ E/W.
(Attach additional pages if necessary)

7. Usual period of use: Year Around to _____ / _____
month day month day

RETURNED
ORIGINAL TO
HEGGE - AUG 5, '93
FORM

8. Remarks: _____

9. Total fees submitted with claim: \$400

Notarized Statement Signed by Claimant.

STATE OF OREGON)
County of Douglas) : ss

I, Marvin Hegge, having been duly sworn, depose and say that I, and being the claimant of the existing surface water right described herein, have read the contents of this claim and to the best of my knowledge all of the matters stated herein are true and correct.

Marvin Hegge
Signature of Claimant SECRETARY @ B.F. Inc.

Signed and attested before me this 22 day of NOV, 19 91

Reggie Gosson
NOTARY PUBLIC for the State of Oregon
My commission expires: 3-19-93

THIS FORM MUST BE ACCOMPANIED BY A MAP PREPARED BY A CERTIFIED WATER RIGHT EXAMINER (CWRE).

Certified Water Right Examiner

Name: James F. Gosson CWRE#: 54

Address: 580 S. State Street Sutherlin, Oregon 97479

Telephone: 503/459-2243

James F. Gosson

STATE OF OREGON)
) ss.
County of Deschutes)

I, Richard C. Bemis, being first duly sworn, depose and say:

1. I am a resident and inhabitant of Deschutes County, Or, 59 years of age, an attorney and the son of Clifford W. Bemis and the grandson of Franklin A. Bemis who lived and died in Douglas County, OR.

2. I am acquainted with Marvin Hegge and Maureen Hegge who are the current owners of a portion of the original property owned by my grandfather, Franklin A. Bemis, in Douglas County Oregon. The original property owned by my grandfather consisted of approximately 1200 acres commonly referred to as the Bemis ranch and the Green Valley ranch. The property is situated near the Calapooya Creek some three miles, more or less, westerly of Oakland and Sutherlin, OR. Marvin and Maureen Hegge currently own and occupy approximately 250 acres of the original Bemis ranch. The address of the Hegge ownership is 149 Rolling Ridge Road, Oakland, OR 97462.

3. To the best of my knowledge my grandfather and grandmother acquired the original ranch property somewhere between 1905 and 1909. The family moved from Albert Lee, Minn. to Douglas county when my father was approximately five years old. My father was born April 25, 1899. Soon after the family arrived in Roseburg, my grandfather purchased the property.

4. The buildings and improvements constructed by my grandfather included a house, outhouse, two barns, a garage, equipment shed and utility shed. The property was fenced and cross fenced. The water supply for domestic use and watering stock consisted of a spring located approximately a mile or so north and up hill from the residence.

5. My grandfather installed the pipe line from the spring to the house and continually maintained the spring and water intake to insure a continuous water supply.

6. The original Bemis property was used primarily for raising sheep, turkeys and a portion of the property was planted as a prune orchard. A lower acreage across the road near the Calapooya Creek was planted in hay and alfalfa.

7. During the summers of my childhood between 1939 and 1949 my

Affidavit of Richard C. Bemis
November 15, 1991
Page 2

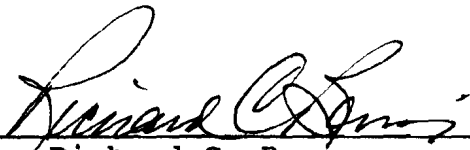
NOV 15 1991
COUNTY OF CLATSOP
CLATSOP COUNTY CLERK

father, Clifford W. Bemis, my mother and I visited the ranch at least once a year during which time my father assisted my grandfather with the farm work. When I was approximately 15 years old I spent several weeks during the summer at the ranch.

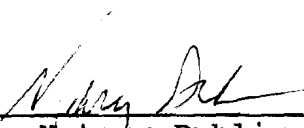
8. When my grandfather died in my father purchased the ranch from his two sisters and two brothers who were the other heirs and devisees of my grandfather. Since that time the property has been sold several times and finally was divided and sold in smaller parcels. One of the parcels of approximately 250 acres included the buildings described above and is the parcel now occupied and owned by Marvin and Maureen Hegge.

9. At all times during ownership and occupancy of the ranch property by my grandfather and my father the only source of domestic water was the spring described above.

10. To the best of my knowledge the use and maintenance of the spring as a water supply source was continuous and without interruption.


Richard C. Bemis

Subscribed and sworn to this 15th day of November, 1991.


Notary Public for Oregon
My Commission Expires: 7-25-94

AFFIDAVIT

My name is Kathleen A. Reed. I reside at 1123 Driver Valley Road, Oakland, Oregon.

From 1969 through 1975, my husband (now deceased) and I owned the property which now is in the ownership of Mr. and Mrs. Marvin Hegge (Creek Bank Farms, Inc.) located in Sections 2, 11, and 12, Township 25 South, Range 6 West, W.M.

During this period of time, a spring located in the southeast 1/4 of Section 2 provided the water for domestic and livestock use.

The delivery system during this period of time was plastic pipe from the spring to the house with hose bibs along the way for stock use.

It was my understanding when we purchased the property that this source had provided the water for domestic and livestock use from around the turn of the century.

Kathleen A. Reed
Kathleen A. Reed

Nov 21, 1991
Date

Notary Public for State of Oregon

Gregg Denson
Witness

Nov 21, 1991
Date

My Commission Expires: 3-19-93

AFFIDAVIT

My name is Delia E. Trumbo. I reside at 1012 Rochester Bridge Road, Oakland, Oregon.

I was born in 1905. I have lived in this vicinity all of my life. I am familiar with the source of water that serves the property in Sections 2, 11, and 12, Township 25 South, Range 6 West, W.M. presently owned by Mr. and Mrs. Marvin Hegge (Creek Bank Farms, Inc.).

The source of water is a spring located in the southeast 1/4 of Section 2. I have first-hand knowledge that it has provided the farm with water for domestic and livestock use from approximately 1917 to the present time. I can remember going to the spring as a child. I can also remember Mr. F. A. Bemis doing maintenance work on the spring as well as Mr. William Link, both of whom owned the property at one time or another.

My earliest memory of the delivery system (approximately 1917) is that of a pipeline from the spring to the house. It is my opinion that the water has been used for domestic and livestock use since 1905, and that the delivery system from 1905 to 1917 was also a pipeline. However, my first-hand knowledge is limited from approximately 1917 to the present time.

