

23430

Name Herman R. Hornecker &
 By Helen Hornecker
 Address Pt. 2 - Box 274 A
Hillsboro, Oregon
3125 S.W. River Rd

Application No. 23430
 Permit No. 18494
 Certificate No. 23516 39222

Stream Index, Page No. 2-62P

FEES PAID

Date	Amount	Receipt No.
9/20/48	25.50	5491
9/29/48	0.50	page 256
	B. P. Fee	
5/1/57	\$1 Cert. Fee	11569

FEES REFUNDED

Date	Amount	Check No.

Date filed September 20, 1948
 Priority September 20, 1948
 Action suspended until OK for cert

Returned to applicant
 Date of approval January 17, 1949

CONSTRUCTION

Date for beginning January 17, 1950
 Date for completion October 1, 1950
 Extended to
 Date for application of water October 1, 1951
 Extended to 10/1/52; 10-1-53

PROSECUTION OF WORK

Form "A" filed JANUARY 24, 1950
 Form "B" filed OCTOBER 27, 1950
 Form "C" filed SEPTEMBER 30, 1953

FINAL PROOF

Blank mailed MAR 25 1957
 Proof received MAR 25 1957
 Date certificate issued November 20, 1957

ASSIGNMENTS

Date	To Whom	Address	Volume	Page

REMARKS

0.39 cfs from an unnamed stream and reservoir to be constructed under App. No. R-23261, P. No. R-450 for irrigation of 30 acres, domestic and stock, being 0.38 cfs for irrig. and 0.01 cfs for dom. and stock.

JAN 17 1950 CARD FOR A

OCT 1 1950 CARD FOR B

Form A

Application No. 18494

NOTICE OF BEGINNING OF CONSTRUCTION

OK
We, Herman R. and Helen Hornecker, the holder of Permit No. 18494
to appropriate the public waters of the state of Oregon, began the actual construction of the works described
therein on the 1st day of September, 1949.

Remarks:

area cleared of brush and refilled. 8 truck-
The appropriator should state the manner of beginning construction work, number of men employed, the amount of work completed
loads of concrete obtained for cribbing. 2 1/2 ft
up to the date of this statement, and any additional information which may tend to show the beginning of work in good faith.
I have put in with Fresno. 2 men employed. Work
will commence again when water trickles.

IN WITNESS WHEREOF, I have hereunto set my hand this 21 day of January, 1949.

Herman R. Hornecker Helen Hornecker Rt 2, Hillsboro Ore.
(Signature of Applicant) (Address)

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

STATE PRINTING DEPT.

Form B

Application No. 23430

NOTICE OF COMPLETION OF CONSTRUCTION

OK
I, Herman Hornecker, the holder of Permit No. 18494
to appropriate the public waters of the state of Oregon, completed the construction of the works described
therein on the 26 day of September, 1950.

Remarks:

If the works have less capacity than described in the permit, or you have definitely abandoned part of the proposed development, you
should so state in order that our records may not be unnecessarily encumbered.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of October, 1950.

Herman R. Hornecker Rt 2, Box 274A, Hillsboro, Ore
(Signature of Applicant) (Address)

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

Form C

IMPORTANT—This form is a notice to the State Engineer that permittee is ready to make final proof to the extent to which the water has actually been applied to the intended use under the terms of the permit. Permittee is cautioned that Certificate of Water Right will be issued based on the extent of the quantity and use as determined by the final proof inspection and survey which will be made in response to the filing of this Form C.

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

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

Application No. 23430

NOTICE OF COMPLETE APPLICATION OF WATER TO A BENEFICIAL USE

RECEIVED
SEP 30 1953
STATE ENGINEER
SAL. OREG.
OK
We, Herman R. and Helen Hornecker, the holder of Permit No. 18494
to appropriate the public waters of the state of Oregon, completely applied the waters to a beneficial use in
accordance with the terms of said permit, on the 29th day of September, 1953.

Remarks:

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of September, 1953.

Herman R. Hornecker Helen Hornecker Rt 2, Box 274A, Hillsboro Ore
(Signature of Applicant) (Address)



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem Oregon 97301-1266
(503) 986-0900
www.wrd.state.or.us

Certificate of Water Right Ownership Update

NOTICE TO SELLERS & BUYERS:

By law, all water belongs to the public (ORS 537.110). In almost every instance, a permit or water right certificate from the Water Resources Department is needed before using, diverting or storing water (ORS 537.130). However, most domestic wells do not require water rights. A certificate of water right stays with the land. In order to keep track of water right ownership, the Department requests that this form be submitted to the Department.

Water that has been used for a long time in one place or that involves a water structure (like a dam) that already exists is no guarantee that there is a water right which would allow the water use to continue.

If you have any questions about this form or water right requirements, please contact your local watermaster or call the Water Resources Department at 503-986-0900.

Note: Please type or print legibly when filling in the following information. Use additional paper if necessary.

PROPERTY SELLER INFORMATION

Applicant(s): Joan Waters
First Last
Mailing address: N/A
Purchased in 1970's
City State Zip
Phone:
Home Work Other

PROPERTY BUYER INFORMATION

Applicant(s): Clean Water Services c/o Steve Kebbe, Principal Engineer
First Last
Mailing address: 2550 S.W. Hillsboro Highway
Hillsboro OR 97123
City State Zip
Phone: Main: 503-681-3600 Direct: 503-547-8198
Home Work Other

PROPERTY DESCRIPTION (attach additional pages if necessary):

County: Washington Township: 1S Range: 2W Section: 9
Tax lot number(s): 1400

Attach a copy of your property deed or legal description of the property.

Street address of water right property: N/A

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AUG 07 2007

WATER RESOURCES DEPT
SALEM, OREGON

Water Right Information (attach copy of water right permit or certificate & final proof map if available):

Application #: S23430 Permit #: S18494 Certificate or page #: 39222

Will all the lands associated with this water right be owned by the buyer? ☒ Yes ☐ No

Name of individual completing this form: Jeff Jones, P.E., WRE Phone: 503-225-9010

Print

Signature: Jeff Jones

Date: 8-2-2007

STATE OF OREGON
COUNTY OF WASHINGTON

CERTIFICATE OF WATER RIGHT

This Is to Certify, That **HERMAN R. & HELEN BORNECKER**

of **3125 SE River Road, Hillsboro**, State of **Oregon**, has made proof to the satisfaction of the STATE ENGINEER of Oregon, of a right to the use of the waters of an unnamed stream and reservoir constructed under application number **R-23261**, permit number **R-950**, a tributary of **Rock Creek** for the purpose of **irrigation of 200 acres**

under Permit No. **18494** of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Oregon; that the priority of the right hereby confirmed dates from **September 20, 1948**

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed **0.25 cubic foot per second**

or its equivalent in case of rotation, measured at the point of diversion from the stream. The point of diversion is located in the **SE 1/4 SW 1/4** as projected within **Thomas Stewart LLC** Section 9, T. 1 S., R. 2 W., W. M., 2040 feet South and 1680 feet East from W. mer, Section 9.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to one-eighth of one cubic foot per second per acre, or its equivalent for each acre irrigated from direct flow and shall be further limited to a diversion of not to exceed 2 1/2 acre feet per acre for each acre irrigated during the irrigation season of each year from direct flow and storage from reservoir constructed under Permit No. **R-950**.

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

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

0.1 acre SE 1/4 SW 1/4
Section 8
1.7 acres NW 1/4 SW 1/4
11.7 acres NW 1/4 SW 1/4
6.4 acres SW 1/4 SW 1/4
0.1 acre SE 1/4 SW 1/4

All as projected within **Thomas Stewart LLC 43**
Section 9
T. 1 S., R. 2 W., W. M.

This certificate is issued to correctly locate the place of use and supersedes certificate of water right heretofore issued to **Herman R. and Helen Bornecker** and recorded at page **23516**, Volume **17**, State Record of Water Right Certificates. The appropriation of water as allowed herein is limited to the terms and conditions of a stipulation between **Catherine and Odell R. Merrill and Herman R. and Helen Bornecker** dated August 9, 1955, on file in the office of the State Engineer.

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

WITNESS the signature of the State Engineer, affixed

this date, **May 31, 1973**

Chris L. Wheeler

State Engineer

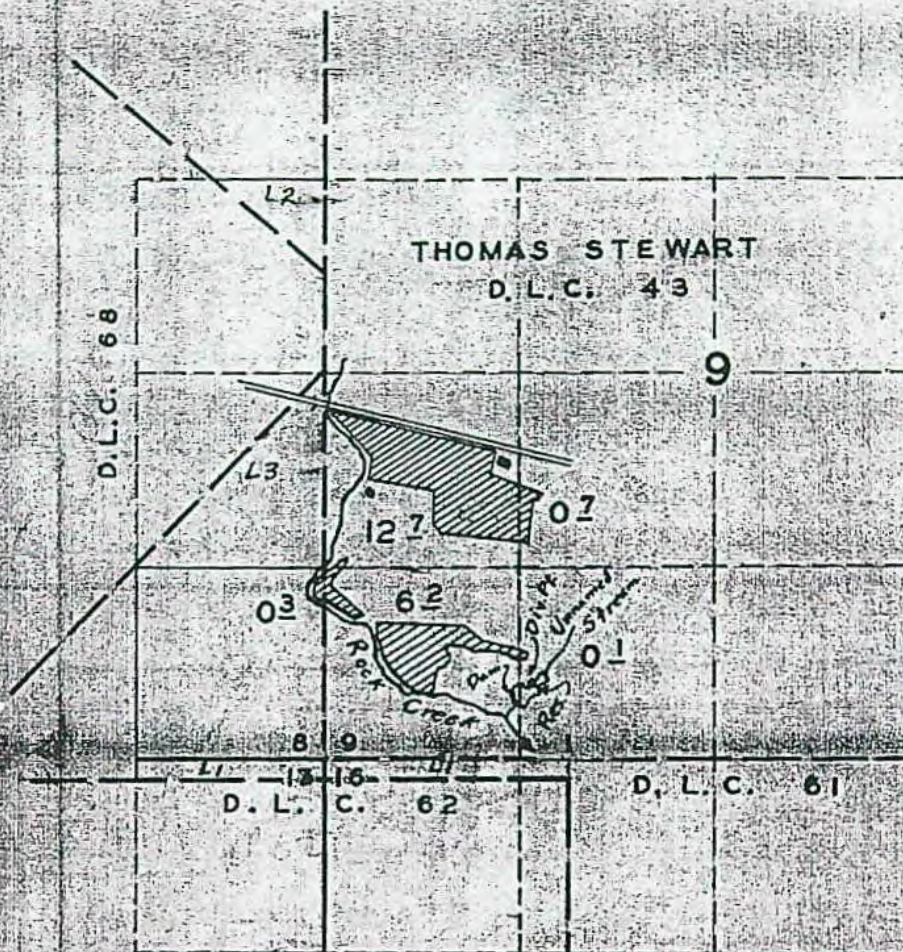
Recorded in State Record of Water Right Certificates, Volume **31**, page **39222**

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WATER RESOURCES DEPT
SALEM, OREGON

#7
R.C.



WATER RESOURCES DEPT
SALEM OREGON

Surveyed 10-24-1956, by R. H. WHITBY

1956 - II

W.C.



CHICAGO TITLE INSURANCE COMPANY

10135 SE Sunnyside Road Suite 200

Clackamas, OR 97015

Phone (503) 786-3940 Fax (503) 653-7833

=METROSCAN PROPERTY PROFILE=
Washington (OR)

OWNERSHIP INFORMATION

Reference Parcel # : 1S20900 01400
Parcel Number : R0338236 RTSQ: 02W -01S -09
Owner : Clean Water Services
CoOwner :
Site Address : 3235 SW Riv
Mail Address : 2550 SW Hillsboro Hwy Hillsboro Or 97123
Telephone : Owner: 503-681-3600 Tenant:

SALES AND LOAN INFORMATION

Transferred : 11/19/2001 Loan Amount :
Document # : CF4688 Lender :
Sale Price : Loan Type :
Deed Type : Interest Rate :
% Owned : Vesting Type :

ASSESSMENT AND TAX INFORMATION

Market Land : \$2,743,650 Exempt Amount :
Market Structure : \$31,000,000 Exempt Type :
Market Other : % Improved : 92
Market Total : \$33,743,650 Levy Code : 02920
06-07 Taxes : Millage Rate : 12.7679
Assessed Total : School Dist : Reedville

PROPERTY DESCRIPTION

Map Grid : Class Code :
Census : Tract: Block:
NbrhdCd : 4TL2 MillRate :
Sub/Plat :
Land Use : 9491 Misc, Unified Sewerage Agency
Legal : ACRES 60.97, CODE SPLIT,
NON-ASSESSABLE

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WATER RESOURCES DEPT
SALEM, OREGON

PROPERTY CHARACTERISTICS

Bedrooms :	Lot Acres : 60.97	Year Built :
Bathrooms :	Lot SqFt : 2,655,853	EffYearBlt :
Heat Method :	BsmFin SF :	Floor Cover :
Pool :	BsmUnfinSF :	Foundation :
Appliances :	BsmLowSF :	Roof Shape :
Dishwasher :	Bldg SqFt :	Roof Matl :
Hood Fan :	1stFlrSqFt :	InteriorMat :
Deck :	UpperFlrSF :	Paving Matl :
Garage Type :	Porch SqFt :	Const Type :
Garage SF :	Attic SqFt :	Ext Finish :
	Deck SqFt :	



CHICAGO TITLE INSURANCE COMPANY

10135 SE Sunnyside Road Suite 200

Clackamas, OR 97015

Phone (503) 786-3940 Fax (503) 653-7833

= METROSCAN PROPERTY PROFILE =
Washington (OR)

OWNERSHIP INFORMATION

Reference Parcel # : 1S20900 01400
 Parcel Number : R1492110 RTSQ: 02W -01S -09
 Owner : Clean Water Services
 CoOwner :
 Site Address : 3235 SW Riv
 Mail Address : 2550 SW Hillsboro Hwy Hillsboro Or 97123
 Telephone : Owner: 503-681-3600 Tenant:

SALES AND LOAN INFORMATION

Transferred : 11/19/2001 Loan Amount :
 Document # : Cf4688 Lender :
 Sale Price : Loan Type :
 Deed Type : Interest Rate :
 % Owned : Vesting Type :

ASSESSMENT AND TAX INFORMATION

Market Land : \$262,350 Exempt Amount :
 Market Structure : Exempt Type :
 Market Other : % Improved :
 Market Total : \$262,350 Levy Code : 02915
 06-07 Taxes : Millage Rate : 11.4103
 Assessed Total : School Dist : Reedville

PROPERTY DESCRIPTION

Map Grid : Class Code :
 Census : Tract: Block:
 NbrhdCd : 4TL2 MillRate :
 Sub/Plat :
 Land Use : 9491 Miso, Unified Sewerage Agency
 Legal : ACRES 5.83, CODE SPLIT,
 : NON-ASSESSABLE

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WATER RESOURCES DEPT
 SALEM, OREGON

PROPERTY CHARACTERISTICS

Bedrooms :	Lot Acres : 5.83	Year Built :
Bathrooms :	Lot SqFt : 253,954	EffYearBlt :
Heat Method :	BsmFin SF :	Floor Cover :
Pool :	BsmUnfinSF :	Foundation :
Appliances :	BsmLowSF :	Roof Shape :
Dishwasher :	Bldg SqFt :	Roof Matl :
Hood Fan :	1stFlrSqFt :	InteriorMat :
Deck :	UpperFlrSF :	Paving Matl :
Garage Type :	Porch SqFt :	Const Type :
Garage SF :	Attic SqFt :	Ext Finish :
	Deck SqFt :	

WARRANTY DEED - STATUTORY FORM
(Individual - Corporation)

88-58815

Washington County

JOAN WATERS

Grantor, conveys and warrants to:

UNIFIED TERRACE AGENCY

Grantee, the following described real property free of encumbrances except as specifically set forth herein:

SEE ATTACHED DESCRIPTION SHEET

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.

ENCUMBRANCES:

THE ASSESSMENT ROLL AND THE TAX ROLL DISCLOSE THAT THE PREMISES HEREIN DESCRIBED WERE SPECIALLY ASSESSED AS FOREST LAND. IF THE LAND BECOMES DISQUALIFIED FOR THE SPECIAL ASSESSMENT UNDER THE STATUTE, AN ADDITIONAL TAX MAY BE LEVIED. (AFFECTS: PARCELS II AND III). THE RIGHTS OF THE PUBLIC IN AND TO THAT PORTION OF THE PREMISES HEREIN, RECORDS PER NUMBER 87059571, 87059572, AND 87059573. SUBJECT TO THE STATUTORY POWERS OF THE UNIFIED TERRACE AGENCY. EASEMENT RECORDED AUGUST 23, 1956; BOOK 385, PAGE 361. EASEMENT RECORDED MAY 21, 1965; BOOK 533, PAGE 624. COVENANTS, CONDITIONS, AND RESTRICTIONS RECORDED AUGUST 3, 1973; BOOK 938, PAGE 810. EASEMENT RECORDED DECEMBER 3, 1987; PER NO.: 87059571. EASEMENT RECORDED DECEMBER 3, 1987; PER NO.: 87059572. EASEMENTS RECORDED DECEMBER 3, 1987; PER NO.: 87059573.

The true consideration for this conveyance is \$329,000.00.

Dated this NOVEMBER 17, 1985; if a corporate grantor, it has caused its name to be signed by order of its board of directors.

JOAN WATERS

STATE OF OREGON,
County of WASHINGTON
NOVEMBER 17, 1985 DATE

)ss.

ACCEPTED BY:

Mary F. Hickman
UNIFIED TERRACE AGENCY
GENERAL MANAGER

Personally appeared the above named JOAN WATERS, who being duly sworn, depose and say that the foregoing instrument is her true and voluntary act and deed.

NOTARY
Public
My commission expires: 7/7/99

Notary Public
My commission expires: 7/7/99

After recording, return and send tax statements to:
UNIFIED TERRACE AGENCY
150 N. FIRST
HILLSBORO, OREGON 97124

Escrow No. 538 34198 BK - Order No. 44317

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WATER RESOURCES DEPT
SALEM, OREGON

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WATER RESOURCES DEPT
SALEM, OREGON

DESCRIPTION

PARCEL I

A portion of Lot 16, WITCH HAZEL LITTLE FARMS, a recorded subdivision in Washington County, Oregon, being more particularly described as follows:

Beginning at a point on the south line of said Lot 16, which is North 89° 41' 30" East 291.5 feet from the southwest corner of said Lot 16; thence North 89° 41' 30" East, continuing along the said south line 388.0 feet to a point on the westerly right of way line of SW River Road (County Road No. 1178); thence along the arc of a 606.62 foot radius curve to the left (which has a chord that bears North 17° 33' 06" West 258.70 feet) an arc distance of 260.18 feet to a point of tangency; thence North 29° 50' 20" West, continuing along said westerly right of way, 73.0 feet to a point; thence South 61° 44' 00" West a distance of 311.87 feet to a point; thence South 0° 18' 10" East, a distance of 163.85 feet to the point of beginning.

PARCEL II

Lot 16, WITCH HAZEL LITTLE FARMS, Washington County, Oregon.

EXCEPTING THEREFROM the following described property:

A portion of Lot 16 of WITCH HAZEL LITTLE FARMS, as shown on the duly recorded map and plat, and more particularly described as follows:

Beginning at an iron pipe at the southwest corner of said lot and running thence North 89° 20' East along the south line of said tract, a distance of 677.4 feet to a point on the westerly side of County Road No. 1178, a 60 foot wide road, said point being on a 606.7 foot radius curve to the left; thence following said curve (the long chord of which bears North 18° 12' West 253.9 feet) to a point; thence North 30° 21' West 184.5 feet along the westerly side of said road to a point; thence along a 543.6 foot radius curve to the left (the long chord of which bears North 38° 26' West 152.5 feet) 153.0 feet to a point; thence North 46° 31' West along the westerly side of said road 29.3 feet to a point; thence leaving the westerly side of said road and running South 35° 12' West 873.3 feet to the place of beginning, in Washington County, Oregon.

PARCEL III

Lot 19, WITCH HAZEL LITTLE FARMS, Washington County, Oregon.

Together with that portion of the vacated street and being more particularly described as follows:

Beginning at the northeast corner of Lot 19, WITCH HAZEL LITTLE FARMS, Washington County, Oregon; thence West along the north line of said Lot 19 to the northeast of that certain tract of land conveyed to John and Louise Gelsich by deed recorded in Book 286, Page 215; thence North 20 feet to a point which bears South 1° 00' East 20 feet from the southeast corner of Lot 15, WITCH HAZEL LITTLE FARMS; thence West parallel to the south line of said Lot 15 to the east line of SW River Road; thence Northwesterly along the east line of said road to the south line of said Lot 15; thence East along the south line of Lots 15 and 14 to the southeast corner of Lot 13; thence south along the southerly extension of the west line of Lot 13, a distance of 20 feet; thence East parallel with the south line of Lot 13 to a point which bears North 20 feet from the true point of beginning; thence South 20 feet to the true point of beginning.

