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 WATER RESOURCES DEPT.
 SALEM, OREGON

JENKINS RANCH INC - VESTED WATER RIGHT APPLICATION

5. Describe the appropriate water diversion and distribution system for both the original distribution system and any enlargements:

A) DITCH:

Div 1, dirt, top width = 6', bottom width = 3', depth = 2.5'
 Div 2, dirt, top width = 7', bottom width = 4', depth = 4'
 Div 3,4,5b, dirt, top width = 5, bottom width = 2',
 depth = 2'
 Div 5a, dirt, top width = 12', bottom width = 6', depth = 4'

7. Location of the area irrigated, or place of use if other than for irrigation:

County of Harney

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>1/4, 1/4 Section</u>	<u>No. of acres Irrigated</u>
28 S	32 E	25	NE,NE	30.6
			NW,NE	20.0
			SW,NE	27.4
			SE,NW	40.0
			NE,NW	2.2
			SE,NW	0.5
			SE,SW	5.6
			NE,SE	40.0
			NW,SE	9.8
			SW,SE	30.3
			SE,SE	34.8
		36	NE,NE	34.6
			NW,NE	21.4
			SE,NE	1.4
			NE,NW	1.6
28 S	33 E	16	SW,SW	0.2
			SW,SW	0.4
		17	SE,SW	17.8
			SW,SE	10.0
			SE,SE	6.6
			NE,NE	16.4
		19	NW,NE	9.8
			SW,NE	40.0
			SE,NE	28.6
			NE,NW	6.0
			SE,NW	34.4
			NE,SW	27.2
			NW,SW	10.4

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	SW,SW	23.2
	SE,SW	30.4
	NW,SE	29.8
20	SW,SE	23.2
	NE,NE	23.2
	NW,NE	37.8
	SW,NE	9.0
	NE,NW	38.6
	NW,NW	19.9
	SE,NW	15.6
21	NW,NW	3.0
30	NW,NE	25.2
	SW,NE	18.6
	NE,NW	26.0
	NW,NW	33.2
	SW,NW	37.1
	SE,NW	32.0
	NE,SW	32.0
	NW,SW	31.8
	SW,SW	29.6
	SE,SW	39.0
	NW,SE	29.8
	SW,SE	5.8
31	NE,NW	2.6
	NW,NW	18.0
	TOTAL	<u>1122.4 ac</u>

8. Location of points of diversion:

Div 1; NW,NW; Section 21, T 28 S, R 33 E, WM
 Div 2; NW,NW; Section 21, T 28 S, R 33 E, WM
 Div 3; NE,NE; Section 20, T 28 S, R 33 E, WM
 Div 4; NW,NE; Section 20, T 28 S, R 33 E, WM
 Div 5; NW,NE; Section 20, T 28 S, R 33 E, WM

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Argued May 7, affirmed July 11, 1956

SMYTH ET AL v. JENKINS ET AL
299 P. 2d 819

Proceeding on application for right to construct reservoir, which had already been constructed at time application was made, wherein granting of water right certificate after application was granted was objected to because reservoir did not meet permit specifications and on other grounds. The Circuit Court, Harney County, Charles H. Foster, J., entered decree affirming part of order directing issuance of certificate of water right to defendants and plaintiffs appealed from that decree. The Supreme Court, Tooze, J., held that under the circumstances state engineer was justified in waiving certain regulations and requirements in regard to construction of the reservoir and that engineer was not arbitrary in doing so.

Decree affirmed.

Waters and water courses—Water code—State engineer—Distribution of waters

1. Under provisions of Water Code, state engineer has primary responsibility for proper distribution of waters of state for beneficial use but his acts in some instances are governed by mandatory provisions of the law. ORS 537.230, 537.250, 537.260, 540.020.

Waters and water courses—Court—Interfere—Discretionary action of state engineer

2. Generally a court will not interfere with discretionary action of state engineer upon matters involving administration of water laws of state and substitute its judgment for judgment of engineer. ORS 537.260.

Waters and water courses—Primary interest of state—Running water

3. Primary interest of state in regard to waters is amount of running water that is going to be used for beneficial purposes, and not in the methods to be employed to make that use possible, so long as the methods used do not endanger life or property, create a nuisance, or injure vested right of some other person and whether the methods used are proper is a question peculiarly within discretion of state engineer. ORS 537.230, 537.250, 537.260, 540.020.

Waters and water courses—Application for right to construct reservoir

4. Where application was made for right to construct reservoir, which had actually already been constructed at time of application, and applicants were admittedly last users of waters involved and also there were no other downstream users of the water, which could not be controlled if requested storage right was not granted and any surplus over amount used would be

Cite as 208 Or. 92

wasted, state engineer was justified in waiving certain regulations and requirements in regard to construction of the reservoir.

See Right to construct dam in stream.
56 Am Jur, Waters § 27.
70 ALR 220.
93 CJS, Waters § 130.

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Appeal from Circuit Court, Harney County, Oregon
CHARLES H. FOSTER, Judge. WATER RESOURCES DEPT.
SALEM, OREGON

Pat H. Donegan, Burns, argued the cause and filed briefs for appellants.

James M. Burns, Burns, argued the cause and filed a brief for respondents.

Before WARNER, Chief Justice, and TOOZE, LUSK, BRAND and PERRY, Justices.

AFFIRMED.

TOOZE, J.

This is an appeal by D. H. Smyth and E. H. Smyth from a portion of a decree of the circuit court for Harney county involving certain water rights. The case originated in the office of the state engineer pursuant to the provisions of the Water Code of this state, and an appeal was taken to the circuit court from the order of the state engineer. The circuit court affirmed the order.