Delia E. Trumbo
Delia E. Trumbo

Nov. 21, 1991
Date

Notary Public for State of Oregon

Weggy Dason
Witness

Nov 21, 1991
Date

My Commission Expires: 3-19-93

EXHIBIT A

A parcel of land located in Sections 2, 11 and 12 of Township 25 South, Range 6 West, Willamette Meridian, being a portion of that parcel of land described in a deed to Robert D. and Mary C. Floto and Robert K. and Cynthia A. Speedy as recorded in Instrument No. 77-0203 of the Records of Douglas County, Oregon and being more particularly described as follows:

BEGINNING at the Northwest corner of the Elisha Williamson Donation Land Claim No. 48, Section 12, Township 25 South, Range 6 West, Willamette Meridian, being also the Northwest corner of that parcel of land conveyed to George A. and Delia Emma Trumbo as recorded in Volume 100, Page 205 of the Deed Records of Douglas County, Oregon; thence South 0° 11' 40" East on the Westerly line of said Donation Land Claim No. 48 and also the Westerly line of said Volume 100, Page 205, 780.97 feet to a 5/8 inch iron rod on the Westerly right of way line of County Road No. 76, as relocated; thence the following courses along said Westerly right of way line:

191.47 feet along the arc of a 1462.40 foot radius curve left (the long chord bears South 14° 16' 24" West, 191.33 feet) to a 5/8 inch iron rod, South 10° 31' 21" West, 361.33 feet to a 5/8 inch iron rod, South 16° 23' 31" West, 99.06 feet to a 5/8 inch iron rod, 289.33 feet along the arc of a 914.93 foot radius curve right (the long chord bears South 19° 35' 06" West, 288.12 feet) to a 5/8 inch iron rod, South 26° 10' 22" West, 101.47 feet to a 5/8 inch iron rod, South 34° 55' 45" West, 132.94 feet to a 5/8 inch iron rod on the Westerly line of said Donation Land Claim No. 48; thence North 88° 54' 42" West along said Westerly line and leaving the Westerly right of way line of County Road No. 76, 271.14 feet to a 3/4 inch iron pipe at the most Westerly Northwest corner of said Donation land Claim No. 48; thence South 0° 13' 49" West continuing along the West line of Donation Land Claim No. 48, 395.60 feet to a 5/8 inch iron rod on the Westerly right of way line of County Road No. 76; thence South 35° 55' 45" West leaving said Westerly line of Donation land Claim No. 48 and along said Westerly right of way line, 345.10 feet to a 5/8 inch iron rod; thence continuing along said Westerly right of way line, 195.53 feet along the arc of a 208.73 foot radius curve right (the long chord bears South 61° 44' 46" West, 188.46 feet to a 5/8 inch iron rod 30 feet right of Engineer's centerline station "A" 2+23.61 of County Road No. 76, said point also being 30 feet right of Engineer's centerline station 5+00.00 of County Road No. 10; thence leaving the Westerly right of way line of County Road No. 76 and along the Northerly right of way line of County Road No. 10 the following courses:

Exhibit "A" Continued
Order No. 19178

South 89° 12' 08" West, 365.41 feet to a point, North 81° 55' 46" West, 132.02 feet to a point, North 83° 28' 23" West, 145.83 feet to a point, North 84° 56' 56" West, 98.05 feet to a point, 214.84 feet along the arc of a 1602.20 foot radius curve right (the long chord bears North 73° 30' 22" West, 214.67 feet) to a point, North 59° 35' 50" West, 257.43 feet to a point, 292.32 feet along the arc of a 557.46 foot radius curve left (the long chord bears North 84° 41' 13" West, 288.99 feet) to a point, North 85° 04' 55" West, 71.50 feet to a point; thence North 14° 26' 24" West leaving said Northerly right of way line and along an existing fence line, 312.27 feet to a 5/8 inch iron rod; thence North 31° 21' 58" West continuing along said fence line, 462.74 feet to a 5/8 inch iron rod; thence North 0° 03' 24" West continuing along said fence line, 674.15 feet to a 5/8 inch iron rod; thence North 12° 46' 04" West leaving said fence line, 765.71 feet to a nail and brass washer set in top of a fence corner post; thence North 6° 46' 33" West, 371.60 feet to a nail and brass washer set in top of a fence corner post; thence North 50° 46' 34" East, 285.75 feet to a 5/8 inch iron rod; thence North 4° 44' 52" West, 117.10 feet to a 5/8 inch iron rod; thence South 80° 00' 00" West, 214.94 feet to a 5/8 inch iron rod; thence North 2040.17 feet to a 5/8 inch iron rod; thence South 57° 49' 49" East, 2608.33 feet to a 5/8 inch iron rod; thence South 79° 51' 07" East, 612.66 feet to a 5/8 inch iron rod on the Westerly line of that parcel of land described in a deed to Geroge A. and Delia Emma Trumbo as recorded in Volume 123, Page 149 of the Deed Records of Douglas County, Oregon; thence South 0° 06' 48" East along said Westerly line, 905.00 feet to a 5/8 inch iron rod at the Southwest corner of said Volume 123, Page 149; thence North 89° 32' 20" East along the South line of said Volume 123, Page 149, 237.40 feet to th point of beginning.

CYNTHIA SPEEDY DESCRIPTION

A parcel of land located in Sections 2 and 11 of Township 25 South, Range 6 West, Willamette Meridian, being a portion of that parcel of land described in a deed to Robert D. and Mary C. Floto and Robert K. and Cynthia A. Speedy as recorded in Inst. No. 77-0203 of the Records of Douglas County, Oregon and being more particularly described as follows:

Beginning at a 5/8" iron rod from which the 1/4 Corner common to Sections 1 and 2 of Township 25 South, Range 6 West, Willamette Meridian bears N.34°56'35"E., 1647.26 feet; thence S.68°30'44"E., 431.10 feet to a 5/8" iron rod; thence S.67°05'02"E., 197.54 feet to a 5/8" iron rod; thence S.9°47'50"W., 1357.58 feet to a 5/8" iron rod on the North line of that parcel of land described in a deed to Creek Bank Farm, Inc. as recorded in Inst. No. 88-9414 of the Records of Douglas County, Oregon; thence N.57°49'49"W., 1000.00 feet to a 5/8" iron rod at the Northwest Corner of said Inst. No. 88-9414; thence along the westerly boundary of said Inst. No. 88-9414 the following courses:

South, 2040.17 feet to a 5/8" iron rod,
N.80°00'00"E., 214.94 feet to a 5/8" iron rod,
S.4°44'52"E., 117.10 feet to a 5/8" iron rod,
S.50°46'34"W., 285.75 feet to a nail and brass washer set in top of a fence corner post,
S.6°46'33"E., 371.60 feet to a nail and brass washer set in top of a fence corner post,
S.12°46'04"E., 765.71 feet to a 5/8" iron rod in a fence line,
S.0°03'24"E. along said fence line, 674.15 feet to a 5/8" iron rod,
S.31°21'58"E. along said fence line, 462.74 feet to a 5/8" iron rod,
S.14°26'24"E. along said fence line, 312.27 feet to a 5/8" iron rod at the Southwest corner of said Inst. No. 88-9414 and on the Northerly right of way line of County Road No. 10;

thence leaving said westerly line of Inst. No. 88-9414 and along the Northerly right of way line of County Road No. 10 the following courses:

N.85°05'41"W., 7.71 feet to a point,
S.65°42'59"W., 258.31 feet to a point,
S.80°17'26"W., 457.54 feet to a point,
N.89°29'07"W., 87.80 feet to a point,
N.84°42'51"W., 235.05 feet to a point,
177.78 feet along the arc of a 681.20 foot radius curve to the right (the long chord of which bears N.64°50'10"W., 177.28 feet) to a point,
N.56°26'40"W., 313.13 feet to a point,
N.58°37'50"W., 403.03 feet to a point on the East line of that parcel of land described in a deed to Philip R. and Mary C. Turnbull as recorded in Inst. No. 74-202 of the Records of Douglas County, Oregon;

thence leaving said Northerly right of way line and along the east line of said Inst. No. 74-202, N.0°34'05"E., 1579.05 feet to a 8"x3" stone at the Northeast Corner of said Inst. No. 74-202, said stone also being the Southeast Corner of that parcel of land described in a deed to Robert Smets, et. al. as recorded in Inst. No. 88-404 of the records of Douglas County, Oregon; thence N.0°18'51"W., along the east line of said Inst. No. 88-404, 2642.24 feet to the South 1/4 Corner of Section 2, Township 25 South, Range 6 West, W.M.; thence North along the West line of the Southeast quarter of said Section 2 to a point 417.43 feet South of the Southwest Corner of the Southwest quarter of the Southeast quarter of said Section 2, said point being the Southwest Corner of that parcel of land described in a deed to Barrett F. and Tami J. Braz as recorded in Inst. No. 87-9232 of the Records of Douglas County, Oregon; thence along the South and East lines of Inst. No. 87-9232 the following courses:

East, 1043.55 feet on a line parallel to the North line of said Southwest quarter of the Southeast quarter,
North, 417.43 feet to a point on said North line,
East, to the Southeast 1/16 Corner of said Section 2,
North along the East line of the Northwest quarter of the Southeast quarter of Section 2 to a point that bears N.56°26'20"W., of the point of beginning;

thence leaving the East line of said Inst. No. 87-9232, S.56°26'20"E., to the point of beginning and containing 200 acres, more or less.

VESTEE

CYNTHIA ANN MANDERO, who acquired title as Cynthia Ann Speedy

Description:

The following described property lying in Sections 1 and 2, Township 25 South, Range 6 West, W.M., Douglas County, Oregon: Beginning at a point on the Westerly right of way line of County Road No. 23, that bears South 73° 11' 11" East 2090.67 feet from the quarter section corner between Sections 1 and 2, Township 25 South, Range 6 West, W.M., Douglas County, Oregon; thence Northerly along the Westerly right of way line of said County Road No. 23 to its intersection with the Northerly line of the property conveyed to Robert D. Floto, et al, recorded in Book 621, Page 261, records of Douglas County, Oregon, Recorder's No. 77-0203; which point is due East of the Southeast corner of Lot 2, in Section 1, Township 25 South, Range 6 West,

DESCRIPTION CONTINUED ON FOLLOWING PAGE

PAGE 2

Mr. Randy Garrison

June 21, 1991

ORDER NO. 70656-DC

(description continued)

W.M.,; thence due West to a Westerly boundary of the J.L. Gilbert DLC No. 61, said township and range, and the Southeast corner of Lot 2, Section 1, said township and range; thence due West along the South line of Lot 2 and Lot 1, said township and range, and the North line of the Northeast quarter of the Southeast quarter of Section 2, to the Northwest corner of the Northeast quarter of the Southeast quarter of said Section 2, said township and range; thence Southerly along the West line of the Northeast quarter of the Southeast quarter of said Section 2 to a point that bears North 56° 26' 20" West of the point of beginning of that property conveyed to William E. Smets, et ux, by deed recorded in Book 1060, Page 993, records of Douglas County, Oregon, Recorder's No. 89-07767; thence along said Smets Northerly property line South 56° 26' 20" East to a 5/8" iron rod, at the point of beginning of said Smets property, South 68° 30' 44" East 431.10 feet to a 5/8" iron rod and South 67° 05' 02" East 197.54 feet to a 5/8" iron rod; thence leaving said Smets Northerly property line and running due North to a point on the South line of the Northeast quarter of the Southeast quarter of Said Section 2; thence running on a line due East to a Westerly line of the said Gilbert DLC #61 in Section 1, said township and range, and continuing due East 600 feet more or less to its intersection with the center line of the easement as set forth in instrument recorded in Book 823, Page 201, records of Douglas County, Oregon, Recorder's No. 82-07220; thence Northerly along the center line of said easement to the point of beginning.

* * * * * END OF LEGAL DESCRIPTION * * * * *

JAMES F. GOSSON Consulting Engineer

CIVIL ENGINEER
LAND SURVEYOR
WATER RIGHTS EXAMINER

(503) 452-2243

November 22, 1991

Oregon Water Resources Department
3850 Portland Road N.E.
Salem, Oregon 97310

Attention: Donald E. Knauer, Adjudication Specialist

Re: Surface Water Registration Statement (Creek Bank Farm, Inc.)

Dear Mr. Knauer:

As agent for Creek Bank Farm, Incorporated, I submit the following documents:

1. Completed Pre-1909 Vested Water Right Claim Form
2. Pre-1909 Vested Water Right Claim Map
3. Legal description (Exhibit A) of the property in the name of Creek Bank Farm, Incorporated
4. Legal description of the property in the name of Cynthia Speedy
5. Legal description of the property in the name of Cynthia Ann Mandero
6. Check #116 in the amount of \$400
7. Affidavit signed by Delia E. Trumbo
8. Affidavit signed by Kathleen A. Reed
9. Affidavit signed by Richard C. Bemis.

Names and mailing addresses of other property owners involved:

Document #4: William and Eve Smetz
777 Rolling Ridge Road
Oakland, Oregon 97462

Document #6: Cynthia Mandero and/or M. Bayard
3954 Green Valley Road
Oakland, Oregon 97462

Please acknowledge the receipt of this claim and advise me of the file number assigned to it.

Very truly yours,


James F. Gosson, CWRE

cc: Creek Bank Farm, Inc.

RECEIVED

DEC 13 1991

WATER RESOURCES DEPT.
SALEM, OREGON

DECEMBER 10, 1991

OREGON WATER RESOURCE DEPARTMENT
3850 PORTLAND ROAD N.E.
SALEM, OREGON 97310

ATTENTION: DONALD E. KNAUER, ADJUDICATION SPECIALIST

RE: SURFACE WATER REGISTRATION STATEMENT (CREEK BANK FARM INC.)
SWR #47

DEAR MR. KNAUER,

PLEASE ADD THE FOLLOWING DOCUMENT:

10. LEGAL DESCRIPTION OF PROPERTY IN THE NAME OF
CYNTHIA A. SPEEDY.

NAME AND ADDRESS OF PROPERTY OWNER INVOLVED:

DOCUMENT #10: CYNTHIA A. MANDERS
3954 GREEN VALLEY ROAD
OAKLAND, OREGON 97462

PLEASE ACKNOWLEDGE.

SINCERELY,

MARVIN HEGGE

CREEK BANK FARM INC.