EXCEPTING THEREFROM the following described tract of land described in Deed to John Gelsich, et al, recorded in Book 286, Page 215, Washington County Deed Records, said tract being more fully described as follows:

Beginning at the northwest corner of Tract 19 of WITCH HAZEL LITTLE FARMS, a duly recorded subdivision in Section 9, Township 1 South, Range 2 West, Willamette Meridian, Washington County, Oregon, and running thence North 89° 41' 46" East along the north line of said Tract 19, a distance of 278.66 feet to an iron pipe which bears South 01° 00' East 40.00 feet from the southeast corner of Tract 15 of said subdivision; thence South 01° 00' East, parallel with the east line of said Tract 19, a distance of 100.0 feet to an iron pipe; thence South 89° 41' 46" West parallel with the north line of said Tract 19, a distance of 166.18 feet to a point on the westerly line thereof, from which point an iron pipe bears North 89° 41' 46" East, 5.0 feet; thence North 48° 58' West, along said westerly line 151.42 feet to the place of beginning, from which an iron pipe bears North 89° 41' 46" East, 20.0 feet.

ALSO EXCEPTING THEREFROM the following described tract of land described in Deed to John Gelsich, et al, recorded in Book 395, Page 445, Washington County Deed Records, said tract being more fully described as follows:

Beginning at an iron pipe marking the southeast corner of that certain tract of land conveyed to Louise and John L. Gelsich in Tract 19, WITCH HAZEL LITTLE FARMS, Section 9, Township 1 South, Range 2 West, Willamette Meridian, Washington County, Oregon, which

point, bears South 01° 00' East 140.00 feet from the southeast corner of Tract 15, WITH
 RENE KIRK FARM; thence continuing South 01° 00' East, 10.00 feet to an iron rod;
 thence South 78° 44' West 129.50 feet to an iron rod on the westerly line of said Tract
 15; thence along the westerly line North 42° 58' West 52.13 feet to a point (from which
 an iron pipe bears North 89° 41' 46" East 4.88 feet); thence North 89° 41' 46" East
 165.18 feet along the south line of said Galich tract as described in Book 206, Page
 215, Washington County Deed Records to the place of beginning.

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WATER RESOURCES DEPT
 SALEM, OREGON

STATE OF OREGON
 County of Washington

I, Dennis W. Moore, Register of Instruments
 and Records and Recorder of Con-
 veyances for the County of Washington, do hereby certify that
 the within and foregoing is a true and correct copy of the
 original as the same appears in the records of said county.



Doc: 89058315

Rect: 22790

11/30/1989 02:55:44PM

23.00



Murray, Smith & Associates, Inc.
Engineers/Planners

121 S.W. Salmon, Suite 900 ■ Portland, Oregon 97204-2919 ■ PHONE 503.225.9010 ■ FAX 503.225.9022

RECEIVED

LETTER OF TRANSMITTAL

AUG 07 2007

WATER RESOURCES DEPT
SALEM, OREGON

To: Oregon Water Resources Department Date: August 6, 2007
725 Summer St. N.E., Suite A Job No. 06-0794.411
Salem, OR 97301 Re: Clean Water Services
Certificate of Water Right
Attn.: Water Rights Division Ownership Update

WE ARE SENDING YOU: ☒ Attached ☐ Under separate cover
☐ Shop Drawings ☐ Prints ☐ Plans ☐ Samples
☐ Specifications ☐ Copy of letter ☐ Change Order ☐ _____

Copies	Date	Description	Appl.
1	08/02/07	Certificate 59991 Ownership Update form with attachments	19257
1	08/02/07	Certificate 20013 Ownership Update form with attachments	21453
1	08/02/07	Certificate 22048 Ownership Update form with attachments	26463
1	08/02/07	Certificate 35409 Ownership Update form with attachments	42578
1	08/02/07	Certificate 38313 Ownership Update form with attachments	25611
1	08/02/07	Certificate 12233 Ownership Update form with attachments	74435
1	08/02/07	Certificate 23105 Ownership Update form with attachments	28486
1	08/02/07	Certificate 39221 Ownership Update form with attachments	823261
1	08/02/07	Certificate 39222 Ownership Update form with attachments	23430
1	08/02/07	Certificate 48414 Ownership Update form with attachments	30117
1	08/02/07	Certificate 48491 Ownership Update form with attachments	53537

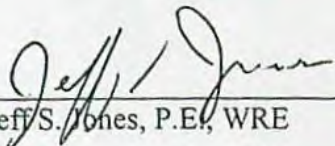
THESE ARE TRANSMITTED as checked below:

☒ For approval ☐ Approved as submitted ☐ Resubmit_copies for approval
☒ For your use ☐ Approved as noted ☐ Submit_copies for distribution
☐ As requested ☐ Returned for corrections ☐ Return_corrected prints
☐ For review/comment ☐ _____

REMARKS: On behalf of Clean Water Services, we are submitting the enclosed Ownership Update forms with attachments for the eleven water right certificates listed above. Please do not hesitate to contact me at 503-225-9010 with any questions or comments you may have regarding the enclosed. Thank you.

COPY TO: Steve Kebbe, P.E., WRE
Clean Water Services

SIGNED:


Jeff S. Jones, P.E., WRE

RECEIVED

AUG 07 2007

WATER RESOURCES DEPT
SALEM, OREGON





Water Rights Information Query Results

	Contacts	Application	Permit	Certificate	Claim	Decree	Transfers	Status
Select	HERMAN R HORNBECKER ▷ 3125 SW RIVER RD HILLSBORO, OR 97123	S23430	S18494	23516				CN
Select	HERMAN R/HELEN HORNECKER ▷ 3125 SW RIVER RD HILLSBORO, OR 97123	S23430	S18494	39222				NC

[Help understanding and working with the Water Rights Information System](#)

Download: [Point of diversion data](#), [Place of use data](#), [Stakeholder data](#)

[Return to WRIS Query](#)

Water Right Information Query Results	
Contact Information	Documents <small>View all scanned documents</small> 
▼ Current contact information HERMAN R HORNBECKER ▷ 3125 SW RIVER RD HILLSBORO, OR 97123	▷ Application: S 23430 digital map ▷ Permit: S 18494 document , digital map ▷ Certificate: 23516 document , digital map , paper map ▷ Order(s)
Water Right Information	
Status: Cancelled County: Washington File Folder Location: Salem Watermaster District: 18	
Point(s) of Diversion 	
▷ POD 1 - UNNAMED STREAM/RESERVOIR > ROCK CREEK ▷ POD 2 - UNNAMED STR/RESERVOIR > ROCK CREEK	
Place(s) of Use <small>Add TRS grouping</small> 	
▷ Use - IRRIGATION (Primary) - 20.0 acres; Priority Date: 9/20/1948	
Water Right Genealogy 	
—No genealogy records available for this water right, try the family link below instead.	

[View Water Rights in same Family](#)[Help understanding and working with the Water Rights Information System](#)[Report Errors with Water Right Data](#)[Return to WRIS Query](#)

Submitted by

Cert. No. 38222

STATE OF OREGON
COUNTY OF WASHINGTON

CERTIFICATE OF WATER RIGHT

This Is to Certify, That HERMAN R. AND HELEN HORNECKER

of 3125 SW River Rd., Hillsboro, State of Oregon, has made proof to the satisfaction of the STATE ENGINEER of Oregon, of a right to the use of the waters of an unnamed stream and reservoir constructed under Application No. R-23261, Permit No. R-950, a tributary of Rock Creek, for the purpose of irrigation under Permit No. 18494 of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Oregon; that the priority of the right hereby confirmed dates from September 20, 1948

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.25 cubic foot per second

or its equivalent in case of rotation, measured at the point of diversion from the stream. The point of diversion is located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ & SE $\frac{1}{4}$ SW $\frac{1}{4}$, as projected within Thomas Stewart DLC #43, Section 9, Township 1 South, Range 2 West, W.M.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to one-eightieth of one cubic foot per second per acre, or its equivalent for each acre irrigated from direct flow and shall be further limited to a diversion of not to exceed 2 $\frac{1}{2}$ acre feet per acre for each acre irrigated during the irrigation season of each year from direct flow and storage from reservoir constructed under Permit No. R-950.

and shall conform to such reasonable rotation system as may be ordered by the proper state officer.
A description of the place of use under the right hereby confirmed, and to which such right is appurtenant, is as follows:

0.3 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$

Section 8

0.7 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, as projected within Thomas Stewart DLC #43
12.7 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$, as projected within Thomas Stewart DLC #43
6.2 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$, as projected within Thomas Stewart DLC #43
0.1 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, as projected within Thomas Stewart DLC #43

Section 9

Township 1 South, Range 2 West, W.M.

The appropriation of water as allowed herein is limited to the terms and conditions of a stipulation between Catherine and Odlat R. Merrill and Herman R. and Helen Hornecker dated August 9, 1955, on file in the office of the State Engineer.

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

WITNESS the signature of the State Engineer, affixed

this 20th day of November, 1957.

LEWIS A. STANLEY

State Engineer

Recorded in State Record of Water Right Certificates, Volume 17, page 23516.

STATE OF OREGON
COUNTY OF WASHINGTON
CERTIFICATE OF WATER RIGHT

This Is to Certify, That **HERMAN R. & HELEN HORNECKER**
of **3125 SW River Road, Hillsboro**, State of **Oregon**, has made proof
to the satisfaction of the STATE ENGINEER of Oregon, of a right to the use of the waters of
an unnamed stream and reservoir constructed under application number R-23261,
permit number R-950
a tributary of **Rock Creek** for the purpose of

under Permit No. **18494** of the State Engineer, and that said right to the use of said waters
has been perfected in accordance with the laws of Oregon; that the priority of the right hereby
confirmed dates from **September 20, 1948**

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

or its equivalent in case of rotation, measured at the point of diversion from the stream.
The point of diversion is located in the **SE $\frac{1}{4}$ SW $\frac{1}{4}$** as projected within **Thomas Stewart DLC**
43, Section 9, T. 1 S., R. 2 W., W. M., 2040 feet South and 1480 feet East from
W $\frac{1}{4}$ Corner, Section 9.

The amount of water used for irrigation, together with the amount secured under any other
right existing for the same lands, shall be limited to **one-eightieth** of one cubic foot per second
per acre, or its equivalent for each acre irrigated from direct flow and shall be
further limited to a diversion of not to exceed **2 $\frac{1}{2}$ acre feet per acre** for each
acre irrigated during the irrigation season of each year from direct flow and
storage from reservoir constructed under Permit No. R-950,

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

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

0.1 acre SE $\frac{1}{4}$ SE $\frac{1}{4}$
Section 8
1.7 acres NE $\frac{1}{4}$ SW $\frac{1}{4}$
11.7 acres NW $\frac{1}{4}$ SW $\frac{1}{4}$
6.4 acres SW $\frac{1}{4}$ SW $\frac{1}{4}$
0.1 acre SE $\frac{1}{4}$ SW $\frac{1}{4}$

All as projected within Thomas Stewart DLC 43
Section 9
T. 1 S., R. 2 W., W. M.

This certificate is issued to correctly locate the place of use and supersedes
certificate of water right heretofore issued to Herman R. and Helen Hornecker
and recorded at page 23516, Volume 17, State Record of Water Right Certificates.
The appropriation of water as allowed herein is limited to the terms and condi-
tions of a stipulation between Catherine and Odlat R. Merrill and Herman R. and
Helen Hornecker dated August 9, 1955, on file in the office of the State Engineer.

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

WITNESS the signature of the State Engineer, affixed

this date. **May 31, 1973**

.....**Chris L. Wheeler**.....

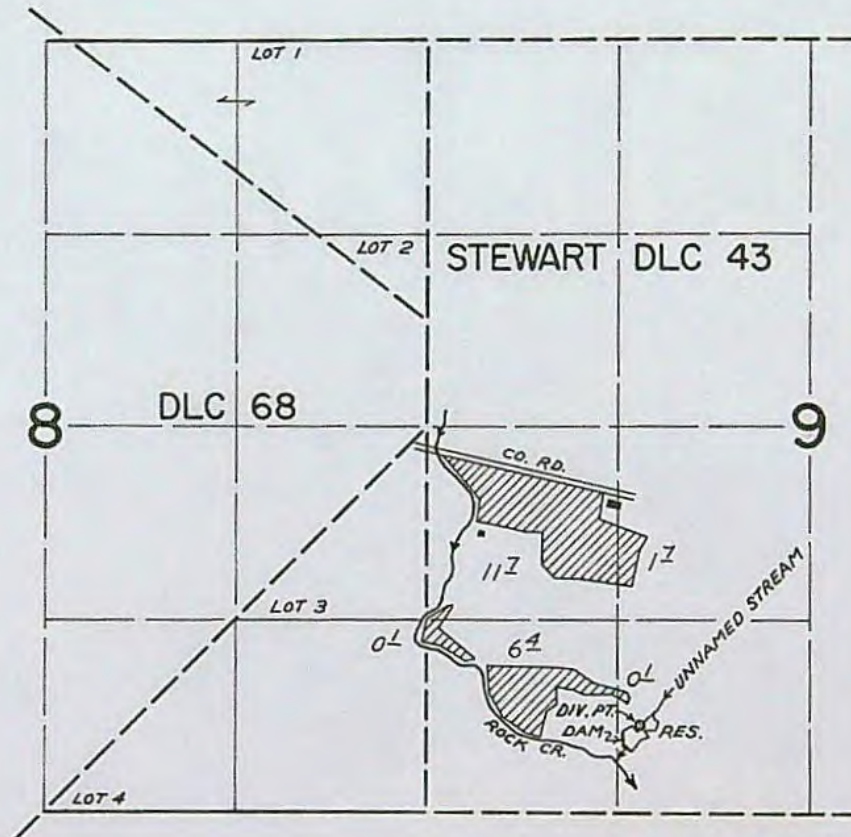
State Engineer

Recorded in State Record of Water Right Certificates, Volume **31**, page **39222**

Appl. # R-23261 Per. # R-950
23430 18494

A corrected Final Proof Map
has been drawn. (Original survey
tie appears to be incorrect). See
file for Appl. #40241 Per. #30521

T. 1 S. R. 2 W. W. M.



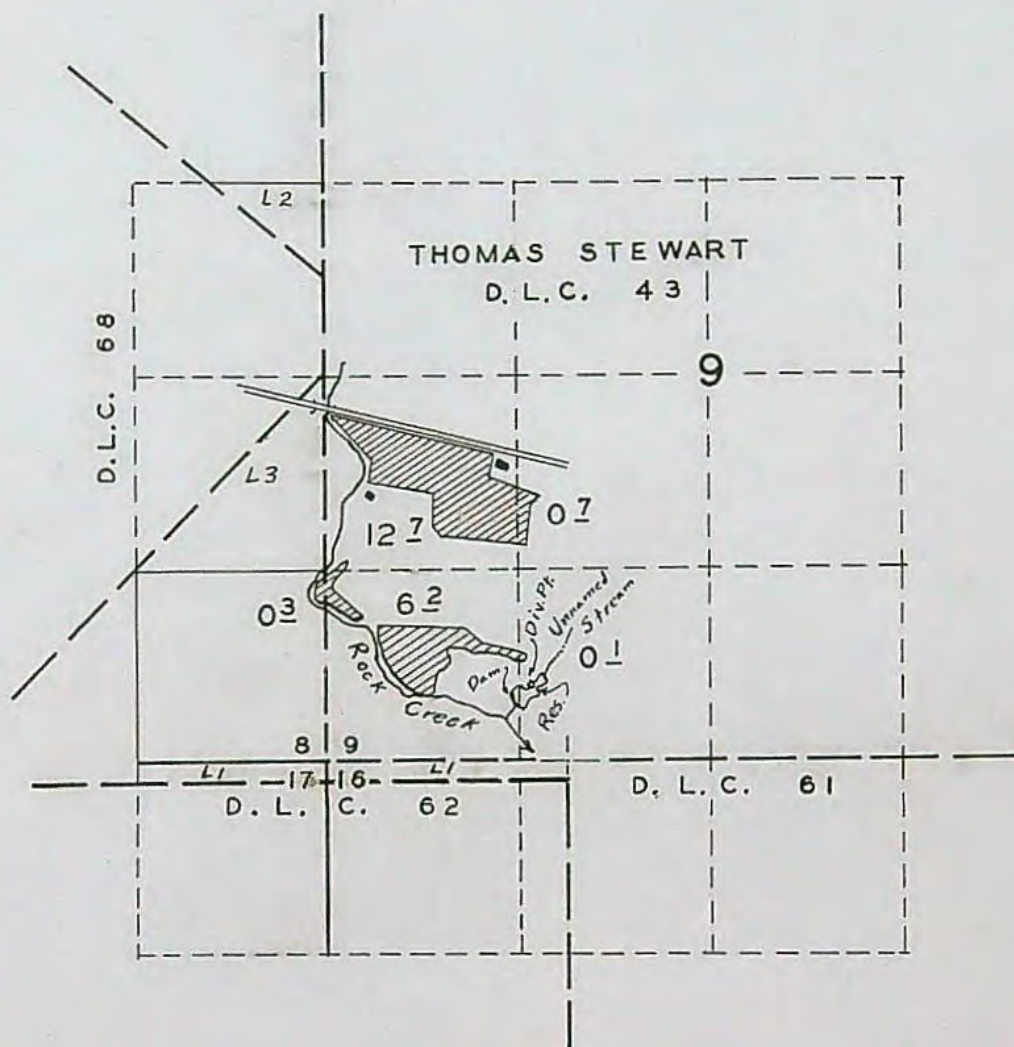
FINAL PROOF SURVEY
UNDER

Application No. R-23261 23430 Permit No. R-950 18494
IN NAME OF

HERMAN R. & HELEN HORNECKER

Surveyed OCT. 24 1956, by R.H. WHITBY

T. 1 S., R. 2 W., W.M.



FINAL PROOF SURVEY

UNDER

R-23 261

R-950

Application No. 23430 Permit No. 18494
IN NAME OF

IN NAME OF

HERMAN R. & HELEN HORNECKER

Surveyed 10-24-1956, by R.H. WHITBY

23516

Permit No. 18494

Application No. 23430

County Washington

RECEIVED
MAY 1 1957STATE ENGINEER
SALEM, OREGON

Proof of Appropriation of Water

3125 S. N. River Rd.,
Hillsboro, Oregon

1. Name Herman R. and Helen Hornecker 2. Address ~~Box 2, Box 274~~
 3. Source of supply/ unnamed stream and Reservoir constructed under Application No. R-23261, Permit No. R-950

Tributary of Rock Creek

4. Amount of water 0.25 cfs 5. Priority date September 20, 1948
 6. Use irrigation 1/80th and 2 1/2 a.f. - from direct flow and storage from reservoir constructed under Permit No. R-950. in Thomas Stewart DLC #43
 7. Location of point of diversion SW 1/4 SW 1/4 & SE 1/4 SW 1/4 Sec. 9, Twp. 1 S, Range 2 W, W. M.
 (Legal Subdivision)
 8. The description of land given below corresponds to that found in your permit covering land to be irrigated, or, if for other purposes, the place of use.

Township	Range	Section	Legal Subdivision	No. Acres Actually Irrigated
1 S	2 W	8	SE 1/4 SE 1/4	0.3
		9	NE 1/4 SW 1/4 As projected within Thomas Stewart DLC #43	0.7
			NW 1/4 SW 1/4 " " " " " "	12.7
			SW 1/4 SW 1/4 " " " " " "	6.2
			SE 1/4 SW 1/4 " " " " " "	0.1
				20.0

I have read the above and foregoing proof of appropriation of water; I know the contents thereof, and that the facts therein stated are true.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of April

1957.

Herman R. Hornecker
Helen Hornecker.

1849

stipulation to be included
on certificate.

See CLW

DFR-20-64

Permit No. 18494Application No. 23430County Washington

Proof of Appropriation of Water

1. Name Herman R. and Helen Hornecker 2. Address Rt. 2, Box 274 A, Hillsboro, Oregon3. Source of supply Unnamed stream & Reservoir Const. under App. 23261 Per. R-950

Tributary of _____

4. Amount of water 0.25 5. Priority date September 20, 1948
Domestic, Stock and _____6. Use Irrigation - 1/80th - or its equivalent for each acre irrigated from direct flow and shall be further limited to a diversion of not to exceed 2 1/2 acre feet per acre for each acre irrigated during the irrigation season of each year from direct flow and storage from reservoir constructed under Permit No. R-950, Application # R-232617. Location of point of diversion As Projected within Thomas Stewart DLC #43
SESW Sec. 9 Tp. 15 Rg. 2W, W.M.
(Legal Subdivision)

8. The description of land given below corresponds to that shown in the permit covering land to be irrigated, or, if for other purposes, the place of use.

Township	Range	Section	Legal Subdivision	No. Acres Actually Irrigated
15	24	9	SW SW As Proj w/in DLC #43 Thomas Stewart	12.0 6.2
			NW SW " " "	14.8 12.7
			NE SW " " "	3.2 0.7
			SE SW " " "	30.2 0.1
		8	SE SE	0.3
				20.0

Land on which water is to be used is part of the property described by appropriator as follows:

DESCRIPTION OF WORKS

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

AFFIDAVIT OF APPROPRIATOR

STATE OF OREGON,

County of } ss.

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

IN WITNESS WHEREOF, I have hereunto set my hand this day of, 19.....

Subscribed and sworn to before me this day of, 19.....

Notary Public for Oregon

[Notarial Seal]

My commission expires

AFFIDAVIT OF WITNESSES

STATE OF OREGON,

County of } ss.

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

Subscribed and sworn to before me this day of, 19.....

Notary Public for Oregon

[Notarial Seal]

My commission expires

REPORT OF PERSON MAKING INSPECTION

(For use by Representative of State Engineer)

I, R. H. Whitby, do hereby certify that I have made an inspection of the works described herein and in Permit No. 13494, on the 24 day of Oct, 1936, and found the foregoing statements and descriptions of works to be accurate. In my opinion the appropriation has been completed to the extent of _____ (Quantity of water in second-feet or acre-feet) and I recommend the issuance of water right certificate for this amount.