Upon the hearing before the state engineer, as well as on the trial in the circuit court, D. H. Smyth and E. H. Smyth were designated as the protestants, and Thomas E. Jenkins and Richard J. Jenkins were designated as the protestees, but we shall hereafter refer to them as the plaintiffs and defendants, respectively.

Plaintiffs D. H. Smyth and E. H. Smyth own lands in Harney county, Oregon, located on Smyth

creek, a tributary of Riddle creek. In 1953 they filed an application with the state engineer for the right to construct a reservoir to impound 160 acre feet of the waters of Smyth creek for irrigation purposes. Defendants Thomas E. Jenkins and Richard J. Jenkins own lands located on Riddle creek and in 1941 they were issued a permit by the state engineer authorizing them to build a reservoir for waters of Riddle creek with a storage capacity of 7,500 acre feet for irrigation purposes.

Defendants protested plaintiffs' application, and plaintiffs in turn objected to the issuance of a water right certificate to the defendants on their permit. The protests were consolidated for hearing which was held before the state engineer at Burns in October, 1953. Both protests were overruled by the state engineer, and he made his order approving plaintiffs' application to construct their reservoir and a further order that a certificate of water right be issued to defendants to store 7,500 acre feet of water under their permit, and a further certificate of water right to use of the waters thereof for irrigation purposes. This appeal is from the decree of the circuit court affirming that part of the order directing the issuance of a certificate of water right to defendants under their permit.

The substance of the objections which plaintiffs made before the state engineer to the issuance of a water right certificate to defendants to store 7,500 acre feet of water under their permit is as follows:

"1. The failure of the respondents to exercise reasonable diligence in the construction of their reservoir system as authorized by their permit;

"2. The construction of their reservoir beyond

its authorized height of eight feet to a height of sixteen feet and to the public's danger;

"3. The submergence of a much greater area of land than authorized by the storage permit as a result of the unauthorized increased height of respondents' dam;

"4. That the respondents' reservoir is so inefficient, uneconomical and wasteful that most of the water impounded cannot be put to a beneficial use; and

"5. That the dam has no adequate spillway."

The transcript of testimony taken on the hearing before the state engineer consists of 383 typewritten pages, and that taken on the appeal to and hearing by the circuit court consists of 457 typewritten pages, in addition to a number of exhibits. Substantially the same evidence appears in both transcripts, although upon the hearing in the circuit court considerable more testimony was offered on the subject of evaporation of the waters of defendants' storage area.

Three dams are involved in defendants' application for a permit to construct and maintain a reservoir for the storage of 7,500 acre feet of water for irrigation purposes. On the hearings these dams were referred to by number as follows: dam No. 1 being the defendants' main storage dam; dam No. 2 being a diversion dam to place water into the reservoir; and dam No. 3 being designed to assist in the control of the stored waters.

Defendants constructed their storage dam (dam No. 1) on Riddle creek in 1929. They utilized an old lake bed for a reservoir. Through an honest mistake, they constructed this dam at that time and stored water in the reservoir without first having obtained a permit from the state engineer as required by stat-

Plaintiffs' contentions in this case are based almost entirely upon the fact that the height of the main dam was 16 feet rather than 8 feet 3 inches as stated in the application, and upon defendants' failure to construct dams Nos. 2 and 3 within the time set forth in the application and permit, without having secured an extension of time from the state engineer.

ORS 537.230 provides:

"Except as provided in ORS 537.240 [has to do with Federal permits when required], actual construction work * * * shall begin within one year from the date of approval of the application. The construction of any proposed irrigation or other work shall thereafter be prosecuted with reasonable diligence and be completed within a reasonable time, as fixed in the permit, not to exceed five years from the date of approval.

"(2) Except as provided in ORS 537.240, the State Engineer shall, for good cause shown, order and allow an extension of time, including an extension beyond the above five-year limitation, within which irrigation or other works shall be completed or the right perfected, under any permit. * * *"

Upon the completion of construction for which permit has been issued, the applicant is entitled to a water right certificate issued by the state engineer. ORS 537.250 provides:

"(1) Upon it appearing to the satisfaction of the State Engineer that an appropriation has been perfected in accordance with the provisions of the Water Rights Act, he shall issue to the applicant a certificate of the same character as that described in ORS 539.140. The certificate shall be recorded and transmitted to the applicant as provided in that section.

"(2) Rights to the use of water acquired under the provisions of the Water Rights Act, as set

forth in any such certificate, shall continue in the owner thereof so long as the water shall be applied to a beneficial use under and in accordance with the terms of the certificate, subject only to loss by nonuse as specified and provided in ORS 540.610.

"(3) The right acquired by an appropriation shall date from the filing of the application in the office of the State Engineer."

It is to the issuance of the foregoing certificate that plaintiffs object. ORS 537.260 provides:

"(1) Whenever the time within which any appropriation under a permit should have been perfected has expired and the owner of the permit fails or refuses within three months thereafter to submit to the State Engineer proof of completion of the appropriation as required by ORS 537.230 and 537.250, the State Engineer *may*, after 60 days' notice by registered mail, order the cancellation of the permit. The cancellation shall have the same force and effect as cancellation of a permit in the proceedings provided for in ORS 537.410 to 537.450.

"(2) The State Engineer *may* determine the extent to which an appropriation has been perfected under any permit at the time of submission of final proof provided for in ORS 537.250, and shall limit the certificate provided for in that section to a description of such appropriation as has been actually perfected to the extent that the water applied for has been actually applied to the beneficial use contemplated in the permit.