149 ROLLING RIDGE Rd.
OAKLAND, OR 97462

EXHIBIT 'A'

DEC 13 1931

A parcel of land located in Sections 1, 2, 11 and 12 of Township 25 South, Range 6 West, Willamette Meridian, Douglas County, Oregon, and being more particularly described as follows:

WATER RESOURCES DEPARTMENT SALEM, OREGON

BEGINNING at the Northwest corner of the Elisha Williamson Donation Land Claim No. 43, Section 12, Township 25 South, Range 6 West, being also the Northwest corner of a parcel of land conveyed to George A. and Delia Emma Trumbo described in Volume 100, Page 205, of Deed Records of Douglas County, Oregon, and being also a point in the South boundary of a parcel of land conveyed to the said Trumbos as described in Volume 123, Page 149, of said Records; thence West along the South boundary thereof to the Southwest corner thereof; thence North along the West boundary of said parcel to the Northwest corner thereof; thence East along the North boundary of said parcel to the Southwest corner of that parcel of land conveyed to Veril A. and Hazel M. Martin as described in Volume 126, Page 110, of said Records; thence Northerly along the West boundary of said parcel as follows:

North 1° West 14.0 chains, North 76° West 2.95 chains, North 36° 45' West 4.02 chains, North 32° 15' West 1.84 chains, North 5° 10' West 8.60 chains; West to a Westerly boundary of the J. L. Gilbert Donation Land Claim No. 61, said Township and Range, at the Southeast corner of Lot 2, Section 1, said Township and Range, and North along said Donation Land Claim boundary and East boundary of said Lot 2 to an angle corner of said Donation Land Claim, being the Northwest corner of said Martin parcel, and also a point in the South boundary of a parcel of land conveyed to W. A. Davidson as described in Volume 58, Page 125, of said Records; thence West along a South boundary of said Donation Land Claim and a South boundary of said Davidson parcel to a Southwest corner of said Gilbert Donation Land Claim, being also a point in the line between Sections 1 and 2, said Township and Range; thence South along said Section line to the quarter corner between said Sections, being also a Southeast corner of said Davidson parcel; thence West along the East-West mid-section line of said Section 2, and along said Southline of Davidson parcel to a point in the East line of a parcel of land conveyed to " D. Whitehead as described in Volume 138, Page 285, of said Records, being the Northwest corner of the Northeast quarter of Southwest quarter of said Section 2; thence South along said property line and the West line of said Northeast quarter of Southwest quarter to the Southwest corner thereof, being a Southeast corner of said Whitehead parcel; thence West along a South boundary of said parcel and the North line of the Southwest quarter of Southwest quarter to the line between Sections 2 and 3 said Township and Range; thence South along said line to the corner to Sections 2, 3, 10 and 11 said Township and Range, and continuing South along the line between Sections 10 and 11 to the most Northerly corner of a parcel conveyed to said W. D. Whitehead as described in Volume 138, Page 285, of said Records; thence along the East boundary of said Parcel as follows:

25-06-01- - 00700, 02700
25-06-02- - 01300
25-06-12- - 00300
25-06-11- - 00103

Exhibit "A" continued
Order No. 24536

South 55° 26' East 5.44 chains, South 20° 53' East 4.91 chains, South 43° 13' East 4.21 chains, South 22° 35' East 7.65 chains and South 7° 57' East 10.31 chains to the Southeast corner thereof, being also a point in the North boundary of that parcel of land conveyed to Evelyn E. Rose as described in Volume 223, Pages 613 and 615 of said Records; thence East along the North boundary of said Parcel to the Northeast corner thereof; thence along the East boundary of said parcel as follows:

South 24.50 chains, South 57° 45' East 4.25 chains, South 60° 30' East 10.7 chains, South 3° 15' East 6.97 chains to the center line of the Calapooya Creek; thence along said center line of Creek upstream as follows:

North 44° East 1.20 chains, North 77° 15' East 1.80 chains, North 87° 30' East 2.95 chains, North 69° East 5.30 chains North 48° 45' East 2.86 chains, and North 67° 15' East 3.63 chains; thence North 74° East 3.63 chains to the Northwest corner of that parcel of land conveyed to C. A. and Madge M. Miller as described in Volume 93, Page 485, of said Records; thence along the North boundary of said Miller parcel as follows:

South 78° 15' East 7.75 chains, South 80° 15' East 1.82 chains, North 88° 15' East 10.84 chains, and North 46° East 4.12 chains to the Northeast corner thereof being also a point in the West boundary of Elisha Williamson Donation Land Claim No. 48, said Township and Range; thence along the boundaries of said Donation Land Claim as follows:

North 9.0 chains to a Northwest corner thereof, East 9.50 chains to an interior angle corner thereof, and North 28.46 chains to the place of beginning. Excepting therefrom any portion of the parcel of land conveyed to Oregon State Highway Commission described in Volume 173, Page 294, of said Records, contained within the above description, all in Sections 1, 2, 11 and 12, Township 25 South, Range 6 West, Willamette Meridian, Douglas County, Oregon.

ALSO the Southeast quarter of the Northwest quarter, Section 2, Township 25 South, Range 6 West, Willamette Meridian, Douglas County, Oregon.

EXCEPTING THEREFROM that property sold to the State of Oregon by and through its State Highway Commission, as described in Deed Recorded in Volume 270, Recorder's No. 238881, Deed Records, Douglas County, Oregon.

ALSO EXCEPTING THEREFROM those property described in Instrument Nos. 77-12489, 80-10950, 82-2238, 83-2939, 87-5763, 87-9232, 88-404, 88-9414, 88-9421, 89-7767 and 91-10286, Deed Records, Douglas County, Oregon.

Order No. 24536

STATE OF OREGON)
COUNTY OF DOUGLAS) ss.
I, GAY FIELDS, COUNTY CLERK AND RECORDER
OF CONVEYANCES, DO HEREBY CERTIFY THAT
THIS INSTRUMENT WAS RECORDED

1991 OCT -2 PM 1:14

GAY FIELDS
DOUGLAS COUNTY CLERK
IN THE OFFICIAL RECORDS OF DOUGLAS COUNTY

Gay Fields
DEPUTY

PH 20 *af*
91-15573

WATER RESOURCES DEPARTMENT
SALEM, OREGON

March 30, 1992

Oregon Water Resources Department
3850 Portland Road NE
Salem, OR 97310

Re: Surface Water Registration Statement (SWR #47)

Dear Mr. Don Knauer,

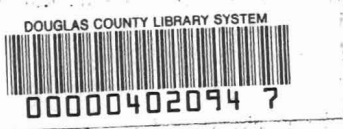
Enclosed are copies of the cover and title pages to the book Lizards in the Well,
Tales of the Umpqua in which the story titled "A Man called Bemis" is told by
Charles McGord. Please add this information to our Surface Water Registration
Statement.

Thank you,


M. Hegge

\$5.95

Date Due 12190
 Date Due 82
 Date Due 4 25
 Date Due 5 1 91
 Date Due 190 115 90
 Date Due 122890
 Date Due 011781



It is impossible to wash out 'Pride of Elkton' from
 the s... at name was on about every little girl's panties
 in tow

Hazel Hudson Waggoner

Date Due 7-2390

"The slumbering city of twelve thousand was aroused with a rude and terrifying shock."