NOTICE TO INSPECTORS

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

R. H. Whitby
(Name)
Field Eng.
(Title)

Div Pt - on Rt bank of reservoir
Pump: PACIFIC, Mod 20 LCM, 2"x2 1/2", Flat belt drive on 12"x4" pulleys @ 52" \pm (6" wide belt)

Motor: JOHN DEERE, 10-20, 20yl, gasoline (10 HP)

Pipe: 1480' x 4" AI
920' x 3" "

Apparently short count
RHW says enough available on ground

Heads: 15 Rain Bird #40, 7/32" x 3/16" }
10 " " " 7/16" x 1/4" } 25

Crop: Pasture, hay, garden, some grain.

L. Pt. 42' total max

Dam: Earth work, approx 45' long x 9' hi x 14' crest.

Spillway @ Rt. abutment, 27' wide x 2' deep x 18' long conc., 0' drop in 18', Flash board control, 1' flash board in place, 0' free board. 2" water over top flash board this day

December 3, 1957

Herman R. and Helen Hornecker
3125 S. W. River Road
Hillsboro, Oregon

Dear Sir and Madam:

The certificates confirming the rights under your permit Numbers R-950 and 18494, as set out in the final proof of appropriation forms you signed and submitted, are in the process of being issued with the next group. After the certificates have been issued, they will be recorded in the county records and later mailed to you.

The statement and proof of claim should be filed only if you wish to be a party to the adjudication proceedings so as to be in a position to contest the claims of others, or are intending to claim vested rights in addition to those allowed in the certificates.

The rights acquired through the permits and to be evidenced by the certificates are valid and remain so regardless of the adjudication proceedings.

Very truly yours,

LEWIS A. STANLEY
State Engineer

By
Chris L. Wheeler, Assistant

CLW:eh

November 18, 1957

W. A. Stanley,
State Engineer
Salem, Oregon;

Herman R. & Helen
Hornecker

3125 S.W. RIVER RD
Hillsboro 4 OR
File No R-23261
23430

Dear Sir:

The first part of last April,
we mailed to you signed final
proof on water right Permit
no. 18494, and reservoir con-
struction Permit No. R-950 for
irrigation; also \$2.00 recording fee.

You stated, "Upon receipt of
the proof, properly executed and
accompanied by the statutory
fee of \$, a Certificate of Water
Right will be issued confirming
the rights thereunder, and after
being recorded in the records
of Washington County, will be
forwarded to you." In your
letter of March 22, 1957,

To date we have not re-
ceived it, and it will be im-
possible to fill out the "State-
ment and Proof of Claim" just
received from you, without the
information in it.

Yours truly

Helen Hornecker

RECEIVED
NOV 18 1957
STATE ENGINEER
SALEM, OREGON

R-23261
23430

May 3, 1957

Herman R. & Helen Hornecker
3125 S. W. River Road
Hillsboro 4, Oregon

Dear Sir and Madam:

Enclosed is our receipt No. 11568 in the amount of \$1 in payment of certificate recording fee covering Permit No. R-950 and receipt No. 11569 in the amount of \$1 in payment of certificate recording fee covering Permit No. 18494.

Also enclosed is our refund check No. 6825 in the amount of \$1 covering excess recording fees paid on Permit No. R-950.

Very truly yours,

LEWIS A. STANLEY
State Engineer

By
Trevor Jones, Assistant

bks

Enc: receipts, refund check

R-23261
23430

March 22, 1957

Herman R. and Helen Hornecker
Route 2, Box 274 A
Hillsboro, Oregon

Dear Sir and Madam:

We are enclosing herewith for completion, final proof in connection with the incomplete water right represented by your Permit No. 18494 granting a right to the use of 0.25 cfs of the waters of unnamed stream and reservoir construction under Permit No. R-950 for irrigation.

The data contained in the proof, which is based on an inspection and survey of your project made by a representative of this department, defines the extent to which your water right has been completed within the terms of your Permit. The proof should be dated and signed by you on the second sheet under the Affidavit of Appropriator and returned to this office.

Upon receipt of the proof, properly executed and accompanied by the statutory fee of \$1, a Certificate of Water Right will be issued confirming the rights thereunder and, after being recorded in the records of Washington County, will be forwarded to you.

In the interest of economy and due to the fact that your completed project was examined by a representative of this department, it is not necessary that your signature be made before a Notary Public, nor that the signatures of witnesses be affixed to the proof.

Yours very truly,

Lewis A. Stanley
LEWIS A. STANLEY
State Engineer

Form 117

1d

Enclosure

P.S. Please note: There is a \$1 certificate recording fee for each permit.

August 10, 1955

Hare, Sturgis & Burdett
Attorneys at Law
First National Bank Building
Hillsboro, Oregon

Attention: Mr. Francis E. Sturgis

Gentlemen:

This will acknowledge receipt of your letter of August 9 in regard to the State Engineer's order dated August 5, 1954, and transmitting six copies of the stipulation in the matter of Permit Numbers R-950 and 18494 in the name of Herman R. and Helen Hornecker.

The copies have been signed by Mr. Stanley and five copies are enclosed.

I have taken the liberty to insert "R" before Permit No. 950 under paragraph Number 8 of the stipulation.

As soon as we have received a copy of the court order dismissing the appeal we will vacate the order of August 5, 1954 and enter a new one in accordance with the stipulation.

Very truly yours,

LEWIS A. STANLEY
State Engineer

By
Chris L. Wheeler, Assistant

CLW:eh

enc. 5

WILLIAM G. HARE
FRANCIS E. STURGIS
JAMES E. BURDETT

Hare, Sturgis & Burdett

ATTORNEYS AT LAW
FIRST NATIONAL BANK BUILDING
Hillsboro, Oregon
TELEPHONE 181

August 9, 1955

RECEIVED
AUG 10 1955
STATE ENGINEER
SALEM, OREGON

Honorable Lewis A. Stanley
State Engineer
Salem, Oregon

Dear Sir:

RE: Permits No. R-950
and 18494

I am enclosing herewith in sextuplet, stipulation which Mr. Huffman and I have worked out in conformance with our discussion. If this stipulation meets with your approval please sign all 6 copies on the bottom of the 2nd page, retain one copy for your records, and return the other five to us. We will then prepare stipulation for dismissal of the appeal and upon the Courts return in September will forward to you copy of the order dismissing the appeal.

If for any reason the stipulation is not in conformance with our agreement please let me hear from you so that they may be corrected.

Very truly yours,

Francis E. Sturgis
FRANCIS E. STURGIS

FES/g

July 11, 1955

Schwenn & Brink
Attorneys at Law
Lawyers Building
Hillsboro, Oregon

Attention: Mr. Thomas A. Huffman

Gentlemen:

This will acknowledge receipt of your letter of July 5 transmitting signed copies of a proposed stipulation between Herman R. and Helen Hornecker and O. R. Merrill.

With reference to your letter, the State Engineer could not issue certificates as set out in the stipulation for the following reasons.

In accordance with the provisions of ORS 537.250 and 537.260 and the interpretation that has been applied to these sections by the courts, the State Engineer may issue a certificate of water right confirming the right acquired under a permit only to the extent that the water has been applied to beneficial use in accordance with the terms of the permit.

With reference to the Hornecker permits, the time for complete application of water to beneficial use under the permits expired October 1, 1953. From examination of the grounds and hearing held it was determined by the State Engineer that Mr. Hornecker had not applied any of the waters of the unnamed stream or reservoir to beneficial use for domestic or irrigation purposes.

The portion of the order as quoted in the first part of the stipulation defines the extent to which the State Engineer found the right had been completed and for which a certificate could be issued under the law.

With reference to Permit No. 22406 in the name of O. R. Merrill, it is the policy of the State Engineer to make an examination of the ground for the purpose of determining the extent to which a right has been completed. Mr. Merrill has

July 11, 1955

reported that he has applied the water to beneficial use but we have not as yet been able to make a survey of the lands. It is planned that this survey will be made later this summer, after which final proof may be made and certificate issued thereunder to the extent that beneficial use has been made.

If Mr. Hornecker wishes to file a new application for uses which he now desires to make of the unnamed stream, the application would be accepted and, from present knowledge, approved by issuance of a new permit. A stipulation could be entered into whereby Mr. Merrill would waive the priority of his right, as suggested in your present stipulation, to Mr. Hornecker's new application. The stipulation of the waiver of priority insofar as it is applicable and does not injure innocent third parties could be followed by the watermaster in his distribution of water.

Very truly yours,

LEWIS A. STANLEY
State Engineer

By
Chris L. Wheeler, Assistant

CLW:eh

cc: Francis E. Sturgis

SCHWENN & BRINK

ATTORNEYS AT LAW

LAWYERS BUILDING

HILLSBORO, OREGON

TELEPHONE 3891

July 5, 1955

MERVIN W. BRINK
W. C. SCHWENN

THOMAS A. HUFFMAN

RECEIVED
JUL 6 1955
STATE ENGINEER
SALEM, OREGON

State Engineer of Oregon
Salem, Oregon

Attn: Chris L. Wheeler

Gentlemen:

I am enclosing herewith a signed copy of the stipulation which we propose to submit to the Circuit Court in Washington County in connection with the appeal of Herman Hornecker and Helen Hornecker under that certain order issued by the State Engineer modifying the permit #R950 and 18494.

I believe that the parties involved, to-wit: Herman R. Hornecker and Helen Hornecker, protestees, and O. R. Merrill and Catherine Merrill, protestants, made sufficient showings of beneficial use on which to grant a certificate of water right. Therefore, we would appreciate your cooperation in settling the differences between these parties by issuing certificates in accordance with the stipulation herein submitted.

As you will note, in the last paragraph of the stipulation, if your office can issue the certificates forthwith we will immediately dismiss this action. May we please hear from you.

Very truly yours,

Thomas A. Huffman

TAH:s
enc.

cc: Francis E. Sturgis
Attorney at Law
Hillsboro, Oregon

May 25, 1955

Mr. Robert H. Torbet
Clerk of Washington County
Hillsboro, Oregon

Dear Mr. Torbet:

On September 2, 1954, this office furnished material to Mr. Francis E. Sturgis of the firm Hare, Sturgis and Burdett, Attorneys at Law, to be used in connection with an appeal by Mr. Sturgis to the Circuit Court of an Order of the State Engineer dated August 5, 1954, in the matter of Permits No. R-950 and 18494.

It would be very much appreciated if you would advise whether or not the suit was filed and if so, what disposition of the case has been made. Thank you very much for any information you may have.

Very truly yours,

LEWIS A. STANLEY
State Engineer

By
Chris L. Wheeler, Assistant

CLW:bc

R-23261
23430

September 2, 1954

Here, Sturgis and Burdett
Attorneys at Law
First National Bank Building
Hillsboro, Oregon

Attention: Mr. Francis E. Sturgis

Gentlemen:

Pursuant to your letter of August 23, enclosed is a
certified transcript of certain documents pertaining to Permit
Numbers R-950 and 10494 in the name of Herman R. and Helen
Wornecker.

Very truly yours,

CHAS. E. STRICKLIN
State Engineer

By
Chris L. Wheeler, Assistant

CL:ch
enc.

R-23261
23430

September 2, 1954

Hare, Sturgis and Burdett
Attorneys at Law
First National Bank Building
Hillsboro, Oregon

Attention: Mr. Francis E. Sturgis

Gentlemen:

Pursuant to your letter of August 23, enclosed are
certified copies of the matter pertaining to Permit Numbers
R-950 and 18494 in the name of Herman R. and Helen Hornecker.

Very truly yours,

CHAS. E. STRICKLIN
State Engineer

By
Chris L. Wheeler, Assistant

CLW:eh
enc.

County of Marion) ss.

I, CHAS. E. STRICKLIN, State Engineer of the State of Oregon, do hereby certify that the foregoing copies of the following described documents relating to Permit Numbers R-950 and 18494 in the name of Herman R. Hornecker and Helen Hornecker to-wit:

Notice of Appeal of Francis E. Sturgis, Attorney for Protestees - Appellants, Herman R. Hornecker and Helen Hornecker

Appeal Bond of Herman R. Hornecker and Helen Hornecker, Principal, and United Pacific Insurance Company, Surety

Order of the State Engineer entered August 5, 1954 in the matter of Permit Numbers R-950 and 18494

Application No. R-23261, Permit No. R-950 and Application No. 23430, Permit No. 18494 in the name of Herman R. Hornecker and Helen Hornecker

Application for Extension of Time under Permit No. 18494, dated September 29, 1951, to make complete application of water

Application for Extension of Time Under Permit No. 18494, dated October 20, 1952, to make complete application of water

Notices of Beginning and Completion of Construction under Permit No. R-950

Notices of Beginning of Construction, Completion of Construction and Complete Application of Water under Permit No. 18494

Protest filed October 26, 1953 by John H. Hall, Attorney for Protestant - Respondent O. R. Merrill

Answer to Protest filed November 4, 1953 by Francis E. Sturgis, Attorney for Protestee - Appellants Herman R. Hornecker and Helen Hornecker

Proof of Service of Order dated September 2, 1954

have been compared with the originals and they are correct transcripts therefrom and of the whole of such original documents as the same appear of record or on file in my office and custody.

I further certify that the foregoing excerpts from the Order of the State Engineer, dated April 29, 1952 and April 28, 1953, extending the time for complete application of water have been compared with the original Orders and that they are correct transcripts therefrom as the same appear of record in my office and custody.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of September 1954.

CHAS. E. STRICKLIN
State Engineer

STATE OF OREGON)
)
County of Marion)

I, CHAS. E. STRICKLIN, State Engineer of the State of Oregon, do hereby certify that the following described documents relating to Permit Numbers R-950 and 18494 in the name of Herman R. Hornecker and Helen Hornecker to-wit:

Notice of Appeal of Francis E. Sturgis, Attorney for Protestees - Appellants, Herman R. Hornecker and Helen Hornecker

Appeal Bond of Herman R. Hornecker and Helen Hornecker, Principal, and United Pacific Insurance Company, Surety

Order of the State Engineer entered August 5, 1954 in the matter of Permit Numbers R-950 and 18494

Application No. R-23261, Permit No. R-950 and Application No. 23430, Permit No. 18494

Application for Extension of Time under Permit No. 18494, dated September 29, 1951, to make complete application of water

Application for Extension of Time under Permit No. 18494, dated October 20, 1952, to make complete application of water

Notices of Beginning and Completion of Construction under Permit No. R-950

Notices of Beginning of Construction, Completion of Construction and Complete Application of Water under Permit No. 18494

Protest filed October 26, 1953 by John H. Hall, Attorney for Protestant - Respondent O. R. Merrill

Answer to Protest filed November 4, 1953 by Francis E. Sturgis, Attorney for Protestee - Appellants Herman R. Hornecker and Helen Hornecker

have been compared with the originals and they are correct transcripts therefrom and of the whole of such original documents as the same appear of record or on file in my office and custody.

I further certify that the attached copies from the Orders of the State Engineer extending the time for completion of construction and complete application of water under Permit No. 18494, dated April 29, 1952 and April 28, 1953, have been compared with the originals and are correct transcripts therefrom as the same appear of record in my office and custody.

PROOF OF SERVICE

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of September 1954.

CHAS. E. STRICKLIN
State Engineer

Filed into 25th day of August 1954

Chas. E. Stucklin
State Engineer

RECEIVED
AUG 25 1954
STATE ENGINEER
SALEM, OREGON

BEFORE THE STATE ENGINEER OF OREGON

Washington County

IN THE MATTER OF PERMIT)
NUMBERS R-950 and 18494)
IN NAME OF HERMAN R. AND)
HELEN HORNECKER)

NOTICE of APPEAL

TO: O. R. MERRILL and JOHN H. HALL, his attorney:

Will you please take notice that Herman R. Hornecker and Helen Hornecker, permit applicants in the above entitled matter, hereby appeal to the Circuit Court of the State of Oregon for the County of Washington from the order issued by the State Engineer of the State of Oregon under date of August 5, 1954, which said decree is in favor of O. R. Merrill, the protestant in the above matter; and that this appeal will be from the whole of said decree.

DATED this 23rd day of August, 1954.

HERMAN R. HORNECKER and HELEN
HORNECKER

By James E. Sturgis
their attorney

Due and regular service of the foregoing Notice of Appeal accepted within Multnomah County, Oregon, on this 23 day of August, 1954.

John H. Hall
Attorney for Protestant O.R.
O. R. Merrill

August 19, 1954

Hare, Sturgis and Burdett
Attorneys at Law
First National Bank Building
Hillsboro, Oregon

Attention: Mr. E. Francis Sturgis

Gentlemen:

This will acknowledge receipt of your letter of August 16 regarding your intention to appeal the Order of the State Engineer in the matter of Permit Numbers R-950 and 13494 in the name of Herman R. and Helen Hornecker.

In regard to your proposed appeal, your attention is respectfully called to the following sections: ORS 535.060, ORS 19.030, ORS 19.040 and ORS 19.070.

It has been the practice in appeals from orders of the State Engineer to file the notice of appeal and undertaking with the State Engineer where it designates the clerk of the court in the above sections. Within ten days after the filing the undertaking, we will prepare and mail to you for filing a transcript on appeal which will include certified copies of the Order of the State Engineer, Notice of Appeal, Undertaking and permits involved. Since the hearing was not recorded by a court reporter and no transcript was made, it cannot be included.

In the matter of orders approving or rejecting applications, ORS 537.200 provides that appeals must be taken within 30 days from the date of mailing a copy of the order of the State Engineer to the applicant or objector. This is also followed in appeals from orders of the State Engineer relating to transfers of point of diversion, place of use or character of use of water as provided in ORS 540.530. The section under which the hearing on the Hornecker permits was held does not specify the time within which the Notice of Appeal must be filed but it has been the practice to file it within 30 days also.

Very truly yours,

CHAS. E. STRICKLIN
State Engineer

By

Chris L. Wheeler, Assistant

CLW:ch

WILLIAM G. HARE
FRANCIS E. STURGIS
JAMES E. BURDETT

Hare, Sturgis & Burdett
ATTORNEYS AT LAW
FIRST NATIONAL BANK BUILDING
Hillsboro, Oregon
TELEPHONE 181

August 16, 1954

Mr. Charles E. Stricklin
State Engineer, Water Resources Department
Salem, Oregon

Attention Chris L. Wheeler, Assistant
Re: R-23261, File No. 23430

RECEIVED
AUG 17 1954
STATE ENGINEER
SALEM, OREGON

Dear Sir:

Would you please prepare and forward to me at your earliest possible convenience a complete transcript of the proceedings re the above designated numbers, as it is the intention of Herman and Helen Hornecker to take an appeal to the Circuit Court from the order issued out of your office under date of August 5, 1954.

Please advise me the cost of the transcript, and I will remit by return mail.

Very truly yours,

Francis E. Sturgis

FES:ij

FRANCIS E. STURGIS

536.060
Notice of appeal must be filed with SE. & within 30 days must
& undertaking
the SE will prepare transcript for filing.
copy of order
notice of appeal
undertaking
copy of transcript
transmitted by express
be furnished.



BEFORE THE STATE ENGINEER OF THE
STATE OF OREGON

RECEIVED
OCT 26 1953

STATE ENGINEER

Filed this 26 day of OCTOBER 1953.

Chas E. Stricklin
State Engineer.

In the Matter of the Protest)
of)
O. R. MERRILL, Protestant,)

P R O T E S T

Comes now O. R. Merrill, protestant herein, and respectfully
alleges and shows:

I.

That the name and address of the protestant herein is O. R. Merrill,
Route 2, Box 271, Hillsboro, Oregon.

II.

That the names and addresses of the protestees herein are Herman
R. Hornecker and Helen Hornecker, Route 2, Box 275, Hillsboro, Oregon; the
Applications and Permits of the protestees herein are as follows: Application
No. R-23261, Permit No. R-950 for permission to construct a reservoir and im-
pound waters of an unnamed creek or stream, tributary to Rock Creek in Wash-
ington County, Oregon, with the right to store water in said reservoir; Ap-
plication No. 23430, Permit No. 18494 for the appropriation of the water so
stored and the appropriation of the natural flow of said unnamed stream for
the irrigation of thirty acres of land and for stock and domestic purposes.

III.

That the proposed appropriation, extension or issuance of Certificate
to protestees will cause harm and injury to the protestant in the following
particulars: protestant has heretofore been issued Permit No. 22406 based upon
Application No. 28486, which said permit was issued subject to any existing
rights vested in protestees; that under said permit protestant is only entitled
to use the surplus water, or water not required to supply existing rights;
that the reservoir constructed by protestees is inadequate, does not comply
with the requirements of the laws of the State of Oregon or the Rules and Regu-
lations of the State Engineer, and is so faulty in construction that at least
one half of the water attempted to be impounded leaks from said reservoir and
is wasted, and the beneficial use of said water is of no benefit to any one;
that Rock Creek, to which said unnamed stream is tributary, flows through the

land of the protestees and the amount of water flowing in said Rock Creek is many times greater than the flow of water in said unnamed stream, and the waters of Rock Creek are more than sufficient to provide protestees with all the water they need for irrigation, domestic and stock purposes; that ever since protestees filed their original applications as herein described, they have used the waters of Rock Creek exclusively for irrigation, domestic and stock purposes, and during said period of time have failed and neglected to use the waters of said unnamed stream for any of said purposes; that by failing to use the waters of said unnamed stream as aforesaid, protestees have prevented protestant from the beneficial use of said water under and by virtue of his said permit and protestant, by the action of said protestees, has been injured and damaged thereby.