"(3) Any person owning an application, permit or water right certificate subsequent in priority may jointly or severally contest before the State Engineer the issuance of the water right certificate at any time before it has issued, and after the time has expired for the completion of the appropriation under the permit, or within three months after issuance of the certificate. The contest shall be brought upon application made, and hearing

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'shall be had in the same manner and after notice as provided in ORS 537.420 and 537.430 for proceedings for cancelation of permits. The State Engineer, in his final order, *may cancel the permit or determine the extent to which the appropriation claimed thereunder has been perfected*, and issue a water right certificate accordingly, or if a certificate has been issued, in the case of a contest within three months after its issuance, he may cancel the water right certificate, or affirm its issuance, and if the water right certificate in such case is canceled, the permit upon which it is based shall also be canceled. Any such order of cancelation shall be subject to appeal as provided in ORS 537.430.'" (Italics ours.)

1, 2. It will be observed that under this statute the state engineer is vested with a wide discretion. It is manifest from the several provisions of the Water Code that the legislature intended to place upon the shoulders of the state engineer the primary responsibility for a proper distribution of the waters of the state for beneficial use; in some instances, however, his acts being governed by mandatory provisions of the law. It is seldom, if ever, that a court will interfere with discretionary action of the state engineer upon matters involving the administration of the water laws of the state and substitute its judgment for his. Judges are not super engineers. *Broughton's Est. v. Central Or. Irr. Dist.*, 165 Or 435, 462, 101 P2d 425, 108 P2d 276.

It is obvious from the record that the gist of defendants' application for a permit to construct a reservoir was to construct one that would store 7,500 acre feet of water. The height of the dam, as stated in the application, is not the material thing. Manifestly, the dam would have to be high enough to provide in the reservoir the necessary amount of water.

The diversionary dam and canal designed for the purpose of aiding in filling the reservoir are mere incidents to the ultimate end in view. Certainly the state engineer would not require the construction of dam No. 3 as mentioned in the application when it was made to appear that it was unnecessary. We do not condone the action of defendants in 1943 in giving notice to the state engineer that all construction was completed, when in fact dam No. 2 had not been built, nor the failure of defendants to request an extension of time for such construction; nevertheless, we are unable to discover from the record where anyone has been harmed by defendants' derelictions. Certainly the state engineer and his appointee, the county water-master, were not misled. If the state engineer could have granted the extension of time, as, of course, he could, then he had the authority to waive failure to request such extension, which he did, as evidenced by his order directing the issuance of a certificate to defendants.

3. It must be kept in mind that the primary interest of the state is in the amount of running water that is going to be used for beneficial purposes, not in the methods to be employed to make that use possible, so long as the methods used do not endanger life or property, create a nuisance, or injure the vested right of some other person. Whether the methods used are proper is a question peculiarly within the discretion of the state engineer to decide. If improper, the statute vests him with ample authority and it is his duty to have them corrected so as to obviate the objections thereto.

We must not overlook the fact that when defendants filed their application to construct the reservoir in 1941, it had long before been substantially com-

pleted and was in actual use. The reservoir actually stored 7,500 acre feet of water, and no more, and the water available was being put to a highly beneficial use. On their application for a permit under the head of "remarks," defendants stated:

"In 1927 we employed Mr. Arthur Page to survey and fill out the Necessary application for the reservoir above stated. He surveyed it and we supposed that he had sent the maps and application in. We started construction upon the reservoir, built the dams and ditches necessary to store the water and take it out from said reservoir in 1928 and had been using the reservoir and the water stored therein since 1928 or 1929 supposing our application had been granted. We are using the same under this except adding some improvements for the better use of the water."

Thus, at the outset the state engineer was fully advised that there would be but little construction work upon the main dam and reservoir; it was then in use. We have not overlooked plaintiffs' contentions respecting evaporation of the waters in the reservoir and their claim that that amounts to a waste thereof within the meaning of the Water Code. However, under the facts and circumstances of this case, and in particular, in the light of the type of country in which the reservoir is located, and in the light of the further fact that before the reservoir was constructed the waters of Riddle creek were largely lost for beneficial use, we do not deem plaintiffs' contentions to be meritorious.

On the hearing before the state engineer at Burns he personally visited and viewed all the premises involved in this litigation, including the dams and reservoir. The trial judge also viewed the premises. Unquestionably, both were impressed with what they

observed on the ground. We cannot read their minds so as to know just what part their personal inspections played in connection with their final conclusions. However, we have always given greater weight to the findings of a trial judge when he has personally viewed the premises. *Becker v. Tillamook Bay Lb Co*, 194 Or 134, 137, 240 P2d 237.

4. Upon the conclusion of the hearing in circuit court, the trial judge read his memorandum opinion deciding the issues between the parties. This opinion contains so much of merit that we include a portion of it herein as a part of this opinion. The trial judge said:

"On the trial, this Court has allowed evidence to be introduced that was produced before the State Engineer, plus any additional evidence relating to the part of the order appealed from. I have done this in order that I might have all the facts before me, because the State Engineer, in his determination, is not limited to the facts produced at the hearing, but can take into consideration other facts and other evidence outside the record.

"Actually, despite the length of this trial and the mass of data and testimony produced, in the Court's opinion there is little if any actual dispute as to the facts; the dispute is mostly as to the interpretation of those facts.