Sonia Patton Buckwalter

"Tonic always made the customer smell nice. The young fellows going courting especially liked that treatment."

Maurice Vogelpohl

"He stuck out his tongue at them. It seemed the proper thing to do at the moment."

Lot (Bus) Harpole

"Mama said she had watched the sunrise, and then cleaned over the house, under the house, around the house, and in the house."

Betty Bailey

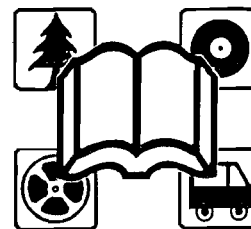
Lizards in the Well

TALES OF THE UMPQUA



HDQ

DOUGLAS COUNTY



LIBRARY SYSTEM

Gift of

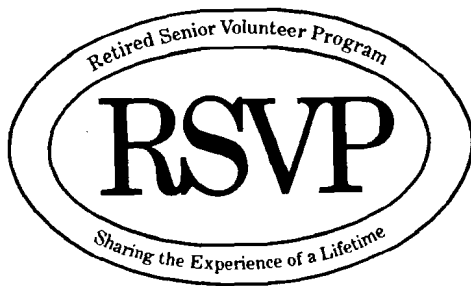
ROSWELL L. MYERS

Retired Senior Volunteer Program

RSVP

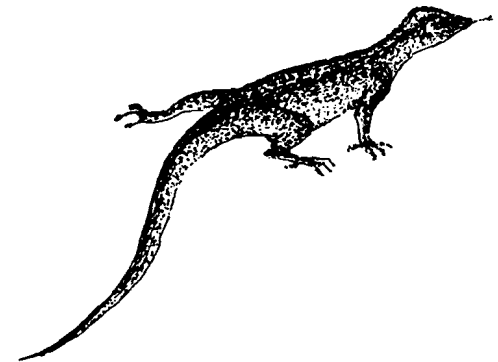
Sharing the Experience of a Lifetime

A "clearinghouse" for and of Older Americans, RSVP was established for the dual purpose of meeting the retired persons need for community involvement and assisting our non-profit organizations and agencies by providing senior volunteer assistance. As a part of the ACTION Agency, we are sponsored locally by the Douglas County Health and Social Services Department. In addition to receiving support through ACTION and Douglas County, RSVP also receives funding from the C. Giles Hunt Foundation, our local Wood Products Industry and through the sale of this book.



Lizards in the Well

TALES OF THE UMPQUA



Lizards in the Well



TALES OF THE UMPQUA



© 1989

Cover Illustration by Sharon Richert
Computer services by B & J Data Services
Printed by Creative Images

A Retired Senior Volunteer Program Project
Funded with support by the Fred Meyer Charitable Trust
Small Grants Program

719.521
Lizards

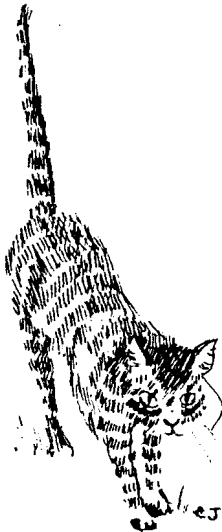
Forward

It lies in the southern foot of the Willamette Valley. On the east are the magnificent Cascades. On the west, the Pacific Ocean. Pioneers came by the thousands and knew this would be their home.

Douglas County is one of the most beautiful landscapes on Earth. But it is the people that make it the truly spectacular place that it is. The pages that fill this book retrieve a special history. The stories told are about families and hardship and inspiration and a time that has just about turned the corner. It is with special gratitude that we glimpse into their lives for just a short time.

To all who came and told their stories, and to all those who will come, this book is dedicated.

Mary Durbin DeSmet



H020911

Acknowledgments

It would be impossible to name all of the people who have contributed even the smallest amount of experience or knowledge toward the completion of "Lizards." For those of you "anonymous" contributors, please accept my sincere thanks.

Clearly, as with any project of this magnitude, there are those who have contributed most significantly. Without the passion and dedication of Mary DeSmet and Elva Hamerstrom Paulson, we would still be holding a bundle of unedited manuscripts and virtually no artwork. I cannot say enough about these two women. They truly deserve a standing ovation.

The support of the Fred Meyer Charitable Trust Small Grants Program has been the financial backbone for this book. I'm tremendously grateful that they approved our grant proposal. The Douglas County Museum has provided at a nominal cost many of the photographs used in the book. Our County Museum Director, Daniel Robertson, provided much needed technical counsel as this project began. Gordon Coons and the County Planning Department have been a wonderful and responsive resource to us. Additional thanks are extended to Creative Images and B & J Data Services for their dedication to our "cause".

Marie Schlotfeldt-Parrett and Mildred Karlin have contributed ongoing support and expertise to "Lizards." They've been a delight to work with.

A debt of thanks is also extended to Nicole DeSmet, Joan Bolsinger, Shannon Applegate, Sadie Solari, Ellen Leveille, Don Frost and RSVP Secretary, Berta Greeson. Last but not least, I appreciate Health Administrator E. L. Hockman for his endorsement of this RSVP fund-raising project.

Daniel Casey, Director
Retired Senior Volunteer Program

Contents

| | |
|---|----|
| Dad Sold Baths and Haircuts..... | 1 |
| Night of Terror..... | 5 |
| Jimenny Whiz..... | 13 |
| Home in Time for Christmas..... | 20 |
| Country Living..... | 22 |
| Indian Gardens at No Fog..... | 24 |
| A Skiff to School..... | 26 |
| A Switch of Poison Oak..... | 28 |
| Memories of Reedsport and Winchester Bay..... | 30 |
| Tail on Fire..... | 32 |
| The Birds on Nellie's Hat..... | 34 |
| Ten Dollars for Both..... | 38 |
| I Never Met a Stranger..... | 40 |
| A Christmas Flood..... | 45 |
| No Closed Season..... | 48 |
| Drive the Cows Home and Build a Fire..... | 55 |
| Running the Stern-wheeler..... | 58 |
| The Beaver Pipe..... | 60 |
| STUMP TOWN Early Glendale and Ferndale..... | 62 |
| Three - C Boys above Steamboat..... | 65 |
| Lizards in the Well..... | 68 |
| We had a Picnic When Mama Died..... | 75 |
| COW CREEK INDIAN CUSTOMS..... | 78 |
| Doodads..... | 83 |
| From Azalea to Devils Flat..... | 88 |

| | |
|------------------------------------|-----|
| Dances in the Hayloft..... | 90 |
| Riding the Night Ferry..... | 94 |
| Idleld Park..... | 98 |
| In Search of a Lost Gold Mine..... | 100 |
| The Pencil War..... | 103 |
| A Man for All Trades..... | 110 |
| Dip Netting..... | 116 |
| Chasing French Toast..... | 119 |
| Myrtlewoods Held the Flood..... | 122 |
| Saddlebag Huckleberries..... | 125 |
| The Boomer Hill Feud..... | 128 |
| An Echo That was Heard..... | 130 |
| Hunting Season..... | 134 |
| Boating on Jackson Street..... | 137 |
| A Lookingglass Lady..... | 140 |
| Knitting Fir Trees..... | 144 |
| C' Mon in — the Door's Open! | 146 |
| A Man Named Bemis..... | 148 |
| Everybody's Telephone..... | 153 |
| Trapped by a Dead Deer..... | 156 |
| Scott Henry's Goat..... | 162 |
| Then West to Catching Inlet..... | 166 |
| Story Tellers..... | 172 |
| Story Writers..... | 174 |
| Illustrators..... | 175 |
| Index of Individuals..... | 176 |