IV.

That prior to the time of filing of this protest, a verified copy thereof was served upon protestees by registered mail.

WHEREFORE protestant prays that the State Engineer set a time and place for hearing evidence in support of this protest and that at the conclusion of said hearing the State Engineer issue an order revoking the permits heretofore granted and issued to protestees.

John H. Hall
Attorney for Protestant.

State of Oregon,)
) ss
County of Multnomah,)

I, O. R. Merrill, being first duly sworn, on oath depose and say: that I am the protestant above named and that all of the allegations and statements contained in said protest are true and correct to the best of my knowledge and belief.

O. R. Merrill
Protestant

Subscribed and sworn to before me this 12th day of October, 1953

John H. Hall
Notary Public for Oregon.
My commission expires March 27, 1957

BEFORE THE STATE ENGINEER OF THE
STATE OF OREGON

RECEIVED
NOV 4 1953
STATE ENGINEER
SALEM, OREGON

In the Matter of the Protest)
of)
O. R. MERRILL, Protestant.)

ANSWER to PROTEST

Come now HERMAN R. HORNECKER and HELEN HORNECKER; and in answer to the protest of O. R. MERRILL, admit, deny and allege as follows:

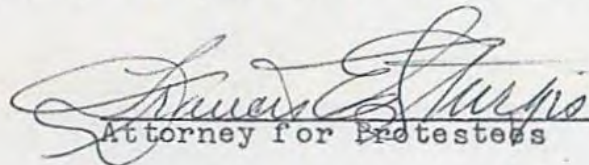
I

Admit the allegations of Paragraphs I and II;

II

Deny the allegations of Paragraphs III and IV.

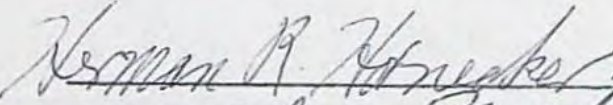
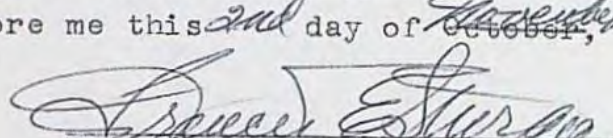
WHEREFORE, protestees pray that the protest of the protestant be dismissed.


Attorney for Protestees

STATE OF OREGON)
County of Washington) ss.

I, HERMAN R. HORNECKER, being first duly sworn, depose and say: That I am one of the protestees above named; that I have read the foregoing Answer to Protest, and that the same is true, as I verily believe.

Subscribed and sworn to before me this 2nd day of November, 1953.



Notary Public for Oregon
My commission expires 8-25-57

R-23261
23430

August 5, 1954

Mr. Arleigh Berget
Watermaster District No. 17
Route 1, Box 222
Forest Grove, Oregon

Dear Mr. Berget:

Enclosed please find copy of the State Engineer's Order modifying permits in the matter of Permit Numbers R-950 and 18444 in the name of Herman R. and Helen Hornecker and copies of the reports of the investigations made by Mr. Chris L. Wheeler of this office.

Very truly yours,

CHAS. E. STRICKLIN
State Engineer

By
Chris L. Wheeler, Assistant

CLW:eh
enc. 3

Form 3811
Rev. 1-4-40

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

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No. 49353

INSURED PARCEL

SALEM,

No. _____

OREGON.

R-23261
23430

August 5, 1954

Mr. John H. Hall
Attorney at Law
Yeon Building
Portland 4, Oregon

Dear Mr. Hall:

Enclosed please find certified copy of the State Engineer's Order modifying permits in the matter of Permit Numbers R-950 and 18494 in the name of Herman R. and Helen Hornecker, also copies of the reports of the investigations by Chris L. Wheeler, of this office.

Very truly yours,

CHAS. E. STRICKLIN
State Engineer

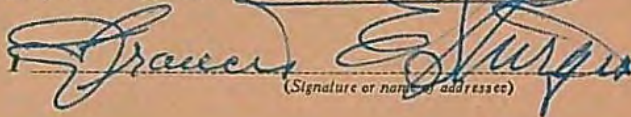
By
Chris L. Wheeler, Assistant

CLW:eh
enc. 3
cc O. R. Merrill

REGISTERED

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Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1 
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2 _____

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Date of delivery  _____, 19____

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(GPO)

U.S. TREASURY

DEFENSE BOND

FLAG — CITY

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Street and Number,
or Post Office Box,

303 State Office Building

REGISTERED ARTICLE

No.

49532

INSURED PARCEL

No.

SALEM,

OREGON.

August 5, 1954

Mr. Francis E. Sturgis
Attorney at Law
First National Bank Building
Hillsboro, Oregon

Dear Mr. Sturgis:

Enclosed please find certified copy of the State Engineer's Order modifying permits in the matter of Permit Numbers R-950 and 18494 in the name of Herman R. and Helen Hornecker, also copies of the reports of the investigations by Mr. Chris L. Wheeler of this office.

Very truly yours,

CHAS. E. STRICKLIN
State Engineer

By
Chris L. Wheeler, Assistant

CJW:eh
enc. 3
cc Herman R. and Helen Hornecker
REGISTERED

January 18, 1954

Mr. John H. Hall
Attorney at Law
Yeon Building
Portland 4, Oregon

Dear Mr. Hall:

Pursuant to your request in your letter of January 12, enclosed is a subpoena signed by the State Engineer to Mr. Berget in the matter of issuance of certificates confirming the rights under Permit Numbers R-950 and 18494.

In accordance with the provisions of ORS 537.430, the matter of services and costs of witness is the responsibility of the party calling them and this office assumes no responsibilities in connection therewith.

The reason for the postponement of the hearing is that I had overlooked the requirement of 30 days notice by registered mail, as required by ORS 537.420, in protests of this nature. Most hearings before the State Engineer do not require a 30 day registered notice.

Very truly yours,

CHAS. E. STRICKLIN
State Engineer

By
Chris L. Wheeler, Assistant

CLW:eh
enc.

JOHN H. HALL
ATTORNEY AT LAW
YEON BUILDING
PORTLAND 4, OREGON

January 12, 1954

Hon. Chas. Stricklin,
State Engineer,
Salem, Oregon.

RECEIVED
JAN 13 1954
STATE ENGINEER
SALEM, OREGON

Dear Sir:

My client Mr. O. R. Merrill has filed a petition to cancel the application and permit of Mr. Herman Hornecker to appropriate waters from an unnamed creek in Washington County for pond and irrigation purposes.

You have heretofore set the time and place of the hearing in Hillsboro, Oregon on January 22, 1954. One of the witnesses we will require and one who knows first hand about the matter is Mr. Arleigh Berget, local watermaster residing at Forest Grove, Oregon.

Mr. Berget is employed as a teacher at Lincoln School in Forest Grove and he feels that he should appear by virtue of a subpoena so that his salary will not be docked.

I notice that under section 537.430 you have power to issue a subpoena.

Will you please issue one to Mr. Berget and send it to me so that it may be served upon him prior to the hearing?

Very truly yours,

John H. Hall

n/h

COUNTY COURT
HILLSBORO, OREGON

January 13, 1954

23430

Chris L. Wheeler, Assistant
State Engineer
Water Resources Department
Salem, Oregon
Dear Sir:

RECEIVED
JAN 15 1954
STATE ENGINEER
SALEM, OREGON

In reference to your letter of January 12th, this is to confirm arrangements for room relative to your hearing. It may be possible that inasmuch as your hearing has been postponed until February 18 that the Court room may be free at that time but if not the Juvenile Officers room will be available.

Very truly yours,
Harry M. Seabold
Harry M. Seabold
County Judge

R-23261
23430

January 12, 1954

Mr. Harry M. Seabold
County Judge
County Court
Hillsboro, Oregon

Dear Mr. Seabold:

This will acknowledge receipt of and thank you for your letter of January 6 relative to a room for our hearing.

I believe the Juvenile Officers office or any room which would seat 12 to 15 people would be satisfactory. However, the hearing has been postponed from January 22 to February 18 at 10:00 a.m. It would be very much appreciated if you would have a room available at this time for the hearing.

Very truly yours,

CHAS. E. STRICKLIN
State Engineer

By
Chris L. Wheeler, Assistant

CLW:eh

JAMES LEWIS
H. R. JOHNSON
Commissioners



COUNTY COURT

HILLSBORO, OREGON

January 6, 1954

Chris L. Wheeler,
Assistant Engineer
State Engineer
Water Resources Department
Salem, Oregon

RECEIVED
JAN 11 1954
STATE ENGINEER
SALEM, OREGON

Dear Sir:

Relative to your letter of January 5th, 1954, addressed to the County Clerk of this County please be advised that both court rooms will be in use on January 22, 1954 at 10 A.M. but we would be glad to offer the use of the Juvenile Officers office which would accomodate your purposes.

Very truly yours,

A handwritten signature in dark ink, reading "Harry M. Seabold". The signature is written in a cursive style with a large, prominent "H" and "S".

Harry M. Seabold
County Judge

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1 John H. Hall
(Signature or name of addressee)

2 Elizabeth Cohen
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery JAN 13 1941, 1941

R-23261; 23430

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Street and Number,
or Post Office Box,

33 State Office Building

REGISTERED ARTICLE

No.

49597

INSURED PARCEL

No.

SALEM,

OREGON.

January 12, 1954

Mr. John H. Hall
Attorney at Law
Yeon Building
Portland 4, Oregon

Dear Mr. Hall:

With reference to the protest which you filed for Mr. O. R. Merrill against the certificates confirming the rights under Permit Nos. R-950 and 18494 in the name of Herman R. and Helen Hornecker, the date for the hearing which had been tentatively set for January 22, as you were advised by my letter of December 21, has been postponed to February 18, 1954, at 10:00 a.m. in the County Courthouse at Hillsboro.

The grounds for cancellation as set out in the protest are summarized as follows:

1. that the reservoir constructed by protestees is inadequate, does not comply with the requirements of the laws of the State of Oregon or the Rules and Regulations of the State Engineer, and is so faulty in construction that at least one-half of the water attempted to be impounded leaks from said reservoir and is wasted, and the beneficial use of said water is of no benefit to any one;
2. that the waters of Rock Creek are available to the protestees and flow through their land in more than sufficient quantity to satisfy their needs;
3. that ever since protestees filed their original applications as herein described, they have used the waters of Rock Creek exclusively for irrigation, domestic and stock purposes, and during said period of time have failed and neglected to use the waters of said unnamed stream for any of said purposes.

In accordance with the provisions of ORS 537.420 you should appear at this time to show cause why the certificates confirming the rights under Permit Numbers R-950 and 18494 should not be issued and the permits cancelled, as requested in your protest received in this office October 26, 1953.

Very truly yours,

CHAS. E. STRICKLIN
State Engineer

By
Chris L. Wheeler, Assistant

CLW:eh
REGISTERED
cc. O. R. Merrill

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1 _____
(Signature or name of addressee)

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(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery 1/24/54, 19____

R-23261; 23430

Post Office Department
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, \$300



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U.S. TREASURY

DEFENSE BOND

FLAG — CITY

Return to  Engineer

203 State Office Building
(NAME OF BINDER)
Street and Number,
or Post Office Box,

REGISTERED ARTICLE

No. 49598
INSURED PARCEL

No. _____

SALEM;

OREGON.

January 12, 1954

Helen & Herman R. Hornecker
Route 2, Box 274A
Hillsboro, Oregon

Dear Sir and Madam:

In connection with the protest filed by O. R. Merrill against the certificates confirming the rights under your Permit Numbers R-950 and 18494, the date for the hearing which had been tentatively set for January 22, as you were advised by my letter of December 21, has been postponed to February 18, 1954, at 10:00 a.m. in the County Courthouse at Hillsboro.

The grounds for cancellation as set out in the protest are summarized as follows:

1. that the reservoir constructed by the protestees is inadequate, does not comply with the requirements of the laws of the State of Oregon or the Rules and Regulations of the State Engineer, and is so faulty in construction that at least one-half of the water attempted to be impounded leaks from said reservoir and is wasted, and the beneficial use of said water is of no benefit to any one;
2. that the waters of Rock Creek are available to the protestees and flow through their land in more than sufficient quantity to satisfy their needs;
3. that ever since protestees filed their original applications as herein described, they have used the waters of Rock Creek exclusively for irrigation, domestic and stock purposes, and during said period of time have failed and neglected to use the waters of said unnamed stream for any of said purposes.

In accordance with the provisions of ORS 537.420 you should appear at this time to show cause why the certificates confirming the rights under Permit Nos. R-950 and 18494 should be issued.

Very truly yours,

CHAS. E. STRICKLIN
State Engineer

By

Chris L. Wheeler, Assistant

CLW:eh
REGISTERED

June 3, 1954

Mr. Chas. H. Stricklin
State Engineer
Salem, Oregon

Dear Mr. Stricklin:

The site of Mr. Hornecker's reservoir was re-inspected in company with Mr. Hornecker on June 2, 1954 as discussed at the hearing since at that time the area was several feet under water.

The dam has been constructed across an unnamed stream with its axis parallel and adjacent to Rock Creek. The dam is in very poor condition; some seepage through the fill, evidence of complete saturation of central portion of fill and downstream toe with appearance of some flow out of the fill in this section, a small concrete spillway (about 15 inches by 30 inches) has been constructed but this was cracked and water flowing around as well as through. At the time of the inspection trash had blocked the spillway and water was traveling down the outside and spilling in through a crack about 4 feet from the entrance. The downstream face, part of the toe, upstream face and reservoir banks were covered with brush about 4 feet high and it was impossible to ascertain the exact toe lines or dimensions of the dam. A few trees appear to be within the fill and therefore it is not believed any stripping of foundation was done.

A sketch of the dam and reservoir is attached, however, due to the brush conditions noted above and which surround the reservoir extending into it in shallow areas the dimensions are approximate. The base including the location tie, county road and stream locations are taken from the application map. It is estimated that the reservoir stores slightly more than 1.0 acre foot of water (the limitation in the permit).

In spite of these conditions the dam has existed for several years and does not appear to be in danger of failure. Should it fail it is doubtful if any damage would occur as the channel of Rock Creek has sufficient carrying capacity for instant failure except in time of high water. Failure at this time obviously could not cause any injury. As noted at the hearing, during high water the Tualatin River backs up and floods the dam to a depth of several feet.

The reference monument as shown on the applicant's map prepared by Vernon H. Roschraugh, Registered Professional Engineer No. 2373, and the corner to which it was tied was found. The area between the reservoir and tie has been logged over and grown up to a heavy cover of brush and young trees. About

Mr. Chas. E. Stricklin

- 2 -

June 3, 1954

one days work brushing would be required before surveying could be made, therefore, it is recommended that Mr. Rosebraugh's tie be accepted as it appears to be correct.

The small cleared area (about $\frac{1}{2}$ acre referred to at the hearing) was about 200 feet from the pond and no evidence of a crop or pasture that could have been irrigated. There was a small thistle type weed covering the ground but little or no pasture grass. At the hearing it was stated some brush had been cleared from this area late last fall and on the date of the survey, Mr. Hornecker was starting to clear more land and rototilling the area cleared. It does not appear that the $3\frac{1}{2}$ hours sprinkling on August 11, 1953, as testified at the hearing, could constitute beneficial use.

There is a cleared trail over the dam and one to the right bank of the reservoir about 80 feet upstream where stock could reach the reservoir and water therefrom. No stock were in the area at the time or direct evidence that they had, but it is reasonable to assume they would since the banks of Rock Creek are quite steep and high at this section of the field.

Very truly yours,

Chris L. Wheeler

CLW:ch

February 19, 1954

Mr. Chas. E. Stricklin
State Engineer
Salem, Oregon

Dear Mr. Stricklin:

At the close of the hearing in the matter of Permit Numbers R-950 and 18494 in the name of Herman R. and Helen Hornecker, it was arranged to examine the grounds. Neither attorney wished to be present but it was arranged to meet Mr. Merrill and Mr. Hornecker at 1:45 p.m. at Mr. Hornecker's. Mr. Dave Williams was also present during the examination of the grounds.

The reservoir and the small tract claimed to have been irrigated near the pond were several feet under flood waters backed up from the Tualatin River. The condition of the tract with respect to brush could not be noted, however, most of the ground appeared to be covered with oak trees. Heavy brush extended to the edge of the backwater and it is doubted if such area could have been beneficially irrigated. The reservoir was described as being about 200 feet from the hill upon which we stood. The area between the reservoir and the upper fields was in heavy timber and brush. The distance was not measured and although it would not be a satisfactory operation, the pipeline could have been laid through the timber as described by Mr. Hornecker.

A larger lower field along Rock Creek was also submerged but both parties at the hearing stated it was irrigated from Rock Creek only.

The upper field referred to as the alfalfa field lays parallel to the county road running from Mr. Hornecker's lane to the timber on the east edge. The dimensions of the field are estimated at 300 feet by 1000 feet width with three large building lots sold off the north side on the east end. The home site, barn and lots lay south of this field and extended to the east. East of the buildings and adjoining the alfalfa on the south lay a field of rye grass and ladino clover, approximate dimensions 200 feet by 500 feet.

When questioned on the grounds Mr. Hornecker was reluctant to state how much of the field had been irrigated from the unnamed stream and reservoir but after several questions vaguely pointed out a line being about on the west end of the grass field to the road and covering about one-half the area. Mr. Merrill insisted, as he had testified, that only one line of sprinklers has been run from the unnamed stream and reservoir on these fields; that line on the south edge of the grass field and only for part of one day, the 24th of September.

Mr. Chas. E. Stricklin

- 2 -

February 19, 1954

When questioned on the ground Mr. Hornecker did not remember how long the system was operated to cover the upper field, how many sets were made or for what period of time the water was applied at a setting. At one time he stated he ran for $3\frac{1}{2}$ hours per set. From the information given on the size of his sprinklers this would put not quite an inch of water on the ground and does not appear to be economically feasible. He further stated he used three lateral lines of sprinklers on the field while the 15 sprinklers, testified to at the hearing as his equipment, would not be sufficient for more than one line running the length of the grass field and the area he claims.

Considering the climatic conditions in the area and the general farm practice, it does not appear that irrigating fields which are for the production of hay in the latter part of September could be considered as beneficial use.

An examination of the reservoir site will be made at a later date after the flood waters recede. At the hearing it was arranged for Mr. Sturgis to advise when this could be done.

Very truly yours,

Chris L. Wheeler

CLW:ch

R-23261
23430
28486

January 5, 1954

Mr. W. A. Tupper
County Clerk
Hillsboro, Oregon

Dear Mr. Tupper:

A hearing before the State Engineer in the matter of a protest filed by Mr. G. R. Merrill against the issuance of certificates confirming the rights under Permit Numbers R-950 and 18494 in the name of Herman R. and Helen Hornecker has been tentatively scheduled for January 22, 1954 at 10:00 a.m. in Hillsboro.

Will you please advise us if you have a room which would be available for our use for the hearing. Thank you very much for your cooperation.

Very truly yours,

CHAS. E. STRICKLIN
State Engineer

By
Chris L. Wheeler, Assistant

CLW:eh

November 4, 1953

Mr. Francis E. Sturgis
Attorney at Law
First National Bank Building
Hillsboro, Oregon

Re: Applications R-23261, 23436
Herman R. Hornecker

Dear Mr. Sturgis:

This will acknowledge receipt of the answer of Herman R. Hornecker and Helen Hornecker to the protest of O. R. Merrill.

Please be advised that there is no fee for filing an answer such as that filed by you.

A time will be set satisfactory to both parties for the hearing upon the protest after which an order will be entered by the State Engineer from which order, either or both parties may appeal to the court.

Very truly yours,

CHAS. E. STRICKLIN
State Engineer

CES:VC

✓
HARE
STURGIS
BURDETT

Hare, Sturgis & Burdett
ATTORNEYS AT LAW
FIRST NATIONAL BANK BUILDING
Hillsboro, Oregon
TELEPHONE 181

November 3, 1953

Mr. Chas. E. Stricklin
State Engineer
303 State Office Building
Salem, Oregon

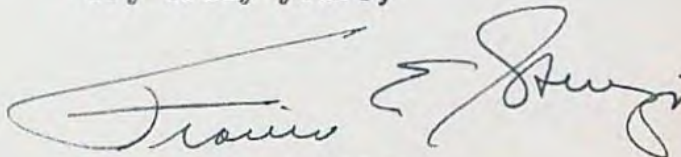
RECEIVED
NOV 4 1953
STATE ENGINEER
SALEM, OREGON

Dear Sir:

I enclose herewith Answer of Herman R. Hornecker
and Helen Hornecker to Protest of O. R. Merrill.

If there is any charge for filing answer, please
advise, and I will remit promptly.

Very truly yours,



FRANCIS E. STURGIS

FES:ij
Enclosure

R-23261
23430
28486

December 21, 1953

Herman R. and Helen Hornecker
Route 2, Box 274A
Hillsboro, Oregon

Dear Sir and Madam:

On October 26, 1953, a protest was filed in this office by Mr. O. R. Merrill through his attorney, John H. Hall, against the issuance of a certificate under Permit Numbers R-250 and 18495. The protest contained a statement that you were served a copy by registered mail.

In matters of this kind, unless you cancel your permits or reach an agreement whereby the protest will be withdrawn, it is necessary for this office to hold a hearing and on the basis of the evidence submitted enter an order approving the permits and uses made, after which a certificate may be issued or cancelling the permits when showing of sufficient cause.