"The Appellants, both before the State Engineer and in this trial, have made substantially the same objections to the granting of the certificate of water right to Respondents confirming rights granted under Permit Number R-770 and Permit Number 15046. These objections are and were:

"(1) That Respondents did not exercise reasonable diligence in the construction of the works authorized by Permit R-770, in that part of the construction, dam number 3, has never been built, and that dam number 2 and the highline canal

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THE TRIAL JUDGE
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were not completed until after the completion date set by the Engineer of October 1, 1943. This respondents have admitted;

"(2) That despite lack of completion, Respondents filed a certificate of completion with the State Engineer in 1943. This Respondents have also admitted.

"(3) That Respondents built dam number 1 many years prior to any permit and without a permit from the State Engineer. This fact is also admitted by the Respondents.

"(4) That Respondents constructed dam number 1 to a height of 12 to 16 feet when their permit authorized only a height of 8 feet. This is also admitted by Respondents, if measured according to regulations of the State Engineer now in existence.

"(5) Finally, that the system of storage used by Respondents in their works as constructed is wasteful and, because of evaporation and absorption, the water stored in excess of the 3900 acre feet which they are allowed to use in any one year cannot be applied to any beneficial use. As to this objection the evidence for both the Appellants and Respondents agrees substantially as to the rate and amount of evaporation.

"The Court has carefully read the entire order of the State Engineer, and finds that when the order was executed, the State Engineer was fully aware of all the facts. It is further the opinion of the Court that the State Engineer, should he have desired to do so, had plenty of grounds upon which to deny a final certificate to the Respondents, but apparently decided, because of various circumstances, to waive certain regulations and requirements and grant the certificate.

"The question for this court to decide is whether, under the facts, the State Engineer was justified in so doing and whether his judgment in so doing was correct.

Cite as 208 Or. 92

"First of all, this court feels that, by necessity, the State Engineer is given wide discretion in waiving certain requirements and regulations concerning the application for and perfection of water rights, as long as such waivers are not arbitrary and do not injure the vested rights of others.

"Here the State Engineer was confronted by applicants for storage rights who, it is admitted, were the last users of the waters involved. There were and are no other downstream users. If the storage right was not granted, the waters could not be controlled and any surplus over the amount used would be, in effect, wasted.

"Furthermore, because such waters could not be controlled, Respondents were seriously hampered in using them for the most effective irrigation, and they were prevented from adequately farming part of their land known as the Barton Lake Ranch, on which the surplus waters ran uncontrolled.

"To grant the storage right, even in the amount of 7500 acre feet, did not infringe on any existing vested rights either downstream or upstream. In the Court's opinion the right does not now affect any upstream water right injuriously, but that is a matter of interpretation of other parts of the State Engineer's order, which this Court is not called upon to interpret in this proceeding.

"It is true that Respondents' reservoir and irrigation system is not as efficient as perhaps it could be. But efficiency is a relative term, dependent upon the area and terrain involved and dependent upon whether the rights of others in such waters are injured by such inefficiency. Considering these factors, the Court does not feel the inefficiency would justify a denial of the right.

"It is also true that the loss by evaporation is great, as it is in all parts of this area. But, in the Court's opinion, that loss by evaporation would occur in one area if stored or in another area if not

stored. Thus, this objection is not very important, in the Court's opinion.

"I feel that the State Engineer, in allowing the right to store 7500 acre feet, realized that this right would only be needed and could only be used in years of high water, which might be few and far between, but in those years would definitely be needed in order for Respondents to control these waters and make the best use, if any, that might remain in a carry-over.

"Furthermore, in allowing the right of storage, the water, merely by being controlled and out of the way of more productive land until a later period in the year, was, under these circumstances, beneficially used, even if much of it was lost by evaporation.

"This Court feels that under the law the State Engineer is allowed to use and does use certain equitable principles, and is not required to harshly hew to the line of technicalities in his regulations and requirements in dealing with the general public, particularly when the purpose of those requirements and regulations do not apply and were not intended to apply in certain given instances and under certain given circumstances. Thus this Court feels, under the facts of this case, of all of which the State Engineer was fully aware, that the State Engineer was justified in waiving certain regulations and requirements and was not arbitrary in so doing.

"Further, this Court, had it been in the position of the State Engineer at the time he executed that part of his order herein appealed from, would have also granted the rights appealed from as being in the best interests of all concerned and in an exercise of good judgment.

"Consequently, this Court confirms the part of the order of the State Engineer executed in this proceeding on March 22, 1954 which has been appealed to this Court."

The decree is affirmed. Defendants to recover costs.

Argued May 7, affirmed as modified June 20, petition for rehearing denied July 11, 1956

MALICK ET UX v. MALICK

298 P. 2d 841

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WATER RESOURCES DEPT.
SALEM, OREGON

Suit for an accounting incident to the dissolution of a partnership. The Circuit Court, Deschutes County, Ralph S. Hamilton, J., entered decree for defendant for certain balance due from plaintiff, and plaintiff appealed. The Supreme Court held that findings of trial court, and decree that plaintiff owed defendant certain balance, were justified by evidence, though balance struck by trial court between parties would be modified to accord with lower figure stated in recapitulation prepared by defendant and made part of his brief.

Decree modified and affirmed.

Appeal and error—Equity—De novo

1. Upon appeal in equity proceeding, Supreme Court is required to try case de novo, to make its own independent investigation of facts as disclosed by record before it, and to arrive at its own conclusions respecting them.

Appeal and error—Equity—De novo—Findings of trial judge

2. Though, on appeal in equity proceeding, Supreme Court is required to examine record de novo, Supreme Court will nevertheless give great weight to findings of trial judge upon disputed questions of fact, though in no sense is it bound by them.