Story Tellers

| | |
|------------------------------|---------|
| Everett Abbott..... | 110 |
| Betty Bailey..... | 34, 75 |
| Nova Bates..... | 100 |
| Marie Bernhardt..... | 22 |
| Joan Bolsinger..... | 103 |
| Louis Brady..... | 153 |
| Quincey A. Brown..... | 144 |
| Sonia Patton Buckwalter..... | 5 |
| Hazel Buell..... | 140 |
| Hazel Bufkin..... | 90 |
| Francis Circle..... | 45 |
| Ellen Collins..... | 68, 122 |
| Margaret Dyer..... | 125 |
| Lot (Bus) Harpole..... | 48 |
| Joan Harris..... | 83 |
| Echo Heard..... | 130 |
| Vivian Argo Holcomb..... | 55 |
| Charles Jackson..... | 60 |
| Alice Chambers Knutsen..... | 94 |
| Merle Lander..... | 20 |

Story Tellers

| | |
|----------------------------------|----------|
| Pearl Yokum Lawson..... | 128 |
| Keith Leonard..... | 156 |
| Charles A. McCord..... | 65, 148 |
| Louella Michaels..... | 78 |
| Berl Oar..... | 119 |
| Winnie Pepiot..... | 134 |
| Elizabeth Perdue..... | 137 |
| Nellie Peterman..... | 146 |
| Harriett Thomson Prozialeck..... | 30 |
| Laura Grace Raess..... | 28 |
| Bess Christensen Riney..... | 22, 58 |
| Guyla Rudzik..... | 40 |
| Sadie Leach Solari..... | 116 |
| Glenora & Nadine Tanner..... | 88 |
| Marie Sindt Tuffs..... | 38 |
| Albert Vaughn..... | 62 |
| Maurice Vogelpohl..... | 1 |
| Hazel Hudson Waggoner..... | 13, 32 |
| Herbert Webber..... | 90 |
| George Wilcox..... | 162, 166 |

Story Writers

| | |
|--------------------------------|-------------------------|
| Beth M. Applegate..... | 1, 166, 162 |
| Dessie Myrtle Baker..... | 122 |
| Sonia Patton Buckwalter..... | 5, 34, 75 |
| Ellen Collins..... | 68, 122, 137 |
| Mary Durbin De Smet..... | 60 |
| Mayme Cota & Monee Riley..... | 24, 26, 98 |
| Irving Elle..... | 125 |
| Cindee Foye..... | 28 |
| Louise Hodge..... | 45, 55 |
| Norma N. Jones..... | 40 |
| Mildred Karlin..... | 128, 146 |
| Bob Kischel..... | 119 |
| Fern Lange..... | 134 |
| Inez M. Lee..... | 13, 22, 32, 58, 83, 116 |
| Eva T. Logan..... | 65, 148 |
| Peggy Montgomery..... | 130, 140 |
| Grace Runyan..... | 30, 94, 110 |
| Marie Schlotfeldt-Parrett..... | 48, 78, 103, 156 |
| John Waller..... | 144 |
| Marge Waller..... | 38 |
| Mary Worley..... | 62, 88, 90, 153 |



Illustrators

| | |
|---------------------------------|-------------------|
| Bill Ahlvers..... | 122 |
| Dale Allred..... | 62 |
| Lucille Allred..... | 100 |
| Barbara Anderson..... | 55 |
| Jody Batson..... | 1 |
| Betty Cheek..... | 110 |
| Jim Cheek..... | 83 |
| Patsy Clarno..... | 32 |
| Camille Collins..... | 65, 116 |
| Lucy Dawson..... | 58 |
| Carol Enos..... | 24 |
| Nancy Faber..... | 68, 134 |
| Florence Jacoby..... | 40, 90 |
| Celia Jolley..... | 88, 128, 140, 148 |
| Gina Klein..... | 34, 146 |
| Kimberly 5-Ponies La Grave..... | 78 |
| Lorella Miller..... | 137 |
| Richard Mitchell..... | 28 |
| Marian Nance..... | 166 |
| Lisa Nelson..... | 119, 125 |
| Mary Anne Pauletto..... | 20 |
| Elva H. Paulson..... | 22, 60, 103 |
| Lita Paulson..... | 130 |
| Marie Rasmussen..... | 45 |
| Sharon Richert..... | 75 |
| Virginia Vogel..... | 162 |
| John & Judy Waller..... | 38, 144 |

Index

— Individuals —

| | Page |
|---------------------------------|-------------|
| Abbot, Arilla (Leach)..... | 110 |
| Abbot, Everett..... | 110 |
| Abbott, Jessie P. | 110 |
| Ahlvers, Bill..... | 122 |
| Allred, Dale..... | 62 |
| Allred, Lucille..... | 100 |
| Anderson, Barbara..... | 55 |
| Applegate, Beth M. | 1, 162, 166 |
| Argo, Ray..... | 55 |
| Bailey, Betty..... | 34, 75, 100 |
| Bailey, Glen..... | 100 |
| Bailey, Patrick..... | 100 |
| Baker, Dessie Myrtle..... | 122 |
| Bates, Nova..... | 100 |
| Batson, Jody..... | 1 |
| Beckley, Lynn..... | 122 |
| Bemis, Mr. | 148 |
| Berella, Minnie..... | 68 |
| Bernhardt, Alice..... | 22 |
| Bernhardt, Marie..... | 22 |
| Bernhardt, Robert (Robbie)..... | 22 |
| Bernstein, Billy..... | 62 |
| Beziels, Sammy..... | 62 |
| Blue, Joan..... | 103 |
| Bluebaker, Chris..... | 122 |
| Bolsinger, Joan..... | 103 |
| Boyes, Dr. | 68 |
| Brady, Louis..... | 153 |
| Brannum, Sheriff Bill..... | 62 |
| Bratton, Johnny..... | 134 |
| Bridges, Mr. | 166 |
| Briggs, R. A. | 45 |
| Bristol, Pamela..... | 103 |
| Broszio, Carl..... | 68 |