The date for the hearing has been tentatively set for January 22, 1954 in Hillsboro. If this date is not satisfactory to you, I would suggest that you contact Mr. Merrill's attorney, John H. Hall, and arrange a date which would be suitable to both you and the protestant for the hearing and, if possible, this date may then be set.

Enclosed is a copy of my letter to Mr. Hall relative to the date of the hearing.

Very truly yours,

CHAS. E. STRICKLIN
State Engineer

By

Chris L. Wheeler, Assistant

CLW:eh
cc. John H. Hall

R-23261
23430
20486

December 21, 1953

Mr. John H. Hall
Attorney at Law
Yeon Building
Portland 4, Oregon

Dear Mr. Hall:

With reference to the protest which you filed for Mr. O. R. Merrill against the issuance of a certificate confirming the rights under Permit No. R-950 and 18495 in the name of Herman R. and Helen Hornecker and our letter of October 28, I am tentatively setting the date for the hearing in this matter for January 22, 1954 at Hillsboro.

If this date is not satisfactory to you, it will be appreciated if you would contact the Horneckers and arrange a date that will be suitable to both parties and advise me. If our schedule can be arranged, this date can then be set for the hearing.

Enclosed is a copy of my letter to Mr. and Mrs. Hornecker regarding the hearing.

Very truly yours,

CHAS. E. STRICKLIN
State Engineer

By
Chris L. Wheeler, Assistant

CLE:ch
enc.
cc. Herman R. & Helen Hornecker

October 5, 1953

Herman R. and Helen Hornecker
Route 2, Box 274-A
Hillsboro, Oregon

Dear Sir and Madam:

This will acknowledge receipt of your notice to the effect that complete application of water has been made under Permit No. 18494.

Pursuant to your report and in line with the general practice of this office, a survey will be made at a later date for the purpose of checking the amount of water used as described in the permit, including the acreage actually irrigated. After this survey, proof may be made and certificate issued covering the actual use of water as found by the engineer. Any lands described in the permit that have not been irrigated will be automatically eliminated from the water right.

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

Very truly yours,

Chas. E. Stricklin

CHAS. E. STRICKLIN
State Engineer

Form 130

gk

August 26, 1953

23430

Mr. John W. Hall
Attorney at Law
Yeon Building
Portland 4, Oregon

Dear Governor:

This will acknowledge receipt of your letter of August 25th and it will be perfectly proper and legal should Mr. Herman Hornecker make application for an extension of time, for the State Engineer to hold a hearing in order to obtain information for use in determining whether Mr. Hornecker has used reasonable diligence in perfecting his right under Application No. R-23261, Permit No. R-950 and Application No. 23430, Permit No. 18494. If such an application is filed, you will be advised and a time will be set satisfactory to both parties for hearing upon this matter.

Please be advised that Mr. O. R. Merrill's application is being approved and permit issued. Mr. Merrill should receive this permit within the next two or three weeks.

Mr. Merrill's permit will be issued subject to existing rights and he would only be entitled to use the surplus water or water not required to supply existing rights. This would be not only true of the unnamed stream upon which the application is made, but also, the main stream to which this unnamed stream is tributary.

Very truly yours,

CHAS. E. STRICKLIN
State Engineer

CES:VC
cc - Mr. O. R. Merrill

23430

May 7, 1953

Mrs. Herman R. Hornecker
Route 2, Box 274A
Hillsboro, Oregon

Dear Mrs. Hornecker:

In response to your letter of May 4, please be advised that there is no record in this office of any right to construct a reservoir or appropriate the waters of the small stream above the diversion set out in your Permit No. 18494.

Very truly yours,

CHAS. E. STRICKLIN
State Engineer

By
Chris L. Wheeler, Assistant

CLW:bc

May 1, 1953

RECEIVED
MAY 4 1953
STATE ENGINEER
SALEM, OREGON

Chas E. Stricklin, State Engineer,
Salem, Oregon.

In re. application 23430, Permit No 18494

Dear Sir:

Does Roy Merrill, who has purchased the David Williams place adjoining us, through which the stream, on which we have a permit, No 18494, for a water right, flows, have a permit from the state to dig a sump hole or lake in the bed of the stream and drain the springs feeding the stream into it?

We would appreciate this information at an early date.

Sincerely Yours,
Mrs Herman Hornecker.

November 14, 1952

Herman R. and Helen Hornecker
Route 2, Box 274A
Hillsboro, Oregon

Dear Sir and Madam:

This will acknowledge receipt of your application for an extension of time in which to complete construction and make complete application of water under the terms of Permit No. 18494 and fees in the amount of \$2, for which our Receipt No. 925 is enclosed.

The application indicates that sufficient diligence to enable the State Engineer to extend the time has been exercised and the time limits are being extended to October 1, 1953.

This is also to advise you that the State Engineer is permitted by law, to extend the time in which to complete the project only upon showing of due diligence by the permittee. Considering the size of your project, it is believed that due diligence will result in its completion on or before October 1, 1953 and you should make proof at that time covering the number of acres that have actually been irrigated and the extent beneficial use has been made of the water.

Very truly yours,

CHAS. E. STRICKLIN
State Engineer

By
Chris L. Wheeler, Assistant

CLW:eh
Enc.

on No. 23430

Permit No. 18494

Application for Extension of Time

To the State Engineer of Oregon:

WE Herman H. and Helen Hornecker Rt. 2 Box 274A Hillsboro
state of Oregon, ^{are} the owners and holders of Permit No. 18494, to
appropriate the public waters of the state of Oregon.

Under the terms and conditions of said permit, construction work is required to be completed on or
before October 1, 1952, and complete application of water is required to be
made on or before October, 1952.

I have heretofore done the following work described under said permit: Completed
the work

costing \$....., and I estimate the cost of completion to be \$.....

~~we~~ have heretofore used water under said permit to the following extent: Domestic
and stock water supply for two years.
Have installed a gasoline motor and centrifugal
pump, larger than called for, and 800 ft of pipe line
called for in permit, prior to October 1, 1952

~~we~~ are unable to { complete construction work
make complete application of water } within the required time, for the following
(Strike out phrase not applicable)

reasons, to wit: Not able to get enough pipe to
completely apply the water, due to allotment
of pipe to others; and insufficient water
to cover all the land specified.

(If additional space is required, attach separate sheet)

(The fee provided by law in the amount of \$2.00 for filing an application for an extension of time should accom-
pany the application for extension.)

(OVER)

Extend to 50 (app)

WHEREFORE, I ask that the State Engineer extend the time for the

{ ~~completion of construction work~~
complete application of water } under said permit to October 1, 1954.
(Strike out phrase not applicable)

AFFIDAVIT OF APPLICANT

STATE OF Oregon
County of Washington } ss.

We, Herman R. & Helen Hornecker being first duly sworn, depose and say that ^{we} have read the above and foregoing application for extension of time; that ^{we} know the contents thereof, and the facts stated therein are true.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of October, 1952.

Herman Hornecker.
Helen Hornecker.

Subscribed and sworn to before me this 20th day of October, 1952.

[Notarial Seal]

Francis E. Sturges
Notary Public for Oregon

My commission expires Aug 25, 1953

October 13, 1952

Herman R. Hornecker
Route 2, Box 274 A
Hillsboro, Oregon

Dear Mr. Hornecker:

Pursuant to your letter of October 8, 1952, I am enclosing herewith a form for use in making application for an extension of time under Permit No. 18494, in the name of Herman R. & Helen Hornecker.

This application should be executed before a notary public and submitted to this office with the statutory filing fee in the amount of \$2.00. Upon its receipt, the matter of extending the time under the appropriation will be given further consideration, and you will be advised of our action.

Very truly yours,

Chas. E. Stricklin
CHAS. E. STRICKLIN
State Engineer

Form 115
Enclosures

OK for
permit

October 8, 1952

Chas. E. Stricklin, State Engineer
504 State Office Building,
Salem, Oregon.

RECEIVED
OCT 10 1952
STATE ENGINEER
SALEM, OREGON

In re: permit NO 518497

Dear Sir:-

We had the impression that if we were watering part of the land covered by our permit that we would be granted a water right, so we did not ask for an extension of time.

We have used the water for domestic use and water supply for stock for two years, but it has been impossible to complete the irrigation because of insufficient water and inability to get enough pipe.

For some reason the stream has diminished in the last three years to about a fourth of the flow that was there when we applied for the water right.

It will take a great amount of pipe to reach our upper land. This land lies along Rock Creek, on which we have no water right, but far from the dam where we must draw the water.

We have been able to get only a limited amount of pipe as our dealer tells us he is on an allotment and can

allow only so much pipe to each customer.

Therefore, we ask for an extension of two years, if possible, or at least one year to accumulate enough pipe.

Yours very truly,
Mrs. Herman Hornbeck

October 2, 1952

Mr. Herman R. Hornecker
Route 2, Box 274 A
Hillsboro, Oregon

Re: Application No. 23430

Dear Mr. Hornecker:

As I interpret your letter of September 29th you have irrigated all of the land described in Permit No. 18494 in the name of Herman R. and Helen Hornecker that you intend to irrigate at any time and have used water for domestic and stock purposes. If this is the case, you should fill out the enclosed Form C which is a duplicate of the one attached to your permit and mail the same to this office.

If water has not been completely applied as above stated, you should submit an application for an extension of time because the time for the complete application of water, according to the terms of your permit extended by the State Engineer, expired on October 1, 1952.

Very truly yours,

CHAS. E. STRICKLIN
State Engineer

By
Ed K. Humphrey, Assistant

EKH:VC
Enc.

Sep. 29. 1952

7 Hillsboro Ore.

Chas. E. Stricklin
State Engineer
Salem Ore.

RECEIVED

SEP 30 1952

STATE ENGINEER
SALEM, OREGON

Dear Sir:

We are using for irrigation ^{water} &
have pump & pipe system but permit no
is 1 8 4 9 9 Title No. 23 430 apply for.

Do to less water than we all expected we
still have large areas of ground and
are irrigating low land. All equip. & pump
on place and ready for inspection if you
require.

Yours sincerely

Hermon H. Humecker

P.S. If there is any thing we
should send in or do further to
obtain a water permit please let us
know.

October 18, 1951

Herman R. & Helen Hornecker
Route 2, Box 274 A
Hillsboro, Oregon

Dear Sir & Madam:

This acknowledges receipt of your application for an extension of time for complete application of water under Permit No. 18494 in the name of Herman R. & Helen Hornecker.

The application indicates that reasonable diligence has been shown in the prosecution of work under this project, and the time limit is being extended to October 1, 1952.

Very truly yours,

Chas. E. Stricklin

CHAS. E. STRICKLIN
State Engineer

Form 121

P.S. Our Receipt No. 13081 is enclosed to cover the \$2.00 statutory filing fee which you submitted.

W. R-23261
ation No. 23430

Permit No. 18494

Application for Extension of Time

To the State Engineer of Oregon:

I, We Herman Rd Helen Hornecker of Rt 2-Box 274A Hillsboro,
state of Oregon, ~~am~~ the owner and holder of Permit No. 18494, to
appropriate the public waters of the state of Oregon.

Under the terms and conditions of said permit, construction work is required to be completed on or
before October 1, 1950, and complete application of water is required to be
made on or before October 1, 1951.

~~We~~ have heretofore done the following work described under said permit: Completed
the work before October 1, 1950.

costing \$....., and I estimate the cost of completion to be \$.....

~~We~~ have heretofore used water under said permit to the following extent: For domestic
use, water supply for 25 head of stock, and
sub-irrigation around lake.

~~We~~ ~~are~~ unable to { ~~complete construction work~~
~~make complete application of water~~ } within the required time, for the following
(Strike out phrase not applicable)

reasons, to wit: There is insufficient water for irrigation, ap-
parently due to diversion of the water before it reaches
us. Since we applied for a water right the stream has
been reduced from a free flowing stream to a mere
trickle, and since it flows through private property
we have so far not been able to determine the cause.
(If additional space is required, attach separate sheet.)
(The fee provided by law in the amount of \$2.00 for filing an application for an extension of time should accom-
pany the application for extension.)

(OVER)

WHEREFORE, I ask that the State Engineer extend the time for the

{ ~~completion of construction work~~ } under said permit to October 1, 1952
{ complete application of water }
(Strike out phrase not applicable)

AFFIDAVIT OF APPLICANT

STATE OF _____ }
County of _____ } ss.

We Herman R. Hornecker and Helen Hornecker, being first duly sworn, depose and say that I have read the above and foregoing application for extension of time; that I know the contents thereof, and the facts stated therein are true.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of September, 1951.

Herman R. Hornecker

Helen Hornecker

Subscribed and sworn to before me this 29th day of September, 1951.

[Notarial Seal]

Russel S. Ike

Notary Public for Oregon

My commission expires Dec 12th 1954

September 25, 1951

Herman R. & Helen Hornecker
Route 2, Box 274 A
Hillsboro, Oregon

Dear Sir and Madam:

In reply to your letter of September 24, 1951, relative to your Permit No. 18494, this will advise you that there is no provision in the law under which proof can be made and certificate issued covering a part of the water right represented by a State Engineer's Permit, leaving the remainder of the right incomplete and in force.

As I interpret your letter, you have not made complete application of water under your Permit No. 18494, and I am therefore enclosing a form for your convenience in submitting an application for an extension of time.

The application for an extension should be executed before a notary public and submitted to the State Engineer with the statutory \$2.00 filing fee.

Very truly yours,

CHAS. E. STRICKLIN
State Engineer

By
Ed K. Humphrey, Assistant

ENH:dlh

Enc.

September 20, 1951

Mr. E. Stricklin, State Engineer,
504 State Office Building,
Salem, Oregon:

RECEIVED
SEP 24 1951
STATE ENGINEER
SALEM, OREGON

Dear Sir:

In Re: Permits No 18494
No R-950

According to the specification of permit No. R-950 our dam was completed by October 1, 1950, but we are asking for an extension of time on permit No. 18494 on the provision for irrigation due to insufficient water for irrigation.

Since the date we applied for the water right the stream has been reduced from a well-flowing stream to a mere trickle. Since this stream flows through private property not accessible to us, we have been unable to investigate where it is being diverted.

It could not draw water stored in the lake as this was the only water accessible to our 25 head of stock, since Rock Creek, their usual source of water, was so low as to be impassible for them to reach it.

Our water permit calls for domestic use; therefore we are asking for a water right Certificate for domestic use and an extension of the permit for irrigation until such time as the normal flow of water comes down to us to enable us to irrigate.

Yours very truly,
 Norman Hornacker,
 Helen Hornacker.

23430

November 2, 1950

Mr. Herman Hornecker
Route 2, Box 274A
Hillsboro, Oregon

Dear Mr. Hornecker:

This acknowledges receipt of Form B, being notice of the completion of construction under Permit No. 18494 in the name of Herman R. & Helen Hornecker.

This report has been filed with other matter pertaining to the water right, and the permit is in good standing until October 1, 1951, when under its terms, all the water which it is intended to use at any time should be used to the full extent intended.

Very truly yours,

Chas. E. Stricklin

CHAS. E. STRICKLIN
State Engineer

Form 119

23430
R-23261

October 19, 1950

Mr. Herman R. Hornecker
Route 2, Box 274-A
Hillsboro, Oregon

Dear Mr. Hornecker:

This will acknowledge receipt of your letter of October 6, stating that you had sent in Form B, notice of completion of construction of the dam for application No. R-23261, permit No. R-950.

According to the terms of application No. 23430, permit No. 18494 for 0.39 cubic feet of water per second from an unnamed stream for domestic and stock use and for the irrigation of 30 acres, completion of construction should have been made by October 1, 1950 for that permit also. I believe that you got the two permits confused or you assumed that form B, notice of completion of construction, which you submitted, covered both permits. We did receive the Form B that you submitted from Portland September 26. It has been filed with other material pertaining to permit No. R-950.

I am enclosing in this letter Form B that should be submitted for your permit No. 18494 if construction has been completed. If construction necessary toward the irrigation of your 30 acres has not been completed, an extension of time should be requested by you.

Very truly yours,

CHAS. E. STRICKLIN
State Engineer

By
Robert D. Conklin, Assistant

RDC:bml
Encl.

October 6, 1950

has E. Stricklin,
State Engineer,
Salem, Oregon.

RECEIVED

OCT 9 1950
STATE ENGINEER
SALEM, OREGON

23430

Dear Sir:

In regard to the enclosed card, I mailed the notice of completion of the dam in Portland on September 26th. I fail to understand why it had not reached you before October 1st. The dam was completed Sept. 25th.

Yours truly,

Herman Hornedaker

January 25, 1950

Herman R. and Helen Hornecker
Route 2 Box 274-A
Hillsboro, Oregon

Dear Sir and Madam:

This acknowledges receipt of Form A, being notice of the beginning of construction under Permit No. 18494 in the name of Herman R. Hornecker and Helen Hornecker.

This report has been filed with other matter pertaining to the water right, and the permit is in good standing until October 1, 1950, when under its terms, construction should be completed.

Very truly yours,

Chas. E. Stricklin

CHAS. E. STRICKLIN
State Engineer

23430

Herman R. & Helen Hornecker

Rt. 2, Box 274 A

January 17, 1949

Hillsboro, Oregon

Dear Sir & Madam:

Herewith you will find Application No. 23430, Permit
No. 18494.

Francis F. Sturgis
ATTORNEY AT LAW
FIRST NATIONAL BANK BUILDING
Hillsboro, Oregon
TELEPHONE 181

RECEIVED
OCT 13 1948
STATE ENGINEER
SALEM, OREGON

October 11, 1948

Honorable Chas. E. Stricklin
State Engineer
Salem, Oregon

Re: 2340 & R23261

Dear Sir:

In reply to your letter of September 30th I enclose
herewith description of the land of Herman and Helen
Hornecker as disclosed by their deed.

Very truly yours,

Francis F. Sturgis

FES:eb
enc.

23430 ✓
R-23261

September 30, 1948

Mr. Francis E. Sturgis
Attorney at Law
First National Bank Building
Hillsboro, Oregon

Dear Mr. Sturgis:

This will acknowledge receipt of your letter of the 24th inst., relative to Applications No. 23430 and R-23261, filed by Herman R. Hornecker and Helen Hornecker of Hillsboro, Oregon, for the right to construct a reservoir and store water therein. It appears from an examination of these applications that all the data has been furnished with the exception of the legal description of the lands to be irrigated with the water to be stored. A description of the lands as shown by the deed of the applicant will be sufficient for this purpose.

On receipt of this description these applications will be placed in line for approval and issuance of a permit. There is inclosed herewith our Receipt No. 5491 as evidence of the payment of \$25.50 by you.

Very truly yours,

CHAS. E. STRICKLIN
State Engineer

CES:RN
INCL.

R-23261

Francis F. Sturgis
ATTORNEY AT LAW
FIRST NATIONAL BANK BUILDING
Hillsboro, Oregon
TELEPHONE 181

September 24, 1948

Mr. Charles E. Stricklin
State Engineer
Salem, Oregon

RECEIVED
SEP 27 1948
STATE ENGINEER
SALEM OREGON

Dear Sir:

This will acknowledge receipt of your letter of September 23d calling attention to the fact that no reservoir permit has been filed. I am enclosing herewith a form containing all of the data with respect to the contemplated dam. I believe I forwarded to you a similar instrument in my letter to you under date of June 30, 1948, however, it may have been misplaced or it may have been returned to me with other papers from your office. In any event, the necessary information is herewith enclosed.

The application was prepared from information supplied to me by my client and I failed to recheck it with the map prepared by the engineer, assuming that my client was familiar with the portion of land in the various political subdivisions involved in the application. I hereby authorize your office to make the corrections referred to in paragraph three of your letter.

If there is any further information which you may require, please feel free to call upon me.

Very truly yours,

Francis F. Sturgis

FES:eb
enc.

transcribed 7/2

September 23, 1946

Mr. Francis E. Sturgis
Attorney at Law
First National Bank Building
Hillsboro, Oregon

Dear Mr. Sturgis:

This will acknowledge receipt of your letter of the 18th inst., together with the application signed by Herman and Helen Hornecker for a permit to appropriate the waters of an unnamed stream, tributary of Rock Creek, and a reservoir to be constructed, together with the map referred to therein.

Your attention is called to Sections 116-424, 116-425, and 116-419, O.C.L.A. It will be necessary for Herman and Helen Hornecker to file an application for a reservoir permit. Your attention is also called to Section 116-502, O.C.L.A., relative to submitting plans and specifications. If the proposed dam is less than 10 feet in height, measured from the ground surface to the top of the dam on the center line at the highest point, then it would not be necessary to have the plans and specifications prepared by a registered professional engineer. However, data which will assist this office in determining the manner in which the dam is to be constructed must be furnished this department. For this purpose there is a blank form enclosed herewith.

Upon examination of the application it appears that it does not conform with the map. For example, under Item #4 of the application the point of diversion is described as being 800 ft. North and 500 ft. East from the SW corner of Section 9, Township 1 South, Range 2 West, W.M. The map accompanying the application shows the proposed dam, which it is assumed is the point of diversion, as being $36^{\circ} 33'$ West 650.5 feet from the northwest corner of the Abram Sulger D.L.C. No. 61, T. 1 S., R. 22 W., W.M. The application, under Item 8, describes the lands to be irrigated as varying from that shown by the map. The map shows there are 12 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 9, 14.8 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and 3.2 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 9, T. 1 S. R. 2 W., W.M.

If your client will authorize this office to do so, we can change the application so the point of diversion will conform with that shown on the map and the acreage will be changed to that shown on the map.