Partnership—Accounting—Findings of trial court

3. In suit for an accounting incident to dissolution of partnership, findings of trial court, and decree that plaintiff owed defendant certain balance, were justified by evidence, though balance struck by trial court between parties would be modified to accord with lower figure stated in recapitulation prepared by defendant and made part of his brief.

See Appeal and error—Equity, Trial de novo.

3 Am Jur, Appeal and Error §§ 2, 912.

111 ALR 744.

68 CJS, Partnerships § 440.

Appeal from Circuit Court, Deschutes County.

RALPH S. HAMILTON, Judge.

Argued and submitted May 7, 1956.

Mark V. Weatherford argued the cause for appellants. On the briefs were Weatherford and Thompson, Albany.

Leonard H. Waterman
ATTORNEY-AT-LAW
~~REDACTED~~
BURNS, OREGON

Sept. 6, 1955

State Engineer, State of Oregon
Salem, Oregon

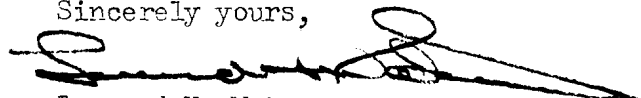
Gentlemen:-

In checking the 1955 session laws it becomes quite apparent that the water law has been materially changed and it will be rather hard to determine just what all such changes are without a properly indexed copy of the new water code complete. Therefor I request that at least three (3) copies of the new water code be sent to me as soon as available. If there is a charge for this please advise and I will send forward my check.

At the present time it is desireable that I know the rights and dates of priority of Jenkins Brothers of Diamond, Oregon. Jenkins Brothers consist of Thomas E. Jenkins and Richard J. Jenkins. These rights may have originally been filed in the name of J.R. Jenkins & Sons or in the name of Eastern Oregon Livestock Co. or J. W. Biggs. Insofar as I have been able to determine the enclosed list of lands would be the lands now owned by said Jenkins Bros. Please furnish me what information you are able to give me in regards to the rights on these lands or part of these lands. The waters I am interested in are from Smyth Creek and Riddle Creek and I am particularly interested in the date of the earliest right owned by Jenkins Bros. Under the findings in the case of Jenkins vs. Smyth #4375 Harney County, the statement is made that Jenkins has a vested right to the use of the natural flow of Riddle Creek with a date of priority prior to 1909 which right has not been adjudicated. Please advise what date of priority if any your records show this right to actually be prior to 1909.

The client I represent has a vested right to the use of water from Riddle creek which has been adjudicated and I am checking this on their behalf. Likewise if any refiling is required on these old water rights is going to be required under the new water code I would appreciate having several copies of the necessary forms for filing.

Sincerely yours,


Leonard H. Waterman

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STATE ENGINEER
SALEM, OREGON

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THE CENTENNIAL HISTORY OF OREGON

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WATER RESOURCES DEPT.
SALEM, OREGON

WILLIAM L. BARTON, a prominent and prosperous farmer of Douglas county, was born in that section July 15, 1866. His parents were William and Rebecca (Smith) Barton. The mother was a native of Iowa, in which state her birth occurred on May 1, 1842. The father was born in Indiana, January 22, 1830. He lived in his native state until 1852, when he crossed the plains with ox teams in company with his father, Edward Barton, and located in Portland, Oregon. William Barton, the father of our subject, then came direct to Douglas county and settled on Cow creek, where he took up a donation claim which he improved and cultivated until 1872, when he sold his land and drove his cattle to eastern Oregon, near Fort Harney. He was a volunteer in the Rogue River and Cow Creek Indian wars in 1853 and in 1856, and saw much service during that time and many exciting fights. He was also in the Pinte-Bannock Indian war of 1878, in which William L. Barton, our subject, when a boy of only twelve years, made bullets for the volunteers. The father was engaged in stock-raising in eastern Oregon in 1872 and remained there until 1881. He had sent his family here in 1880 for better educational facilities for his children. He lived in Douglas county upon his holdings until his death, in 1882. He was the father of eleven children, six of whom are deceased. Those who survive are: Lucy, the wife of Fletcher Edwards, of Bend, Oregon; William L.; Wright S., who married, has eight children and is now a resident of Douglas county; Frank, also living in this district; and James, who was married on May 8, 1912, and makes his home in Humboldt county, California. William L. Barton also has a half-brother, Carroll Smith, who is a resident of Douglas county.

William L. Barton was educated in the common schools of his native district and was brought up on his father's farm. He learned the details of agriculture and became thoroughly versed in the labors incident to farm life. When he grew to maturity he engaged in the cultivation of the soil and has been for many years a scientific and progressive farmer in his native district. He also engages as contractor and does a great deal of road building, tunnelling, railroad building and work of a similar nature. He gives his political allegiance to the democratic party and although he has never been an office seeker he nevertheless takes an active and intelligent interest in public affairs and is a firm believer in democratic principles and policies.