| | |
|--------------------------------------|--------------|
| Broszio, Frederick..... | 68 |
| Broszio, Fritz..... | 68 |
| Broszio, Minnie..... | 68 |
| Brown, Quincy, A. | 144 |
| Buckwalter, Frankie..... | 5 |
| Buckwalter, Sonia Patton..... | 5, 34, 75 |
| Buell, Hazel..... | 140 |
| Buel, Roy..... | 140 |
| Bufkin, Hazel..... | 90 |
| Burk, Victor..... | 119, 125 |
| Burns, Frank..... | 45 |
| Cheek, Betty..... | 110 |
| Cheek, Jim..... | 83 |
| Cheney, Charles Sr. | 88 |
| Circle, Abbie..... | 45 |
| Circle, Elmer..... | 45 |
| Circle, Francis..... | 45 |
| Circle, Mike..... | 45 |
| Clarno, Patsy..... | 32 |
| Collins, Camille..... | 65, 116 |
| Collins, Dick..... | 122 |
| Collins, Ellen..... | 68, 122, 137 |
| Collins, Louis..... | 68 |
| Collins, O. G. | 68 |
| Collins, Orpha..... | 68 |
| Collins, Twit..... | 122 |
| Connine, Mr. | 26 |
| Cota, Mayme..... | 24, 26, 98 |
| Dart, Mr. | 62 |
| Dawson, Lucy..... | 58 |
| Dawson, Mr. | 128 |
| DeSmet, Mary Durbin..... | 60 |
| Dellenback, Representative John..... | 103 |
| Domphier, Marie..... | 24 |
| Draper..... | 5 |
| Dunn, Dr. | 68 |
| Durant, Pauline..... | 68 |
| Dyer, Effie..... | 90 |
| Dyer, George..... | 90 |

440 364 RSVP

Lizards in the Well

TALES OF THE UMPQUA



A Retired Senior Volunteer Program Project

A Man Named Bemis

By Charles A. McCord
As told to Eva T. Logan
Illustrated by Celia Jolley

In 1932 on a ranch of over a thousand acres just west of Oakland, I went to work for a man named Bemis, a Scot from the old country. Since his wife refused to live on the ranch, he spent most of his time in Roseburg with her. But I never knew, of course, when he was coming to inspect the ranch and to check up on me.

Mr. Bemis was not only canny, he was also, to put it in plain American slang, tight, and therefore keenly aware of the value of the money he was paying me. So when, in the middle of sweltering heat, Mr. Bemis drove out to the ranch and discovered me asleep in mid-afternoon on a big low branch of a shady oak in front of the house, he drew himself up to his not-very-tallest and bellowed, "So this is the way you work when I ain't around!"

Suddenly wide awake, I realized that the evidence against me was damning — I eased my long and sweaty body out of the tree. But perhaps because my surname gave me title to Scot's blood myself, I understood Mr. Bemis's anger. After he'd cooled a bit, I explained my seeming laziness.

The weather, I reminded him, was unusually hot, had stayed hot for days, and would likely be hot for days to come. And the horses, though willing workers, suffered mightily from the heat. In the first place, although I didn't say so to Bemis, they were unusually small for the heavy work on a farm. They struggled, boning their necks and straining gamely to pull the reaper around and around the hay field in the increasing heat of mid-day, sweating so profusely that they were lathered with foam. When that dried, they still looked as if frosted with soapsuds. I was

afraid that the heat, combined with the difficulty of the work, would do them in.

I therefore had decided that every morning, as long as the hot spell lasted, I would take them out of harness at about eleven o'clock, when the sun began to beat down most fiercely. For the next four hours they were free in the barnyard to drink at the watering trough and to wander into the barn for grain and for



shade whenever they wanted to. When they and I were fed, watered and rested we all did a better job for the rest of the day.

For the time being, however, when the horses were taken care of, I hoisted myself onto a large low branch of the oak, settled my skinny length along it, and went to sleep almost immediately.

All this (minus the embroidery I did in telling it to you) I told to Mr. Bemis. However, red-faced and grim, he continued to regard me with suspicion.

I tried once more. It was now almost four p.m., I said, and time to start haying again. The horses would be rested and we would work as long as we could see — probably until ten o'clock, or, if there was moonlight, even later. Then next morning at first light — about four o'clock — with the horses again in harness we'd work, as we had that day, until an hour before noon.

Mr. Bemis looked relieved, "Oh," he said, understanding at last, "so that's the way you do it," and said no more.

It still seems to me, as it did then on that hot and sticky August day, that when you're haying during a blistering hot spell, a twelve to fourteen hour working day, no matter how you slice the twenty-four, is still a full day's work for team and driver. The temperature was well into the 90's every day, and those small horses and I threshed 3,000 bushels of oats and wheat, and cut 100 tons of hay.

In addition to the hay-making, there were turkeys, sheep, a cow or two, and calves to care for daily.

The turkeys were fairly easy to take care of. I filled their feeders from hoppers once a week. When the birds grew to weigh about three pounds, I put up long fence poles for roosts, supported by uprights. Most of the birds managed to flap up there to roost at dusk. However, we began to lose some of them.

One evening as I watched them settle for the night, I became aware that I was not the only watcher. Above them, roosting quietly in the darker dusk of a leafy tree, was a big owl. Soon it flew down and alighted, sociably enough, beside one of the young turkeys. In a few minutes he crowded closer. The fowl, evidently not enjoying the proximity, moved away. The owl soon followed and the uncomfortable turkey moved away again. Thus they continued, the owl moving close to the chick and the chick retreating, until the owl pushed it off the end of the roost, then

swooped down to intercept his dinner before the awkwardly flapping chick touched the ground.

We lost several that way. They never seemed to learn. Years later my wife remarked of such a flock, "If they weren't stupid, they wouldn't be turkeys."

A clutch of turkey eggs varies in number from fifteen to eighteen, but they were not always full clutches. As many as ninety percent of each clutch were fertile. Those eggs suspected of being infertile had to be tested; one day when Mr. Bemis was there, he decided to test some. We rolled a few thickness of newspaper into a cone and tucked a speckled egg in the large end, holding it steady with one hand while he placed the small end of the cone to his eye. The egg, with the bright sunshine trained on it (we were outside), was translucent enough for him to tell whether it was, or was not, fertile. With his head back and his eye sighting the egg at the far end of the cone, he squinted to confirm his suspicion that it was indeed rotten. But something went wrong. Perhaps the overripe fruit of the turkey started to fall and Bemis instinctively tightened his fingers on it; perhaps the egg was exceptionally thin-shelled or even cracked. Anyway, it broke, exploding all over his face. Rotten! I couldn't get within fifteen feet of him without gagging. But I couldn't stop laughing, even when I heard him mutter angrily, "Laugh, you damned fool!"

While I worked for Mr. Bemis I received a dollar a day and board and room.

He furnished the groceries — baking bread, meat packed in tins, oatmeal for breakfast — always oatmeal. He often commented, "Oats make fine horses." Perhaps Bemis was right about oats and horses, but I was reasonably sure that oatmeal did little for me.