Yours very truly,

CES:sk
Encls. cc: Herman & Helen Hornecker

CHAS. E. STRICKLIN
State Engineer

Francis E. Sturgis
ATTORNEY AT LAW
FIRST NATIONAL BANK BUILDING
Hillsboro, Oregon
TELEPHONE 181

September 18, 1948

Honorable Chas. E. Stricklin
State Engineer
Salem, Oregon

Attention Mr. Ed. K. Humphrey

Dear Sir:

RECEIVED
SEP 20 1948
STATE ENGINEER
SALEM OREGON

Enclosed herewith please find the following:

1. Application for permit to appropriate public waters of the State of Oregon, executed by Herman Hornecker and wife.
2. Attached thereto, maps in duplicate prepared by certified engineer showing the required information with respect to the dam site and appropriation.

I have filled in the number of families to be supplied under the domestic water provision, however, the primary purpose of the domestic water will be for cattle and irrigation of a small garden tract. My clients do not feel that the water from the pond would be satisfactory for drinking purposes and they have already constructed a well on their property to supply household uses.

Enclosed herewith please find my check in the sum of \$25.50 to take care of the balance of filing fees on this application.

Will you please advise my client so he in turn can start his bulldozing for the fill to construct the dam. It is rather late in the season, however, if the weather holds reasonably fair, he will be able to complete the construction prior to high water if we receive word within the next few days.

Thanking you very kindly for your courtesies, I remain

Very truly yours,

Francis E. Sturgis

FES:eb
enc.

DIRECT EXAMINATION

By John Hall of Mr. Merrill:

Q Your name is O. R. Merrill and you are the protestant in the matter of the water right that has been granted to Herman Hornecker?

A Yes sir

Q And where do you live, Mr. Merrill?

A Route 2, Box 271 A, Hillsboro

Q And you own property there?

A I do

Q And what is the nature and extent of the property?

A About 9 acres. Right across from the house where I am living I own half of that myself, about 5 acres of it

Q And is there any creek/^{or}stream running through your property?

Identification and other testimony not pertinent to the question

Q Did he have any kind of spillway or any way or any construction on the dam to control the amount of water that would be contained or be impounded?

A Not that I could see, it spilled over the top, it just filled up and spilled over the top and what didn't leak through the construction

Q I believe the record has allready shown that you applied for a permit to the State Engineer to impound this water and use it for irrigation?

A That I had.

Q That you had?

A That I applied for a permit?

Q Yes, that's right and you stated that under this permit you would commence to use the water on July 20?

A Yes

Francis Sturgis:

do not

Excuse me but I believe that the records show that Mr. Merrill had a permit, at least a statement that the examiner did not make any reference to the permit of Mr Merrills

J. Hall: Oh, I thought that it did

Mr. Wheeler: The clarification on that is that Mr. Merrill filed an application on June 1, 1953 and a permit was issued on August 21. Mr. Merrill has also filed notice that he has completed his project and has irrigated all the land under the permit.

Hall: Thank you, I had thought of shortening this thing up a little bit

Sturgis: I just wanted the record to be clear because up to here there is no showing of Mr. Merrill's permit

Q Under this ~~application~~ permit application permit that you had filed ~~en~~ in June and ~~pr~~ approved in August, when did you say you commenced use of the water? ~~and-how-long-did-you-use~~

A July 20

Q And how long did you use that water?

'Til

A-From August 10 when I was stopped by the watermaster.

Q And ~~who was the watermaster?~~ how much use did you make of the water ~~from~~ ^{between} July 20~~7~~ to August 10

A I used the water night and day ~~and~~

Q And

A Almost continually

Q You had your pumps there?

A Yes

Q And your pipe?

A Yes

Q Springkler?

A Yes

Q And did you have sufficient equipment there to cover all of your land?

A I did

Q That you owned

A I did

Q By the way, is all of your land tillable

A No, part of it ~~is brush~~ has got brush or wood on it.

Q And is that ~~true~~ true of Mr. Hornecker's property?

A Yes

Q But you did use the water to irrigate whatever land ~~that~~-you had that was tillable?
because I was in

A Yes, also I strung out into the bursh part too/irrigating for pasture and use of-pasture.
And why

Q Did you ~~ease-a~~ cease using the water August 10?
to,

A Because that Mr. Berget told me/that Mr. Hornecker was going to was ready to use the water,
and that I should stop.

Q And who is Mr. Berget?

A He is the watermaster

Q Employed by the State Engineer?

A I presume so

Q After Mr. Berget

Sturgis: Excuse me, to clarify the record I think that Mr. Berget is the watermaster ~~not~~

A That's right
~~water-engineer~~

Sturgis: Not the water engineer

Wheeler: For clarification here the watermaster in this area is appointed by the State Engineer and the county pays him , if you are a little mixed up on that procedure, that is the way it is.

~~Hall~~ Q Thank you. And Mr. Merrill what did you do after? Had you ceased to use the water when you were advised by Mr. Berget not to use it any more?

A I did

Q And you haven't used it since then?

A No sir

Q Well, are you familiar with Mr. Hornecker's property, the way it lies, etc?

A Yes sir

Q Have you had any occasion to estimate the distance from his dam to the field he intended to irrigate?

A I never measured it but I would say it was approximately

to would be
 Sturgis: I would say the examiner that is a matter that is entirely immaterial in this position or proceedings as to what any distance is. Mr. Hornecker had made application for a reservoir. It has the permit has therefore been issued and is based upon an application for the irrigation of certain farm lands which are designated on the map which accompanies the petition. & The distance from the dam site to the land is an absolutely immaterial in this proceeding.

Q It goes to the question of the court as to whether or not he is actually using the water, we will show through this witness and other witnesses, that his fields were 1000 feet away from his dam and at no time with the exception of only once was there sufficient pipe there on Mr. Hornecker's place to even reach his fields. That goes to the question as to the beneficial use of the water.

Wheeler: One clarification on this, normally we do not ^{sustain} state-objections, that is, you object to some testimony you enter your objection and ^{it goes into the record} ~~these objections are noted on the record~~ but normally ~~and then we allow the~~ then allow the other side to put it on if he makes a statement and feels it is ~~apertinent~~ pertinent to it. Then afterwards if it isn't ~~id~~ it doesn't carry much weight.
 Sturgis; Mr. Examiner just so that we may understand each other I will probably interpose a number of objections and with the statement which you have just made it will be understood just so they are matters of record.

Q —————

Q I understood you to say that the main field which he was intending to irrigate from the water impounded on his ~~feet~~ ~~was~~ place about 1000 feet.

A That's right

Q Is there any other water on his place besides this unnamed stream?

A There is Rock Creek which skirts the whole ~~said~~ side of his property .

Q. In Mr. Hornecker's permit, he in his application and his permit claimed that he wanted to use the water partially to water his stock. Can you state whether or not in your own knowledge and give the dates you know about whether or not his stock watered at this stream?

A As far as I know the stock has never watered from the unnamed stream because I took particular pains to take the watermaster clear along the side of the stream that borders Mr. Hornecker's property and

Q Now which stream are you talking about/

A About the unnamed stream.

Q The unnamed stream

A It goes right through his property but we went all along the edge of it and could see no place where the stock has been going down in there to water. In the first place the water is very much stagnat in the way of scum over it and I doubt if they would go there to drink when they could get better water from Rock Creek and there was many places in Rock Creek showing where they had gone up and down to get their water to drink.

Q Now you said that you hadn't actually see any cattle watering on the unnamed stream. Had they been using that stream for that purpose would there have been any physical indication of this kind?

A There certainly would be trails, horse trails or cow trails, something showing where the stock went in and out to get the water and there is none. There wasn't any there then and there isn't any yet.

Q And what is the situation/^{of trails or evidence}~~or indication~~ that Mr. Hornecker's stock had been watering at Rock Creek?

A There are several places where it is very pronounced--Fresh, well used.

Q Was during the period that subsequent to the time that you filed your application do you know whether or not Mr. Hornecker was useing the waters of Rock Creek for any purpose other than watering his stock.

A From Rock Creek

A Rock Creek.

A Before I filed my application

Q Or after you filed?

A After I filed my application.

Q Did he use it?

A Yes

Q And what kind of equipment did he have?

A We had a four cylinder gas engine and centrifugal pump and several hundred feet of pipe and sprinklers, about of sprinklers was what I counted.

Q And that water was being taken from where?

A Rock Creek

Q That is not the stream that is in controversy here.

A It is not

Q How far would you say the Rock Creek was from the ~~filed~~ fields he wanted to irrigate/

A It skirted right along side of the fields

Q Right along side, The water impounded on the unnamed stream you say was 1000 feet away?

A That's right

Q Now, subsequent to July 20 when you started irrigating did you make any inspection and observation as to whether Mr. Hornecker was actually using water from this unnamed stream?

A You mean before I put in application.

Q No. I said beginning with July 20 when you commenced to use the water did you make any observation as to whether Mr. Hornecker made any use of the water?

A He did not make any use of the water.

Q Did you keep his activities under observation ?

A Yes, I did

Q From what period?

A From July 20 the time that I started to irrigate I kept goind down there, if I didn't go every day, it was every other day and kept looking to see if he was using the water because at one time the watermaster told me that at any time he started to use the water I would have to quit and I kept watching to see if he didn't use the water and he didn't.

Q On those trips down there did you make any notes or memoranda of what you observed?

A Oh, yes.

Q Do you have those with you?

A Yes

Q Did you make those yourself in your own handwriting?

A I did

Q And at ^{or} about the time you observed?

A I did

Q You may use that to refresh your memory not to read from it but to refresh your memory.

I will ask you. On July 20 you said you began irrigating night and day?

A Yes

Q And then continued until August 10 when you were stopped by Mr. Berget?

A Yes

Q What did Mr. Hornecker have there in the way of equipment on August 10 the day that you were stopped by Mr. Berget?

A On August 10 he had a four cylinder gas engine, about 400 feet of pipe and 8 sprinklers set upon the unnamed stream or upon the pond. The pond is filled from the unnamed stream. Sturgis (?) What was that date please

Q August 10. He stated that Mr. Hornecker had a four cylinder gas engine, centrifugal pump, 400 feet of pipe and 8 sprinklers. What size was that pipe?

A 3 inch

Q 3 inch pipe; it might have been one joint of four inch near the pump, I do not know.

Q That was 400 feet

A About yes

Q Would that reach the tillable land of Mr. Hornecker's?

A Oh, no it just reached out into the woods a little ways.

Q Now, how long did that equipment stay there?

A OHHHH

Q You can refer to your notes there if you care to Mr. Merrill

A Until August 16

Q Well now did he use that pump and sprinklers and pipe during that period between the 10th and 16th of August, or was it just sitting there?

A It was just sitting there most of the time but he had it going one day when I was there. The rest of the time it just set there in the woods.

Q Did you observe that situation every day between Aug. 10 and 16?

A Yes I did.

Q And all the equipment was there was a maximum of 400 feet and it was being operated one day.

A Well that's all I saw it operated

Q yes

A If it was there at night, I wouldn't know because I didn't go down at night time

Q Now, that was on the 16th of August, how long did that equipment remain there?

A Until the 16th of August

Q Then what happened to it?

A Well, on the 17th Mr. Berget came out to my place and I asked him to go with me ~~s~~ to see if he could find the equipment because the equipment was gone. Mr. Berget

Q~~s~~ Gone from where?

A Gone from the pond on the unnamed stream; it had been removed but Mr. Berget said he would later on in the day. I never asked Mr. Berget if he did go down but Mr. Williams and I went down and the equipment was no where to be found any place around the unnamed stream.

Q Did you finally locate it?

A Well, I did on the 19th this same equipment had been set up on Rock Creek and 15 or 16 sprinklers were going from Rock Creek.

Q You ^{say} same this is the same equipment that is his pump and gas engine, and pipe that had been on the unnamed stream between the 10 and 17 of August. You found these being used on Rock Creek on the 19th of Aug.

A That's right.

Q How long did that equipment remain at Rock Creek?

A. Until August 27

Q August 20 through 27th?

A That's right

Q That equipment was still set up at Rock Creek?

A That's right.

Q And being used?

A Yes

Q What happened after that~~?~~ that you observed?

A On August 30 the pipe was removed with the equipment and strung through the woods from the pond up to the upper field.

Q The pipe was?

A The pipe was

Q What about the pump

A The pump didn't come.

Q What about the gas engine?

A It didn't come either

Q That was on August 30th?

A Yes

Q Alright, what happened after that?

A Well, from Aug 30 to Sept. 23 there was no change. The pipe was still through the woods. The engine and pump wasn't connected up until, that is not before the 23rd.

Q What happened after the 23rd of Sept?

A On the 24 he had his engine pump set up on the pond and he had about 15 sprinklers going on the upper field a few hours on the 24th.

Q And how large is that upper field?

A I don't know how large the upper field is but the part the sprinklers were going on would probably contain about one acre of ground.

Q And how large or did you know how large was the main field or lower field that he was irrigating?

A I really don't know but offhand I think there was 10 or 15 acres.

Q Now you say that was on Sept 24th?

A Yes

Q He had 15 sprinklers going for a few hours on the 24th on the upper field?

A That's right.

Q What use did he put to the waters of the unnamed stream after September 24th?

A None

Q None at all?

A None at all.

Q When were the sprinklers removed?

A On the 25th. No sprinkling was done on the 25th. The pipe came to a dead end, and the sprinklers had all been removed from the field on the 26th. There was no sprinkling on the 27th. The engine and pump and pipeline were all removed by the 28th.

Q What happened to the pipe and the pump after the 28th of Sept?

A He put them up on Rock Creek again and used them on his upper field.

Q When did he remove the pipe from the unnamed stream?

A Well, on the 28 the pump and pipeline had all been removed. He might have done it the day before because as I say I didn't go every day but maybe every other day and sometimes every day.

Q Well, now you say that all this equipment was removed on Sept 28th?

A Yes

Q Has it ever been brought back since?

A No, not to the unnamed stream.

Q So that your testimony covers the period from July 20, 1953 until the present time?

A That's right.

Q And you claim that during that time he used the water of the unnamed stream on one day only.

A. On one day only, other than as I said on the 10th he had about 400 feet set up there in the woods which wasn't for beneficial purposes unless it was to test his pump out and I don't know why he had it that way.

Q The pipe didn't reach any field?

A No

Q What about the condition of his dam? Is it serviceable? dam for the purpose for which it was built?

A Well, it would hold some water back but it probably wouldn't hold more than half the flow of the flow at that time of the year. At that time of the year the water is rather low. There is not too much flow anyway and I would estimate that about half the water was going thru the rocks. The dam is made of broken up concrete and stuff like that, then the dirt fixed over it and you can see all thru the crevices of the rock where the water keeps pouring thru all the time. It doesn't retain more than about half of the water.

Q In other words his dam was built in such a way it wouldn't impound but about half of the normal flow of the unnamed stream.

A Yes

Q And the other half go to waste?

A Yes

Q I think..... quiet

~~By Francis Sturgis of Mr. Hornsaker~~

DID NOT BRING OUT ANY NEW POINTS BUT MERELY

CROSS EXAM

Except flow of water & question as to condition of dam.
corroborated CORROBORATED PREVIOUS TESTIMONY

Q Sturgis: Mr. Merrill, you say that he was losing half of the water. What do you mean by that?

A I said about half of the normal flow of the water at that time of year wouldn't

On Cross Exam. Mr. Merrill testified as follows.

His equipment was

2 HP motor

Centrifugal pump. 50 gpm rated capacity

8 - 8 gpm Sprinklers

Sufficient pipe to cover his land.

When operated took essentially the entire flow of the stream.

He stated the quantity he diverted, could be figured from his sprinklers but with the pump listed this could not be true that the sprinklers would be delivering the design capacity.

Probable max flow of about 50 gpm. (slightly over)

STATE OF OREGON

CHAS. E. STRICKLIN, STATE ENGINEER
SECRETARY
STATE RECLAMATION COMMISSION
HYDROELECTRIC COMMISSION OF OREGON

OFFICE OF THE
STATE ENGINEER
WATER RESOURCES DEPARTMENT
SALEM

ADDRESS ALL COMMUNICATIONS
CHAS. E. STRICKLIN, STATE ENGINEER
SALEM, OREGON

AND REFER TO
FILE NO. _____

Gentlemen:

Section 116-447, Oregon Compiled Laws Annotated, reads as follows: "The owner of an approved application or permit to use water under this act shall annually, after the date of such application, furnish the state engineer with a detailed report of the work done, a log of wells drilled, characteristics of the underground supply, elevation of water, amount and time of use of water, and manner of utilization."

It appears that many wells exist where no provision has been made to determine the elevation of the water surface, which essential information is required by law to be furnished to the State Engineer for the protection of the water right.

Unless your well is equipped with an access port, it is respectfully urged that you install one so that the elevation of the water surface can be determined. Enclosed herewith is a sketch showing different ways of installing access ports, one of which may be adopted for your well.

It is also requested that, if possible, you set a permanent bench mark with elevation inscribed thereon, at the well.

Very truly yours,

Chas. E. Stricklin

CHAS. E. STRICKLIN
State Engineer

NEW WITNESS: DIRECT EXAM OF ARLEIGHT BERGET BY JOHN HAL

Q What is your name??

A Arleight Berget

Q Your occupation?

A Teacher

Q Where do you teach school?

A Forest Grove, Oregon

Q Do you have any other occupation other than being a teacher at Forest Grove?

A Yes, in the summer I am watermaster of District 17

Q Under appointment of the State Engineer of the State of Oregon?

A That is right.

Q Are you familiar with property owned by Mr. Hornecker⁷ and Mr. Merrill?

A Yes

Q Are both of those properties within the jurisdiction of District No. 17?

A They are

Q Did you have occasion at all during the year of 1953 Mr. Berget to inspect the land of either Mr. H. or Mr. Mr.?

A Yes, I did

Q How did it happen that you made such an inspection?

A I am not sure how it came about the first time but I think Mr. H. Wanted to have me look at his set-up the first time I came out.

Q Do you recall when that was? the date approximately?

A In the diary I have kept I have the date as June 26 as the first day I went out to the property, apparently that was the date.

Q That was Mr. H? property?

A Yes

Q What did you find out there at that time?

A He showed me his farm and explained to me what he wanted to do when I went by on that day.

Q When did you first have occasion to inspect the property of either of these individuals in connect~~ed~~on with Mr. Merrill?

A I have here June 30 that I went over to both places and talked with both men in going

over some sort of a problem so apparently that was the first time anything was brought up about it.

Q And what did you observe thereon June 30 as to whether or not Mr. H. was using the waters of the unnamed stream for irrigation purposes?

A He wasn't using the water for irrigation.

Q That was on June 30th?

A Yes

Q When was the first time at all you saw any equipment set up on the unnamed stream for the purpose of irrigating Mr. H field?

A I don't believe that at any time I was out there in the summer there was any pump set up on this unnamed stream; I mean any of the times I was out there.

Q Now what times were you out there Mr. B after (Withdrawn)

Mr. M. Has testified from direct examination that you stopped him from use of the water on August 10th.

A Yes

Q Is that correct?

A I was looking over my diary and I had it as August 12th but it was a date pretty close to Aug 10.

Q But you actually advised him that he could not use the water?

A Yes

Q Without a permit?

A That's right.

Q Subsequent to Aug. 10 or 12 whichever date is appropriate, how many times were on Mr. H's property?

A 4 times, I was on there on June 26, 30th, July 29 and 30th.

Q On any of those occasions did you observe any equipment set upon this unnamed stream for the purpose of irrigating Mr. H's land?

A I really am not sure if Mr. H. had any pipe; I can't remember now but I am practically positive that I didn't see any pipe and I am positive that I didn't see a pump there.

Q That would be on any of the occasions that you visited the property after Aug 10?

A Yes

Sturgis: Excuse, me, I don't think that the witness has testified that he visited the property after the 10th.

Q That's right, it had been before, hadn't it?

A That, that we had been talking about was before Aug 10.

Q Well, I asked you if you had made any visits to the place after Aug 10.

A Oh, I answered that I was out there before Aug 10. After Aug 10 I was out there on Aug 12 and 17.

Q Relative to these dates did you notice any equipment set up on the unnamed stream for the purpose of irrigation on Mr. H's property?

A No, I never saw a pump set up there.

Q Altogether you were out there during the summer about 6 times?

A Yes, about 6 times.

Q Did you have any occasion to observe whether or not on any of those occasions if there was any evidence that Mr. H's stock was being watered at this unnamed stream?

A I went down to observe that one day and

Sgurgis: May I ask when?

A I am not sure of the date. It was the day Mr. M. asked me to come down but I am not sure when the date was. It was one of the six ~~dates~~ days.

Q On any of these 6 days did you observe that the unnamed stream had been used for the purpose of watering the stock?

A No

Q If the stock had been watered there, would there have been some evidence?

A I believe there would have been, a path down to the water.

Q Were you on Rock Cr. where it goes thru Mr. H's property?

A Yes

Q Did you observe any evidence whether the stock had been using the water from Rock Cr?

A Yes, there were trails right down to the water's edge.

Q But not on the unnamed stream?

A Not on the unnamed stream.

Q That it all

CROSS EXAM OF MR. BERGET BY MR. STURGIS

By John Hall of David Williams

Q Your name is David Williams?

A Yes

Q And where do you reside?

A Route 2, Box 273 .

Q And is that close to where Mr. M resides?

A Right close to it

Q And is it also close where Mr. H. resides?

A Right between the two

Q And you are acquainted with both Mr. M. and Mr. H?