JENKINS BROS. LANDS

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	30	29	36
9	1	30	35
	12	30	35
10	33	29	35
	34	29	35
11	4	30	35
	18	28	33
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	2	30	35
27	3	30	35
	10	30	35
28	9	30	35
	14	30	35
29	15	30	35
	22	30	35
30	28	30	35
	32	30	35
31	33	30	35
	36	27	36
32	20	27	36
	36	27	36
	4	31	35
	3	28	33
	4	28	33
	9	28	33

RECEIVED

OCT 20 1992

WATER RESOURCES DEPT.
SALEM, OREGON

		S	T	R
1	SW $\frac{1}{4}$ SE $\frac{1}{4}$: S $\frac{1}{2}$ SW $\frac{1}{4}$	25	29	32
2	S $\frac{1}{2}$ SE $\frac{1}{4}$	26	29	32
	NE $\frac{1}{4}$	35	29	32
3	W $\frac{3}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$: W $\frac{1}{2}$ NE $\frac{1}{4}$: NW $\frac{1}{4}$	36	29	32
	E $\frac{1}{2}$ SW $\frac{1}{4}$: SW $\frac{1}{4}$ SE $\frac{1}{4}$	21	28	33
4	NE $\frac{1}{4}$ NW $\frac{1}{4}$	28	28	33
	Lots 1-2-3	19	28	33
5	SE $\frac{1}{4}$ SE $\frac{1}{4}$	13	28	32
	NE $\frac{1}{4}$: W $\frac{1}{2}$ SE $\frac{1}{4}$: NE $\frac{1}{4}$ SE $\frac{1}{4}$: E $\frac{1}{2}$ NW $\frac{1}{4}$: SW $\frac{1}{4}$ NW $\frac{1}{4}$	24	28	32
6	S $\frac{1}{2}$ NE $\frac{1}{4}$: N $\frac{1}{2}$ SE $\frac{1}{4}$: SE $\frac{1}{4}$ SE $\frac{1}{4}$	20	29	35
	SW $\frac{1}{4}$ NW $\frac{1}{4}$	21	29	35
7	NW $\frac{1}{4}$ NW $\frac{1}{4}$: S $\frac{1}{2}$ NW $\frac{1}{4}$: SW $\frac{1}{4}$ NE $\frac{1}{4}$	28	29	35
	W $\frac{1}{2}$ SE $\frac{1}{4}$: NE $\frac{1}{4}$ SW $\frac{1}{4}$	28	29	35
8	E $\frac{1}{2}$ NE $\frac{1}{4}$	29	29	35
9	SE $\frac{1}{4}$ SE $\frac{1}{4}$	11	23	28
	E $\frac{1}{2}$ NE $\frac{1}{4}$: NE $\frac{1}{4}$ SE $\frac{1}{4}$	11	23	28
10	SE $\frac{1}{4}$	26	28	36
11	N $\frac{1}{2}$ S $\frac{1}{2}$: NW $\frac{1}{4}$: S $\frac{1}{2}$ NE $\frac{1}{4}$: NW $\frac{1}{4}$ NE $\frac{1}{4}$	36	28	36
	All	16	30	35
12	W $\frac{1}{2}$ NE $\frac{1}{4}$: NW $\frac{1}{4}$: N $\frac{1}{2}$ SW $\frac{1}{4}$	16	28	33
	W $\frac{1}{2}$ SW $\frac{1}{4}$	9	30	35
13	S $\frac{1}{2}$ SE $\frac{1}{4}$	8	30	35
	E $\frac{1}{2}$	17	30	35
14	NE $\frac{1}{4}$	20	30	35
	SW $\frac{1}{4}$: SW $\frac{1}{4}$ SE $\frac{1}{4}$	15	30	35
15	S $\frac{1}{2}$ SE $\frac{1}{4}$	21	30	35
	W $\frac{1}{2}$ NE $\frac{1}{4}$: E $\frac{1}{2}$ NW $\frac{1}{4}$: SW $\frac{1}{4}$ NW $\frac{1}{4}$: SW $\frac{1}{4}$: W $\frac{1}{2}$ SE $\frac{1}{4}$	22	30	35
16	W $\frac{1}{2}$	27	30	35
	E $\frac{1}{2}$ NB $\frac{1}{4}$	28	30	35
17	NW $\frac{1}{4}$	34	30	35
	N $\frac{1}{2}$ NW $\frac{1}{4}$: NE $\frac{1}{4}$: N $\frac{1}{2}$ SE $\frac{1}{4}$: SE $\frac{1}{4}$ NW $\frac{1}{4}$: E $\frac{1}{2}$ SW $\frac{1}{4}$	21	30	35
18	NE $\frac{1}{4}$ NW $\frac{1}{4}$: W $\frac{1}{2}$ E $\frac{1}{2}$	28	30	35
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 WATER RESOURCES DEPT.
 SALEM, OREGON

SURFACE WATER REGISTRATION CHECKLIST

(received after July 18, 1990)

CHECK BASIN MAP DWF NAME MALHEUR LAKE # 12 UNADJUDICATED AREA ? OK DWF
RECEIPT # 92062 S W R NUMBER 90
CHECK ENCLOSURES DWF PRELIMINARY DATA BASE ENTRY DWF
ACKNOWLEDGEMENT LETTER DWF ENTER ON STREAM INDEX Dec 10-6-92
CHECK QUADRANGLE MAP Dec CHECK GLO PLATS Dec 10-8-92
WATERMASTER CHECKLIST Dec 10-6-92 PUBLIC NOTICE PUBLICATION Dec 10-5-92

FORM REVIEW

☒ blanks filled in
☒ signed
☒ date received stamped

3 - STORAGE - 3

MAP REVIEW

☒ source and trib
☒ diversion point location
☒ conveyances (pipes, ditch, etc.)
☒ place of use
☒ scale
☒ township, range, section
☒ north arrow
☒ CWRE stamp
☒ disclaimer
☒ date survey was performed
☒ P.O.B. of survey
☒ dimensions and capacity of diversion system
☒ "beneficial use" type title
☒ "permanent-quality" paper