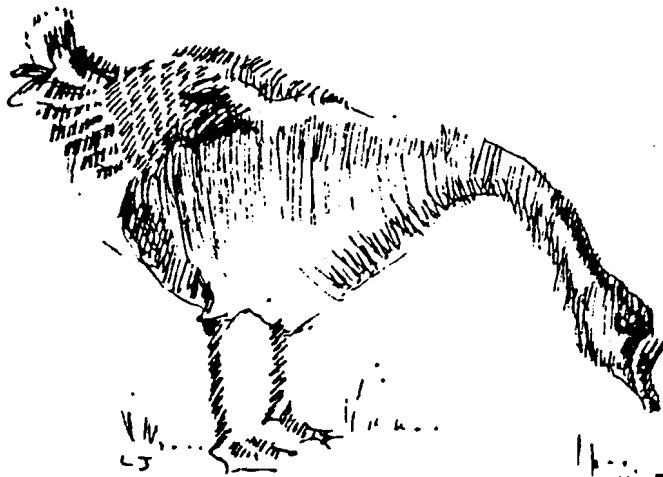
We also had bacon and ham and, from a little garden we picked roast'n ears and raspberries. He was there perhaps a third of the time. I did most of the cooking except when his wife came and cooked us a good meal with a roast and mashed potatoes, vegetables, and cake for dessert. She was a good cook.

In December the temperature sank to nine degrees below zero and stayed there for four or five days — more than long enough for the water system to freeze. The "system" was a half-inch

pipe that had been in the ground for thirty years and had been installed for the benefit of the stock. Spouting a stream the size of a lead pencil, it quickly piled up a mound of ice six to eight feet long, four to five feet wide, and thick enough that the whole lump must have weighed at least one-and-a half tons. The sheep could go to the creek for water, but not the turkeys. We had to carry it to them in buckets, for they couldn't get to the fountain under its heavy coat of ice.

There was nothing I could have done to prevent the freezing of the tiny pipe, and nothing I could do to de-ice it after it was frozen. But Bemis fired me anyway. Perhaps out of frustration, or maybe he still smarted at the memory of my laughter when the rotten turkey egg exploded in his face.

Three or four miles west of Oakland that farm house, with the barn nearby, still stands. Nearly every day in summer a breeze blows cool over that ridge late in the afternoon. If any air is stirring, you can feel it then, in that place.



Everybody's Telephone

By Louis Brady

As told to Mary Worley

In the early part of the century, gasoline was shipped from Portland to Glendale in five gallon cans. The railroad was very important to the Glendale-Azalea area. It brought groceries and most other supplies. Sometimes, the Bradys could get groceries at the Canyon Pass Hotel and Store. (Now known as the Azalea Store)

Louis remembers the old party telephone. Everyone owned part of the company and worked to keep Everybody's Telephone system working. The telephone boxes contained two batteries and hung on the wall. Each house had a special ring, such as three long rings and two short rings, which would be thirty-two. One extra long ring generally meant emergency or important news and everyone listened as the caller announced a fire, birth, death, etc. To get a number in town or a party on another line, you rang one short ring. Central would answer and make the proper connections. The I. H. Smith family ran the telephone office in Glendale for several years. Rates were established at fifty cents a month. Dial phones didn't come until after 1950.

Everyone raised a garden so they usually had a winter's supply of potatoes and root vegetables. Evergreen blackberries were plentiful along creeks. Dewberries were found in the logged over areas. Wild strawberries were a special treat. Most pioneer families used mushrooms, Miner's lettuce, lambsquarter and other weeds for greens. Men and boys hunted deer, rabbits, ducks, geese, pigeons and other birds for meat. Cow Creek offered many fish, lots of chub and suckers and some trout. Salmon came up Bull Run and other small creeks.

CLAIM OF BENEFICIAL USE

CREEK BANK FARMS, INC.

DIVERSION WORKS

The diversion works in 1991 consist of a wooden gathering box approximately 2' x 2' x 2'.

An infiltration gallery extends uphill from the gathering box for a distance of 175 to 190 feet. The physical details of the gallery are unknown. The inflow pipe from the gallery enters the uphill side of the gathering box approximately 2/3 of the way up from the bottom to the top. The outflow pipe exits the box on the downhill side at the bottom of the box.

The elevation difference between the spring and the house is approximately 210 feet. The pipe length is approximately 4900 feet.

The elevation difference between the house and the 1200 gallon holding tank is 62 feet. The pipe length is approximately 1800 feet.

CLAIM OF BENEFICIAL USE
CREEK BANK FARM INC.

2/3

DELIVERY SYSTEM CAPACITY

JAN - 6 1982

KNOWN VALUES

L = 1800 FT. (HOUSE TO 1200 GALLON CONCRETE TANK)

D = 1" PLASTIC PIPE

ELEVATION = 62 FT. (HOUSE TO 1200 GALLON CONCRETE TANK)

USING THE DARCY WEISBACH FORMULA

$$H_f = f \times \frac{L}{D} \times \frac{V^2}{2g}$$

ASSUMED VALUES

$$f = 0.029$$

$$H_f = 1.7 \text{ FT. / 100 FT}$$

$$1.7 = (0.029) \left(\frac{100}{1/12} \right) \left(\frac{V^2}{62} \right)$$

$$34.8V^2 = 109.5$$

$$V^2 = 3.15$$

$$V = 1.78 \text{ FPS}$$

$$Q = VA$$

$$V = 1.78$$

$$A = \frac{\pi R^2}{144} = \frac{(3.14)(.5)^2}{144} = 0.005 \text{ FT.}^2$$

$$Q = (1.78)(0.005) = 0.01 \text{ CFS} = 4.36 \text{ GPM}$$

CLAIM OF BENEFICIAL USE
CREEK BANK FARM INC.

3/3

USING $V = 1.78 \text{ FPS}$, $f = 0.033$

$$h_f = (0.33) \left(\frac{1800}{412} \right) \left(\frac{1.78^2}{64.4} \right)$$

$$h_f = (.033)(21.600)(.049)$$

$$h_f = 35.1 \text{ FT.}$$

USING $h_f = \frac{35.1}{18} = 1.95 \text{ FT./100 FT.}$

$$1.95 = (.033) \left(\frac{100}{412} \right) \left(\frac{V^2}{2g} \right)$$

$$39.6V^2 = 125.58$$

$$V^2 = 3.17$$

$$V = 1.78 \text{ FPS}$$

$$Q = 4.36 \text{ CFS}$$

RECORDED

JAN - 6 1992

WATER RESOURCES DIVISION
SALEM, OREGON

JAMES F. GOSSON Consulting Engineer

CIVIL ENGINEER
LAND SURVEYOR
WATER RIGHTS EXAMINER

580 South State Street
Sutherlin, Oregon 97479

(503) 459-2243

January 4, 1992

Oregon Water Resources Department
3850 Portland Road N.E.
Salem, Oregon 97310

Attention: Don Knauer

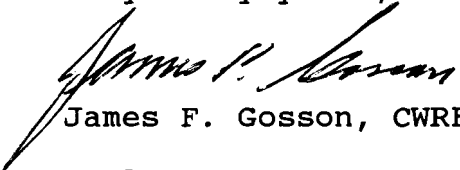
Re: Surface Water Registration Statement 47 (Creek Bank Farm)

Enclosed is a modified map along with the original map as well as narrative describing the diversion works structure, elevation differences, and pipe lengths and two sheets of calculations identifying the capacity of the delivery system.

The locations showing stockwater are hosebibs.

Please contact me if you need additional information.

Very truly yours,



James F. Gosson, CWRE

Enclosures

JFG/p