A Yes

Q And how long have you lived out there, Mr. Williams?

A About 8 years.

Q What kind of a place do you have, farming place? residence

A Farming place and residence.

Q How many acres do you have?

A I have between 4 and 5 acres.

Q Does your property adjoin that of Mr. M?

A Yes

Q Does it also adjoin Mr. H's?

A Yes

Q In other words you are right in the middle. Did you have occasion last summer at any time to go on the property of either Mr. H or Mr. M to observe what was being done in the way of irrigation?

A Yes

Q Do you know when Mr. M. used the waters of the unnamed stream for irrigation purposes?

A Yes, in the latter part of July on.

Q And do you know how long he used it?

A About three weeks probably somewhere in that neighborhood.

Q Mr. M testified that between approximately July 20 & Aug 10. Is that correct?

A Yes

Q Did Mr. M use the water after that?

A No How's that?

Q For irrigation purposes?

A Who

Q Mr. M.

A No

Q Now after Mr. M ceased the use of the water on Aug 10 did you observe whether or not Mr. H reservoir was full.

A Yes, well it was about as full as it could be. As far as I could see.
after Aug 10

Q And was there sufficient water in Mr. H's reservoir to use the water for irrigation purposes?

A For a small amount of irrigation, ^{a certain amount of irrigation}/yes

Q And would that be true as to watering the stock. Was there water enough in the unnamed stream ~~after Aug 10?~~ & res. after Aug 10 to water the stock?

A And irrigate, too

Q No

A Just water his stock, yes

Q But you also testified that there was sufficient water to do some irrigating.

A Some, yes

Q Did you ever observe whether or not Mr. H's cattle or horses had been using the unnamed stream for watering purposes?

A I never saw any trails down there; I never saw the stock down there/ to drink.

Q Did you ever see them drink any place else?

A I saw them drinking out of Rock Cr.

Q Were there trails leading to Rock Cr?

A Yes, several.

Q Were there any trails leading directly to the unnamed stream that were ^{used} ~~made~~-by cattle or horses?

A No, not that I know of on the property.

Q What use of the waters of the unn. cr did Mr. H. make after Aug 10 when Mr. M quit using the water? What use did he make of the water, Mr. H.

A He had, I don't know, a number of sprinklers. ~~There~~ were some from this unn stream ; I don't know how much he used it.

Q I don't mean how much water he used. How many times did he use the water to sprinkle after Aug 10?

A I saw the sprinklers working about one day , that was taking water from the unn. crick.

Q And the rest of the time it was not being used?

A No

Q Did you ever see any pump or gas engine at the unn stream that was not being used for irrigation purposes?

A Yes, I saw it sitting there. It wasn't working when I saw it.

Q How many times did you observe the conditions there after Aug 10 and up to say the 1st of oct?

A You mean from the unn. stream.

Q The unn. stream.

A I don't think I was down to the unn stream only once or twice after that.

Q After what?

A After

Q After August 10?

A After Aug. 10.

Q You say it was between Aut. 10 and Sept ~~12~~ 23 how many times do you think you were down by the unn. stream?

A ?

Q Did you make any memorandum at the ?

A Yes

Q Did you make a memorandum at the time you were there?

A On Aug. 10 I was down there once and Aug 16 I went down.

Q What occurred there on the 16th?

A It had been moved. The equipment had been taken ~~away~~ from the unn. stream then.

Q The equipment, you mean the gas engine and the pump?

A yes

Q When was the next time you were down there?

A On 17th

Q 17th of Aug?

A Yes

Q What was the situation then?

A I didn't find any pump or equipment down there.

Q When was the next time you were down there?

A the 19th, Aug 19th

Q What did you find on the 19th?

A The equipment had been taken out and set upon Rock Crick.

Q And was the water being used from Rock Cr?

A It was being used from Rock Cr.

Q To irrigate the field?

A lower field

Q Lower field? Alright, when was the next date you were down there?

A Aug. 27, I think

Q And what did you find around the 27th?

A The equipment was still on Rock Cr.

Q O.K. And not on the unn stream?

A Not on the unn. stream.

Q Were you down there after that?

A On the 30th

Q What did you find on the 30th?

A The pipe had been run up thru the woods. The water was^{n't} being used, No, I don't think it was being used then.

Q Was there any pump there on the 30th?

A No

Q No engine or pump. And the pipe that was strung thru the woods was it sufficient length to reach his fields?

A No

Q And no engine or no pump?

A No engine or no pump.

Q Alright that was 30 of Aug., were you there again after that date?

A Sept. 24.

Q Sept. 24. What did you find on Sept 24th?

A The water was being used from the unn stream.

Q That was on Sept 24 and was that the only time you have ever seen water being used from the unn stream by Mr. H?

A Yes

Q How long did he use it ~~on Sept-24?~~ commencing Sept 24?

A Not over 1 day.

Q Did you have occasion to observe the situation after Sept 24?

A The sprinklers were taken off the pipe down that way on the 26th.

Q On the 26th the sprinklers and pipes were removed?

A Yes

Q The 26th of Sept. Were you there after the 26th?Sept???

A 27th No

Q That was your last?

A That was on the 28th of Sept.

Q On the 28 of Sept.

A mmmmm

Q What did you observe on the 28th?

A Some pipe and all the equipment was moved out and set up on Rock Cr., a different part of Rock Cr. then it has been before.

Q Was Mr. H. using the waters of Rock Cr on 28 for purpose of ~~irrigation?~~ sprinkling?

A Yes

Q He was using it for sprinkling purposes?

A

Q Did you make any observation after 28 of Sept?

A On the 29th I was down there and there was several peices of irrigation pipe that was just laying there. It was just laying there and not being used that's all, no pump there.

Q And that was on the 29th?

A 29th

Q Is that the last time you observed the situation?

A Yes

Q You testified that on the 10, 16, 17, 18, 19 27 and 30 of Aug. and Sept. 24, 26, 28 and 29 that you observed the conditions there and as I understand it there was only one day during that period that Mr. H used the waters of the unn stream.

A of th~~e~~ unn. stream

Q That is all. We have no further testimony at this time. We may have a rebuttle later, ~~I don't~~ know.

Mr. Wm. Coffield of the SCS, Hillsboro, and has been employed by that office for one year testified in behalf of Mr. H. to the ffect that ~~there was insignificant~~ seepage thru the dam/and that although he knew the land was irrigated he did not know from what sources.

DIRECT EXAMINATION

Thomas Southwell by Francis Sturgis

Q Your name is Thomas Southwell?

A Yes

Q And by whom are you employed?

A ~~Geep~~ Tualatin Valley Coop.

Q In connedtion with your work with the Tualatin Valley Coop you have had occasion to meet Mr. and Mrs. H? And have you had occasion to be on their place?

A Yes sir

Q What was your occasion of your becoming acquainted with or meeting the H's?

A I was asked out to ~~help give them help for irrigation~~ get an estimate for irrigation on their place

Q You meanfor an irrigation system.

A Yes

Q And did you give them an estimate?

A Yes

Q And didyour company later sell them an irrigation system?

A We sold them a partial system and the entire estimate wasn't sold to him . We have record of what was sold. I failed to bring my original estimate on it.

Q Well, Tom, I think as far as our purposes here are concerned you sold him the equipment which he ordered.

A. Yes

Q And ~~what~~ wanted.

A Yes

Q When was that equipment delivered?

A It was delivered , the first/^{amount}was delivered Aug. 11

Q August 11

A And laid out and started to operate

Q What was that last? You said the first equipment was delivered Aug. 11

A Aug. 11 and we laid it out that day and started it to operating

Wheeler: Was that 1953?

A 1953

Q Where was that equipment set up on Aug 11, Tom?

A It set set up on something out of the pond on..
that would be the east side of the pond I believe.

Q In other words on the field side of the pond. Would that be correct?

A On the field side, yes.

Q Now the pond ~~where~~ you are referring to is what is also referred to as the reservoir?

A Yes

Q That was on Aug 11 you set it up then and started operating. And then were you back there?
Yes

A ~~That's right~~, I was back there again on Aug 17.

Q On Aug. 17

A And delivered some more irrigation equipment ^{to} ~~at for~~ the company.

Q You were back there on 17th.

Q On the 17th Tom, where was the irrigation equipment?

A I believe it was on the I couldn't swear to that because I was in another field/
on the farm.

Q You were in another field?

A Let's say, I assumed it was going to be attached to the previous system that I delivered.

Q Well, now let me ask you this, Tom? When you come down on the highway to into Hermans place, if the irrigation system had been down in the bottom there along Rock Cr. You could have readily seen it, could you not?

A Well I would say that I would have been able to have seen it but I ~~wouldn't~~ wasn't on Rock Cr. Let's say if it was between H's road and his house

Q That's what I mean.

A I would have been able to have seen it and I undoubtedly would have noticed it.

Q And it was not in that area?

** Now you took

.. Wait a minute now, the witness didn't say that

Q Then did you have any occasion to go back on any other occasion during the irrigation season?

A I went back once to get the irrigation pump.

Q When was that, do you know?

A I couldn't tell you that. the date. It was It could have been most any time after Aug 17 between then and ...

Q What was the purpose of going back for the pump and motor, Tom/
pump uh motor

A The ~~meter was~~ pump was using excessive oil and Herman didn't feel it was operating satisfactorily/ because I was renting the pump to him as the invoices say. Herman was to pay the upkeep on it while he had it and then he was to pay the rent to the Tualatin Valley Coop. for the use of the pump.

Q You brought the pump back in?

A Yes, and set it on the shelf.

Q Did you later return it when it was repaired?

A No, I sent one of the boys out with it.

Q That is alllll

CROSS EXAM BY JOHN HALL

Q Mr. Southwell, what was the nature of this equipment that you sold or furnished to Mr. H. on 11th of Aug?

A the pump?

Q No, the nature of it, what was it?

A. 3" aluminum pipe

Q How much of that did you deliver?

A 320' of 3" aluminum tubing; 40' of 4" aluminum tubing, 8 sprinklers rainbird.

Q You delivered a total of 360 feet of pipe?

A Yes sir

Q And did you at any time deliver him any more pipe than that?

A Yes sir on Aug. 17 I had occasion to be there and delivered 240' of 3" pipe and 80' of 4".

Q Or a total of 680' altogether, 360' on Aug. 11; 320' on Aug 17

ARGUMENT OMITTED

A That's correct

Q On the 11th when you went down there you said that you set this equipment up.

A Yes

Q At the pond on this unnamed stream?

A At the pond; I don't know what the name of it is

Q It doesn't have any but we call it an unnamed stream. Yousset your pump at and your gas engine up there at the side of the pond.

A Yes

Q And where did you run the pipe? 360' of it

We run it into this

A ~~360' to the end of this~~ bottom area bordering the pond there .

Q And would you say it was suitable pasture land?

A Possibly

Q Was there any crops growing on there? this particular area?

A No

Q As a matter of fact you just ran it down there, didn't you to test the system ?

start

A No Mr. H asked us to ~~set~~ it up and irrigate there as at that time it was dry. He wanted to irrigate that so he could disc it up and seed it.

Q How big a piece of land was that?

A I didn't measure it.

Q I know you didn't measure it I am just asking you to estimate whether it is 1 acre or 15.

A Possibly some light brush on some of it, could irrigate maybe 4 or 5 acres.

Q Rather brushy land, wasn't it?

A Yes, some of it was brush.

Q It wasn't like his alfalfa field, you are familiar. How far would you say the main alfalfa and other fields were from this stream? Would you say 1000 ft?

A I don't remember exactly but it was about that.

DIRECT EXAMINATION

Hornecker by Francis Sturgis

Q You are Herman R. Hornecker?

A Yes

Q Herman, you are the holder of Res. Permit No. R-950.

A I am

Q And water right permit No. ~~188502~~ 18494?

A I am

Q When did you first start the use of water on your property ^{pursuant to} ~~under~~ these permits?

A Fall of 1952.

Q The Fall of '52.

A Yes

Q Summer and Fall?

A Along towards Aug and Sept., in there

Q Now, then during the year of 1952 what system did you use for irrigation?

A I used gasoline motor and centrifugal pump and sprinklers, about 6 ~~to~~ 7 gpm sprinklers

Q Was that the system that you procured from the Tualatin Valley Coop?

A No

Q That was another system ?

A That was another system

Q How many feet of line do you have, irrigation pipe?

A Right now I have the figures that Mr. Southwell has but I used a lot of additional pipe.

Q How much of the additional?

A 18 sections of 30" pipe in one batch.

Q 30" or 3"

A 3"

Q How long are the sections?

A 30'

Q 30'? Alright and what else?

A Then I used about ~~2001~~ 800' of 2" lateral line with rainbird.

Q Does the 18 sections that you used plus the pipe that you procured from Mr. or from the Tualatin Valley Coop? Does that cover any part of your place from the pond?

A The 18 sections counting 2 sections of 4" pipe took from a pond directly up in the woods to the alfalfa field then used my new 3" pipe on the alfalfa out a ways and then I hooked the 2" lateral line and went down the alfalfa field up to the tract close to the house, with ~~the-other~~ two lateral lines.

Q Now Mr. H. when did you start irrigating? in the season of 1953?

A Around the..

Q When was the date that Mr. Southwell brought out the pump there? and delivered it? I

I believe he stated that was Aug 11.

A That is when I started irrigating.

Q Did you have any need for irrigation prior to that time?

A I did.

Q What was the hold-up? Why didn't you start until Aug 11?

A ~~The reason was that the week before that they had trouble~~

One reason we ordered it weeks before that but they had trouble of..... it or getting it up.

And then there wasn't water coming down but he said he's bring it out anyway. Mr Berget said that when we had the pump set up that he would see that the water come down.

Q You got the pump set up on the 11th?

A I did

Q And is that when you Notified Mr. Berget?

A I notified Mr. Berget a day or so before that; I notified him that the ~~p~~ pump would definitely be set up that day and be running.

Q How long prior to that time had there been no water coming down?

A I don't know exactly how long but it was long enough that the pond got stagnant and

the horses would not go in there and drink.

Q Now then there has been some testimony there that there is a lot of places along Rock Cr. where horses drink. What are the facts in respect to that?

A There is one place, the big bottom was fenced off and there is one place along that between there and the pond that the horses could get but they have to slide down 3 foot over a bank into the stream to get water.

Q What is the nature of the bottom of Rock Cr. in respect to...

A Soft they go clear up to the knees.

Q How many horses do you have?

A We had 26 head to water there.

Q Now those are riding horses?

A Riding horses.

Q ~~And do you maintain~~

.....

start
Q How many times did you irrigate your land that is subject to irrigation under your permit this last summer?

A How many times did I water all of it?

Q ~~MMMMMM~~ Yes

A I watered where they took the pump up and I watered the big bottom, the bottom referred to as 15 acres and I water the up land, the alfalfa up above and that field once. And I watered that bottom below, I watered it ^{twice} /part one time and ^{watered it complete} /part the next.

Q Was that sufficient for the forage crops you had growing there?

A It was for that time of the year.

Q Could you have watered your land when you were ready to irrigate it when it needed it? Could you have irrigated it out of the pond? Was there ample water in your res to take care of it?

A No

Q When ~~you~~ did you discover that the water in your pond was insufficient?

When
A We set up the pump, you mean for irrigation.

stop
Q Yes

Q We set up the pump and watered for $3\frac{1}{2}$ hours and it failed to fill up, in any time at all.

Then I asked the watermaster and I was permitted to do further .

Q Well, you asked the watermaster then what?

A If I could go and water from the crick?

Q What did he tell you?

A He said to go ahead and water from the creek.

Q And that was when there was no water coming down to supply your needs in the res?

A That's right.

Q And then you set up on the creek, where did you set up, Herman?

A I set it up on the west end of the bottom

Q On the west end of the bottom?

A The big bottom west of the reservoir.

Q Now then the record can't know how far one point is from another. How far from your res was it to where you set up your pump down on Rock Cr after the Wm told you you could ?

A I'd say it was approximately 1400 or 1500 feet.

Q 1400 or 1500 feet from your reservoir?

A From the res.

Q How long did you pump from that set up?

A I don't know exactly. We pumped there for a couple, several days up there to cover that whole field, running about 14 to 15 rainbirds to a set.

Q Now that was when you were irrigating the 16 acres of bottom land.

A That's right

Q Did you change your set to irrigate the alfalfa field?

A We changed the set back and irrigated from the pond where I got this additional pipe and run it up thru the woods, run it up to the alfalfa field and we irrigated the alfalfa field and the ladino rye grass field that is up above the Market road.
on the 17th

Q Now you got that additional pipe is that correct?

A Later than that to get all the additional pipe laid that I gathered up.

Q I see. Then when did you. The first time you irrigated from Rock Cr. now in the season of '53 was when there was not water in the res. to take care of it and the WM said you could take it out of Rock Cr. Is that correct?

A Yes

step
Q Now then, after you had set in Rock Creek you then moved your irrigation plant back to the res.?

A I did

Q And irrigated out of the res again?

A I did

Q Did your res then go dry or get down again?

A Our res held up fair; we irrigated after that one day, then we irrigated on the next day to make the ^{set} ~~7th~~ until we finished that part of the fild up above but there was more water coming in.

Q Now did you then make any other uses of the waters of Rock Cr?

A Yes

Q And when was that?

A It was a piece of the alfalfa field up towards the house. And that was later I don't remember the exact date. But we irrigated from the crick up to the house right in the open right down by the tree.

Q Was that the irrigation to complete the ~~the~~

step
A Complete coverage of my land.

Q Now then Herman did you ever use water out of Rock Cr for irrigation purposes at any time other than these 2 times when the WM gave you permission to?

A No, I haven't.

Q And since the time you filed your res permit all of your irrigation last year was out of your res?

A It was

Q Was there any time ^{in 1952} ~~last year~~ when there was any insufficient water for irrigating you needed to do on your crop there on that place?

A-Yes Say that again

~~Above Q repeated~~

A Yes there was . We irrigated and there was very little water coming in or going over after we irrigated that out.

Q After you irrigated?

A After we irrigated from the pond there was no water

Q Now ~~what-is~~ it isn't feasible for you with your riding horses there, Herman to water them out of Rock Cr?

A No, Not during the summer at all

Q And that is the reason for that, is the steepness of the banks and mire in the bottom.

A From the time we ~~made~~, didn't have so much irrigation most places there was a 3' drop a 4' drop and deeper

~~but dropping deeper~~ from the banks down in. In places where horses naturally go which I can show used to be a hole and it has been filled in with silt and a horse will not go into a place like that and drink even if it is a gradual bank when the hold is filled with silt. That makes it a limited trough where the horses can possibly drink any where around the stream.

Q Now there is a charge in this protest, herman that every since you filed your original application you have used the waters of Rock Cr exclusively for irrigation, domestic and stock purposes. Have you ever used the waters of Rock Cr for domestic purposes or stock purposes or irrigation excepting the 2 times you have mentioned here and when your horses had occasionally gone down to the miry places to get water?

A ~~Q~~ They drank at it before but I never irrigated out of it.

Q You have never irrigated out of it?

A No

Q And do you use any of the waters of Rock Cr for domestic purposes in your house?

A No, absolutely not.

Q How do you secure your house water?

A From a pump in the well.

Q You have a pump and well?

A I do

Q And that is the same pump and well you had to use to water your horses last summer?

A I do and there is a limited amount there.

Q I think you may....

CROSS EXAM OF HORNECKER BY JOHN HALL OMITTED

DIRECT ~~8988~~ EXAM OF HORNECKER BY STURGIS

Q Herman, there is also a charge here that your dam is not satisfactory and that it leaks, Half of the flow of the stream comes into it, this unnamed stream. What are the facts in respect to that?

A That dam is put in, a concrete spillway where the boards slide in on the gates to hold the water. The beavers have moved in this last summer and this last spring for the last 2 years and sealed the pipe so the water has to go over the top of the dam when the dam is full enough if there is any over and very little has went around or anywhere around the boards of the spillway.

Q Did you put in a weir to test the amount of overflow on that dam?

A I did. The State W.M. had me put in a weir ~~and test~~ below and test how much water was coming down below and going over.

Q Did you make a test of it?

A I did

Q And what were the dimensions

A I... $\frac{3}{4}$ of an inch down in this weir board and there was $\frac{1}{2}$ inch of water scarcely a $\frac{1}{2}$ " ~~3/4~~ $\frac{3}{4}$ of an inch long going over that pond from that whole dam.

Q Now is that just pressure or was it?

A That was just the gradual dwindling overflow, no pressure.

Q And that was down below the dam, down below the outlet and the overflow so that you got everything that was leaving the dam

Q Was the test made when Mr. Merrill was using the water or later? A Both

Q On the later test was the flow any greater?

A No later on after we pumped and the water was turned loose the water increased greatly.

Q You mean after he had turned the water loose?

A Everything was turned loose and the water come natural.

Q I guess that's all

CROSS EXAM BY HALL

Q I would like to inquire just briefly about the condition of this so called lower field. Isn't it a fact Mr. Hornecker, that you set up your equipment there on Aug 11 and watered that lower field primarily for the purpose of testing out your sprinkling system?

A It was that lower field for it to be worked up and put into cover crops.

Q Or pasture?

A Yes

Q How large is it in area?

A About, oh the strip was about say about 450, or 500 ' long and runs about 70 to 80' wide.

Q About half an acre then?

A Oh, more than that there is a whole ~~strip~~ strip down further that is just a little spot of brush here and there and I don't know ~~what~~ exactly how much land is all covered but that is what we irrigated.

Q There is brush and trees on it, isn't there?

A No, just brush and clear land.