Dec

~~CHECK MISC~~
~~DECREASE~~
DO NOT REMOVE

WATER RIGHT RECORD CHECK _____ FIELD INSPECTION _____
FINAL FILE REVIEW _____ FINAL
ENTER ON PLAT CARDS _____

C:\WP51\SWR\CHCKLIST.1

7-30-92

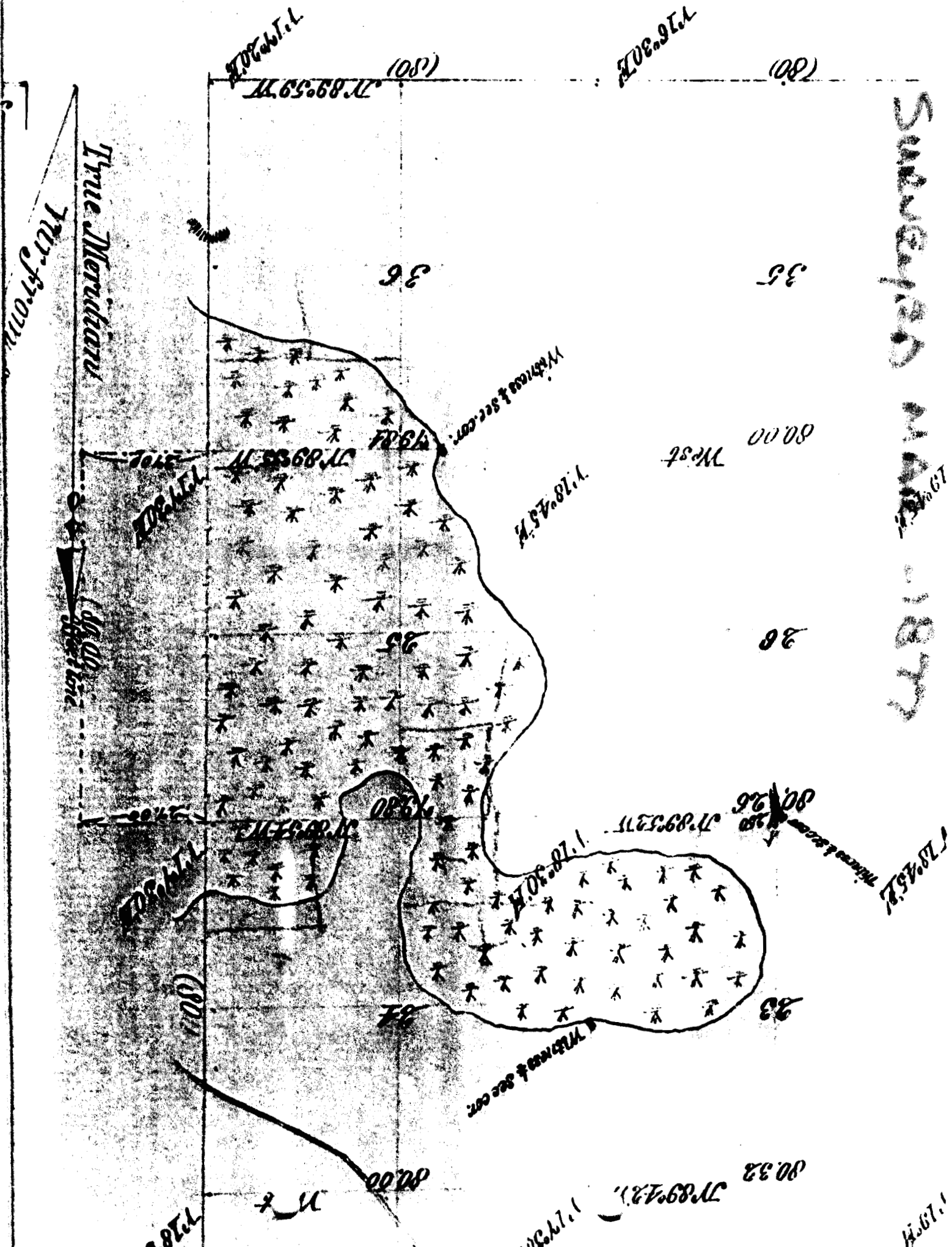
RECEIVED

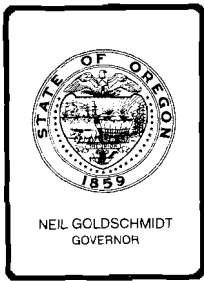
SEP 18 1992

WATER RESOURCES DEPT
SALEM, OREGON

HC 72 Box 3

Submerged Map 1877





Water Resources Department

HARNEY COUNTY COURTHOUSE, BURNS, OREGON 97720 PHONE 573-2591

OCT 16 1992
Oct-15, 1992

Don Knauer

IN reply to questions of CWR #90 Surface
Water registration.

1. yes - I have observed the use And talked to Dick
Jenkins about Filing.
2. yes - I have regulated Riddle Cr. for stock water
and irrigation with the Riddle Ranch and
Red Otley.
5. yes - The map checks with the permit map And
the ground as I remember in my observation
at the Jenkins Ranch.

Sincerely

William H. Beal

William N. Beal

Bill

INTERDEPARTMENT MEMO

TO: Watermaster District # 10
FROM: Adjudication Section
RE: Surface Water Registration

Enclosed is a copy of a Registration Statement and accompanying map that has been filed in your district. It has been numbered SWR #90.

We are gathering information about this claim to a pre-1909 water use and would like you to assist us by filing out the checklist below and including any comments that you think might be of significance.

(Yes or No)

1. Do you know anything about this water use? yes
2. Have there been any distribution problems relating to this claim? yes
3. Do you have reason to believe that the claimed priority date is not accurate? No
4. Does the quantity of water claimed look unreasonable for the uses named? No
5. Does the place of use look to be accurately depicted by the CWRE map enclosed? yes
6. Do you know if there has been a period of more than a five years of non-use? No
7. Should someone in our section contact you concerning this claim? IF Need be

If you answered yes to any of the above questions, please explain below on an additional sheet of paper.

Attach any memo's or correspondence that deal with this water use and return to the Adjudication Section at the address below.

Thank you for your assistance.

Sincerely,

Don

Adjudication Section

Enclosures

October 21, 1992

WATER
RESOURCES
DEPARTMENT

Jenkins Ranch Inc
Richard Jenkins
Diamond OR 97722

re SWR-90

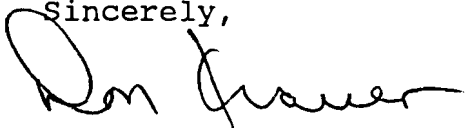
Dear Mr Jenkins,

I am sending the enclosed "Petition for Determination of Water Rights" as we talked during my visit on Oct. 15, 1992. You can fill it out and send it to the Martha Pagel, Director, Water Resources Department, 3850 Portland Road NE, Salem, Or 97310. As I told you, I don't know if this will speed up an adjudication in your area but it might help. At least you will notify the Water Resources Department of your interest in having your water rights adjudicated.

Yesterday Larry Jebousek was in my office and we did some research of records and added three items to your file. He took copies to send to you.

If I can be of any further help, don't hesitate to call.

Sincerely,



Don Knauer
Adjudication Specialist

C:\W\SI\CSWR-0090.004



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

INTEROFFICE MEMORANDUM

*Oregon Water Resources Department
Adjudication Section*

TO: SWR-90 FILE

FROM: Don Knauer

DATE: October 21, 1992

SUBJECT: Field Inspection October 15, 1992

On Oct. 15, 1992 Dwight French and I met with Richard Jenkins on the property covered in his claim. He told us he was born on the ranch and is the third generation to live on the ranch. He said the ranch was first homesteaded by the Bartons. He said Larry Jebousek, his CWRE, was researching records for evidence to submit in support of his claim. He showed us the irrigation system and explained how it works. He said the stock water from the ditches and channels but that there are no structures for that prupose. He said they usually have about 350 cows on the irrigated fields during the summer and about 2200 cows, calves and yearlings during the fall and winter.

On Oct. 20, 1992 Larry Jebousek visited my office and gave me copies of evidence he has gathered for the Jenkins claim.

From the conversation with Mr Jenkins and Mr Jebousek, it appears these folks are in real need of an adjudication. There has been a shortage of water and it sounds as though the upstream user is the only one to get water. Which may or may not be right.

September 30, 1992

WATER
RESOURCES
DEPARTMENT

Jenkins Ranck Inc
Richard Jenkins
Diamond OR 97722

re: SWR-90

Dear Mr Jenkins,

This letter is to confirm the meeting we arranged for October 15, 1992 in the early afternoon. As I told you on the telephone, I will be traveling from Burns Jct so I don't know the exact time I will arrive. When I get to your property I will look you up.

Sincerely,



Don Knauer
Adjudication Specialist

C:\WIS\C\SWR-0090.002



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

September 25, 1992

Jenkins Ranches, Inc.
Diamond OR 97722

RE: Surface Water Registration

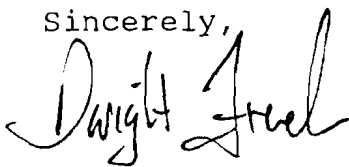
Dear Jenkins Ranches, Inc.,

This will acknowledge that your Surface Water Registration Statement in the name of Jenkins Ranches, Inc. has been received by our office. The fees in the amount of \$1,423.00 have been received and our receipt # 92062 is enclosed. Your registration statement has been numbered SWR-90.

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,



Dwight French
Adjudication Section

enc.



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

STATE OF OREGON
WATER RESOURCES DEPARTMENT
RECEIPT # 92062 3850 PORTLAND ROAD NE
SALEM, OR 97310
378-8455/378-8130 (FAX)

RECEIVED FROM:
BY:

Jenkins Ranches, Inc

APPLICATION	
PERMIT	
TRANSFER	

CASH: ☐ CHECK # ☒ OTHER: (IDENTIFY)

☐

24-22

☐

TOTAL REC'D \$ *1423-*

01-00-0 WRD MISC CASH ACCT

842.010	ADJUDICATIONS	<i>413301220015</i>	\$ <i>1423-</i>
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	\$
850.200	RESEARCH 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	\$

EXAM FEE
\$
\$
\$
EXAM FEE
\$
\$

RECORD FEE
\$
\$
\$
LICENSE FEE
\$
\$
\$

06-00-0 WELL CONST START FEE

842.013	WELL CONST START FEE	\$	CARD #	
	MONITORING WELLS	\$	CARD #	

45-00-0 LOTTERY PROCEEDS

864.000 LOTTERY PROCEEDS \$

07-00-0 HYDRO ACTIVITY

842.011	POWER LICENSE FEE(FW/WRD)	\$
842.115	HYDRO LICENSE FEE(FW/WRD)	\$

HYDRO APPLICATION \$

RECEIPT # 92062

DATED:

9-18-92

BY:

Bmack

Distribution—White Copy-Customer, Yellow Copy-Fiscal,

Copy-Fiscal