Q Well it would have to take quite a bit of cultivating to put it into condition to raise crops?

A It had been worked once before.

Q How long did you water down there on Aug 11?

A We watered from, after I set the pump in, ~~from~~ for about $3\frac{1}{2}$ hours.

Q And do you feel that watering the field at that are for $3\frac{1}{2}$ hours would be sufficient water to put in in shape to cultivate it?

A If you, you can cultivate it if it's soaked up, yes.

Q Well in Aug. it was pretty dry out there wasn't it?

A It depends on the condition of your ~~filed~~ field that you irrigate.

Q But I am talking about this particular field? It was dry wasn't it?

A It was dry but not so awfully dry as some of the ground.

Q How much penetration would $3\frac{1}{2}$ hrs. of light sprinkling

A I don't know; I didn't take it down.

Q It wouldn't penetrate an inch, would it?

A It penetrates far enough to work it if you throw enough water on it, and it absorbs in and didn't run off.

Q That's all.

Sturgis to Herman

Brink Hillsboro

6 Start

Merrill start use
July 20th Sprinkler

No Spillway on Hornecker Bx.

Stopped Aug 10 by W.M.
12 min.

Washed 22.5" from July 20 on
Hornecker use.

August 10 pipe, pump Sprinkler

4 gal. gal. 8 Sprinkler ^{not} pump.

3" pipe about 400' & would
not reach land from pond.

Pipe there to Aug 16 & used 1 day only
16th

Aug 17th same equip. on Rock creek
several sprinklers being used,
through 27th 27"

Aug. 30 pipe from pond to
field no pump or eng. no change
through Sept. 23

9/24 Engine & pump on pond;
15 sprinklers on upper field
feet higher.

No more use from unnamed
stream

26th all equip gone
by 28th back on Rock Creek

37. Cross ex.

54. New witness

Mr. Berget no use at our time
he was there from Unnamed St.
by Hornecker.

Use 26
16th 27
16th 30

Aug 12
17 No use or equip.
pump.

No stock trails on unnamed
Stream along on Rock Cr.
No believed used for stock,
believe in July

Side 2 start after dinner

David Williams

Reside between Horner
& Merrill for 8 yrs.
4 acre farm, along both.
Observed Horner irrig.
after 10 P.M. fall

Sprinkled from stream on road
1 day only, 7-8 min

Phone

Aug 10
16 No equip.
19 Equip on Rock Cr

Aug 27. Equip on Rock Mt on
Stream

Aug 30. pipe at stream but won't
reach field.

Sept 26 1 day, only use
26 pipe & sprinklers removed.
28 Equip on Rock Cr, & used
29

O.P. Merrill
Arthur Beget
Dave Williams.

Contestants
Mr. Coffield.

William S.C.S.
Hillsboro

1 yr the area

OSC, 1947
Farm Management, by teaching.

Thomas Southwell
Tualatin Valley Coop.

SCS Use dam as base.
insignificant seepage.
April through June 26
Doesn't know where water was
coming from.

Thomas Southwell
sold equiv.

Aug 11, 1953 Relined to equip.
Field,
pumping from pond. E side,
Aug. 17, Back

Went after pump & motor later to
get pump & motor & check.
Repaired & returned.

Aug 11 3" 40' section 220'
4" 40'
8 sprinklers

Aug 17 3" 240'

80' 4"

Satur Aug 11 on pond.
bottom area bordering pond,
possible pasture no crop,
est. 34 acres brushy land.

est. 1000' from pond to alfalfa
field river road.

Horned Lark Swainson
not recorded

August 1952 still in
One motor & centrifugal pump

18 sat 3" 30'

800' 2" lateral line

used by pump, by bottom &
alfalfa.

3 1/2 hrs. dug up pond.

Alfalfa & Ryegrass from
pond, after 17th

Upper field from pond later

Test small receiver

$\frac{1}{2}$ " deep $\frac{3}{4}$ " wide $\frac{1}{2}$ " wide

borrowed 18" ³

52 motor

without Little Meadow
bottom strip by
pond.

52.

Lower field by pond.

& Alfalfa & Ryegrass.

500 x 70

Mr. Prior Schaffs.

Coffman 2" lateral
River Road.

Washington Co

August 26, 1953

217

Mr. John M. Hall
Attorney at Law
Yeon Building
Portland 4, Oregon

Dear Governor:

This will acknowledge receipt of your letter of August 25th and it will be perfectly proper and legal should Mr. Herman Hornecker make application for an extension of time, for the State Engineer to hold a hearing in order to obtain information for use in determining whether Mr. Hornecker has used reasonable diligence in perfecting his right under Application No. R-23261, Permit No. R-950 and Application No. 23430, Permit No. 18494. If such an application is filed, you will be advised and a time will be set satisfactory to both parties for hearing upon this matter.

Please be advised that Mr. O. R. Merrill's application is being approved and permit issued. Mr. Merrill should receive this permit within the next two or three weeks.

Mr. Merrill's permit will be issued subject to existing rights and he would only be entitled to use the surplus water or water not required to supply existing rights. This would be not only true of the unnamed stream upon which the application is made, but also, the main stream to which this unnamed stream is tributary.

Very truly yours,

CHAS. E. STRICKLIN
State Engineer

CES:VC
cc - Mr. O. R. Merrill

JOHN H. HALL
ATTORNEY AT LAW
YEON BUILDING
PORTLAND 4, OREGON

August 25, 1953

Mr. Chas. E. Stricklin,
State Engineer,
Salem, Oregon.

RECEIVED
AUG 26 1953
STATE ENGINEER
SALEM, OREGON

Dear Charlie:

Once again I feel impelled to write to you about the right of Mr. O. R. Merrill to use water from an unnamed creek running through his property in Washington County.

On May 28, 1953 Mr. Merrill filed an application to appropriate water from the creek. His application was not granted because a similar permit had been granted to a Mr. Herman Hornecker on September 20, 1948.

In July of this year Mr. Merrill asked you if you could grant permission to use the water. You replied that you could not, but that if the water was not being used by Hornecker, he could use it unless stopped by the water master. On August 10, 1953 Mr. Berget, the watermaster, told Mr. Merrill to cease using the water as Hornecker needed it for irrigation.

On this same day, August 10th, Hornecker has a four cylinder gas engine, pump and about four hundred feet of pipe set up at his pond near the mouth of the creek. It was impossible however for him to irrigate his fields with this equipment as his fields were a thousand feet from the pump.

On August 16, 1953 all of the above described equipment had been removed from the unnamed creek. On August 17, 1953 Mr. Merrill, Mr. Berget and a disinterested witness went all over the premises and there was no irrigating equipment to be seen.

On August 19, 1953 Hornecker had this same equipment set up on Rock Creek which skirts all of one side of his property. There were fifteen sprinklers going on his fields and bottom land, but the water was all coming from Rock Creek and not from the pond or the unnamed creek. On August 20th and 21st this same equipment was still set up on Rock Creek, and Mr. Hornecker has never used any of the water from the unnamed creek for any beneficial use, domestic or otherwise. His stock gets water from Rock Creek and he is irrigating from Rock Creek which has many fold the capacity of the unnamed creek. Hornecker refuses to let Merrill use the water even though Hornecker is not using it himself.

I believe Hornecker's present extension expires October 1st, and that he will have to renew to retain his present status. Is there any way that your office can hold a hearing on our objections to such a renewal on the ground that he is not using the water and by his arbitrary action is preventing others from doing so? If such a procedure is possible under the law Mr. Merrill will be glad to support his claim with adequate testimony. Please advise me as to the hearing.

Very truly yours,

John H. Hall

H/h P. S. As I will be away for ten days, please send reply to O. R. Merrill,
Rte. 2, Box 271, Hillsboro, Oregon.

August 13, 1953

Mr. John H. Hall
Attorney at Law
Yeon Building
Portland 4, Oregon

Re: Applications Nos. R-23261
and 23430

Dear Governor:

This will acknowledge receipt of your letter of August 11th relative to the permits of Herman R. and Helen Hornecker.

The records of this office show that on July 1, 1948 Herman R. and Helen Hornecker filed an application for a reservoir permit for the storage of 1 acre foot of water from an unnamed stream, tributary to Rock Creek, for irrigation, domestic and stock purposes. This application was filed pursuant to the provisions of Sections 116-419, 420 and 425, O. C. L. A.

A right to store water, as construed by our Supreme Court in the case of Cookingham v. Lewis, 58 Ore. 404, is not a right to use the water stored. This right is obtained under a permit referred to in Section 116-425, O. C. L. A., as a secondary permit.

On September 20, 1948 the foresaid parties filed an application for the secondary permit referred to above, for the appropriation of the water stored and the appropriation of the natural flow for the irrigation of 30 acres of land and for stock and domestic purposes.

The reservoir filing is designated in the records of this office as Application No. R-23261, Permit No. R-950. The secondary filing is designated as Application No. 23430, Permit No. 18494.

August 13, 1953

The records show that the reservoir application was approved by the issuance of a permit on January 17, 1949. The applicant filed Form "A", Notice of Beginning of Construction, on September 12, 1949 which was within the one year time limit fixed by law and fixed in the permit issued by the State Engineer. Notice of Completion of Construction, Form "B", was filed on September 28, 1950 which was also within the time limit fixed in the permit. The applicants tried to make proof upon the reservoir application and were advised that until the water had been applied to beneficial use, this could not be done.

Application No. 23430 was also approved and permit issued on January 17, 1949. The time for completion of construction and application of water to beneficial use as fixed in the permit expired on October 1, 1951. On September 29, 1951 the applicants filed an application for an extension of time, the reason therefor, as set forth in the application, being as follows:

"There is insufficient water for irrigation, apparently due to diversion of the water before it reaches us. Since we applied for a water right the stream has been reduced from a free flowing stream to a mere trickle, and since it flows through private property we have so far not been able to determine the cause."

Your attention is called to that part of Section 116-424, O. C. L. A., which reads as follows:

"** Except as hereinabove provided, the state engineer shall, for a good cause shown, order and allow an extension of time, including an extension beyond the five-year limitation aforesaid, within which irrigation or other works shall be completed or the right perfected, under any permit, and in determining said extension, shall give due weight to the considerations described and set out in subdivision 6 of section 47-403, Oregon Code 1930;***"

The State Engineer cannot, except in the case of municipalities, extend the time for beginning construction, but he can extend the time for completion of construction and complete application of water to beneficial use provided reasonable diligence has been shown in perfecting the right.

At the time the application was filed for an extension of time there was no watermaster in charge of the distribution of waters in accordance with the relative dates of priorities.

Mr. John H. Hall

-2-

August 13, 1953

However, it is my opinion that the reasons set out in the application in that there was not sufficient water for the irrigation of the lands were good grounds for extending the time for complete application of water.

All permits are issued subject to existing rights and since Mr. Merrill's application is subsequent in time to the applications of Herman R. and Helen Hornecker, under Oregon laws his right is subject to the Hornecker right and all other prior rights to the use of the waters under consideration.

The time for complete application of water under the Hornecker right expires on October 1st of this year and your client has the right to object to any further extension of time. If objections are filed, a hearing will be held to determine whether or not reasonable diligence has been used in perfecting the right. The State Engineer would then enter an order from which either or both parties could appeal to the courts.

Very truly yours,

CHAS. E. STRICKLIN
State Engineer

CES:VC

cc *Burgess* - 17

JOHN H. HALL
ATTORNEY AT LAW
YEON BUILDING
PORTLAND 4, OREGON

August 11, 1953

Mr. Chas. E. Stricklin,
State Engineer,
Salem, Oregon.

R-23261
23430

RECEIVED
AUG 12 1953
STATE ENGINEER
SALEM, OREGON

Dear Charlie:

Thank you for the information contained in your letter of August 1, 1953.

I have made further inquiry and have been told of the following circumstances. Perhaps the records and files in your office will verify.

On July 1, 1948 Mr. Hornecker filed an application designated as No. R-23261.

On September 20, 1948 Mr. Hornecker filed an application for a permit to appropriate water for irrigation and domestic and stock use.

Mr. Hornecker did nothing further to protect his applications until some time in 1952 he asked for and received an extension of time until October 1, 1952.

Hereafter and some time during the year 1953 my client Mr. O. R. Merrill filed an application for the use of the same water.

While Mr. Merrill's application was pending, Mr. Hornecker asked for and received an additional extension on his original and theretofore extended filings.

Mr. Hornecker has had this water tied up since 1948, a period of over five years and has made no use of it. Mr. Merrill has a legitimate and immediate use for the water and will make the necessary improvements.

Am I correct in thinking that rights expire if not used within a period of three years. It seems to be inequitable to grant a further extension to Mr. Hornecker while Mr. Merrill's application for the same water was pending, especially so in view of the fact of Hornecker's non-use of the water for such a long period of time.

I will appreciate any advice or suggestions you can give me in this matter.

Very truly yours,

H/h

John H. Hall

July 30, 1953

Mr. John W. Hall
Attorney at Law
Yeon Building
Portland 4, Oregon

Dear Governor Hall:

In reply to your letter of July 29th please be advised that it appears Mr. Berget was in error with regard to the filings made by Mr. Herman R. Hornecker.

On July 1, 1948 Mr. Hornecker filed an application for a permit to construct a reservoir and store water in the amount of 1 acre foot, which application is designated as No. R-23261.

On September 20, 1948 Mr. Hornecker filed an application for a permit to appropriate 0.39 cubic foot per second of water from an unnamed stream and the reservoir to be constructed, for the irrigation of 30 acres of land and domestic and stock use.

There is no filing in this office, and it is rather questionable whether the State Engineer could issue a permit, for the appropriation of water for the purpose of floating logs.

Very truly yours,

CHAS. E. STRICKLIN
State Engineer

CES:VC

23460

JOHN H. HALL
ATTORNEY AT LAW
YEON BUILDING
PORTLAND 4, OREGON

July 29, 1953

Mr. Charles E. Stricklin,
State Engineer,
Salem, Oregon.

RECEIVED
JUL 30 1953
STATE ENGINEER
SALEM, OREGON

Dear Sir:

Re File No. 28486

This letter is to supplement one written you by Mr. O. R. Merrill, Route 2, Box 271, Hillsboro, Oregon regarding the proposed filing for certain water rights in Washington County, Oregon.

I am advised that in 1948 a Mr. Herman Hoernecker filed on this same water claiming the use of it for floating logs. An examination of the stream in question will disclose that it is too narrow and shallow for that purpose. It is a small spring fed stream that almost dries up during the summer months.

The water master recently inspected the stream in connection with Mr. Merrill's filing and advised my client that any such rights are automatically canceled and forfeited if not used within a period of three years from the date of initial filing. I am told that no use has been made of these rights by Mr. Hoernecker since he filed in 1948.

I thought that the above information would be helpful to your department in passing upon Mr. Merrill's claim.

Very truly yours,

H/h

John H. Hall

August 7, 1953

Mr. Arleigh M. Berget
Watermaster, District No. 17
2516 Douglas Street
Forest Grove, Oregon

Dear Mr. Berget:

In reply to your letter of August 6th please be advised that our records show the time for completion of the water right under Application No. 23430, Permit No. 18494, has been extended to October 1, 1953

Very truly yours,

CHAS. E. STRICKLIN
State Engineer

CES:VC

WASHINGTON COUNTY
Hillsboro, Oregon

August 6, 1953

RECEIVED
AUG 7 1953
STATE ENGINEER
SALEM, OREGON

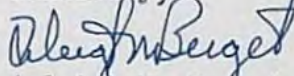
Mr. Charles E. Stricklin, State Engineer
303 State Office Building
Salem, Oregon

Dear Mr. Stricklin:

Thank you very much for clearing up a statement written in the abstract book, that was not clear to me; also the validity of a water permit.

Today I would like to ask a question on another water permit. It concerns Application No. 23430, Abstract of Permit No. 18494. This permit was issued to Herman R. Hornecker and Helen Hornecker. I would like to know if the time limit to completely apply water has been extended beyond October 1, 1952.

Sincerely,



Arleigh M. Berget
Water Master, District #17

WILLIAM G. HARE
FRANCIS E. STURGIS
JAMES E. BURDETT

Hare, Sturgis & Burdett
ATTORNEYS AT LAW

Hillsboro, Oregon
TELEPHONE 181

August 17, 1955

RECEIVED
AUG 18 1955
STATE ENGINEER
SALEM, OREGON

Mr. Lewis A. Stanley
State Engineer
Water Resources Department
Salem, Oregon

Re: Hornecker v. Merrill.

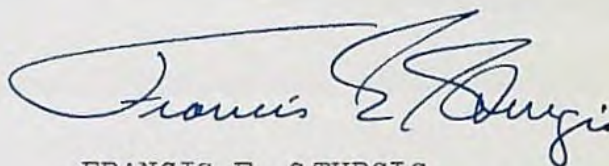
Dear Mr. Stanley:

Herewith please find duly verified copy of order entered this day by the Court Court, dismissing the appeal re the above matter.

I believe this fully complies with the terms of the stipulation, so far as we attorneys are concerned. The matter now rests in your hands, and the hands of our clients to comply with the respective provisions of the stipulation.

I thank you very kindly for your cooperation in this matter.

Very truly yours,



FRANCIS E. STURGIS

FES:ij
Enclosure

September 25, 1956

File
Verbal and
Survey done

Permit No 18494
Herman R. & Helen Hornecker

Lewis A. Stanley,
State Engineer,
Salem, Oregon.

Dear Sir:-

We have covered our ground, and
are ready for inspection.

Yours truly,
Helen Hornecker.

BEFORE THE STATE ENGINEER OF THE STATE OF OREGON

Washington County

STATE OF OREGON }
County of Washington } ss.

SUBPOENA

To

IN THE NAME OF THE STATE OF OREGON: You are hereby commanded to appear before the undersigned, State Engineer of the State of Oregon, at the Court House in Washington County, Oregon, on the 18th day of February, 1954, at 10:00 o'clock, A. M., to give evidence in a contest in the matter of the issuance of certificates confirming the rights under Permits Nos. R-950 and 18494 for the storage and use of the waters of an unnamed stream, a tributary of Rock Creek, wherein O. R. Merrill is contestant, and Herman R. Hornecker and Helen Hornecker are contestees, on the part of the contestees.

WITNESS my hand this 18th day of February, 1954.

State Engineer

BEFORE THE STATE ENGINEER, State of Oregon

In the Matter of the issuance of certificates
confirming the rights under Permits Nos. R-950
& 18494 for the storage and use of the waters
of an unnamed stream, a tributary of Rock
Creek

O. R. Merrill
Contestant

vs.

Herman R. Hornecker & Helen Hornecker
Contestees

STATE OF OREGON,)
County of) ss.

I hereby certify that the within is a true
and correct copy and the whole thereof of the
original subpoena.

Filed., 1954

State Engineer

AFFIDAVIT OF SERVICE

BEFORE THE STATE ENGINEER OF THE STATE OF OREGON

Washington County

STATE OF OREGON)
) ss.
County of Washington)

SUBPOENA

To Arleigh Berget

IN THE NAME OF THE STATE OF OREGON: You are hereby commanded to appear before the undersigned, State Engineer of the State of Oregon, at the Court House in Washington County, Oregon, on the 18th day of February, 1954 at 10:00 o'clock, A. M., to give evidence in a contest in the matter of the issuance of certificates confirming the rights under Permits Nos. R-950 and 18494 for the storage and use of the waters of an unnamed stream, a tributary of Rock Creek, wherein O. R. Merrill is contestant, and Herman R. Hornecker and Helen Hornecker are contestees, on the part of the contestant.

WITNESS my hand this 18th day of January, 1954.

State Engineer

BEFORE THE STATE ENGINEER, State of Oregon

In the Matter of the issuance of certificates
confirming the rights under Permits Nos. R-950
& 18494 for the storage and use of the waters
of an unnamed stream, a tributary of Rock
Creek

O. R. Merrill

Contestant

vs.

Herman R. Hornecker & Helen Hornecker

Contestees

STATE OF OREGON,)
County of) ss.

I hereby certify that the within is a true
and correct copy and the whole thereof of the
original subpoena.

Filed....., 1954

.....
State Engineer

AFFIDAVIT OF SERVICE

BEFORE THE STATE ENGINEER OF THE STATE OF OREGON

Washington County

STATE OF OREGON)
) ss.
County of Washington)

SUBPOENA

To Arleigh Berget

IN THE NAME OF THE STATE OF OREGON: You are hereby commanded to appear before the undersigned, State Engineer of the State of Oregon, at the Court House in Washington County, Oregon, on the 18th day of February, 1954 at 10:00 o'clock, A. M., to give evidence in a contest in the matter of the issuance of certificates confirming the rights under Permits Nos. R-950 and 18494 for the storage and use of the waters of an unnamed stream, a tributary of Rock Creek, wherein O. R. Merrill is contestant, and Herman R. Hornecker and Helen Hornecker are contestees, on the part of the contestant.

WITNESS my hand this 18th day of January, 1954.



State Engineer

BEFORE THE STATE ENGINEER, State of Oregon

In the Matter of the issuance of certificates confirming the rights under Permits Nos. R-950 & 18494 for the storage and use of the waters of an unnamed stream, a tributary of Rock Creek

O. R. Merrill

Contestant

vs.

Herman R. Hornecker & Helen Hornecker

Contestees

STATE OF OREGON,

County of

ss.

I hereby certify that the within is a true and correct copy and the whole thereof of the original subpoena.

Filed. Feb. 18, 1954

Chas. E. Stricklin

State Engineer

by Chris H. Wheeler Asst.

AFFIDAVIT OF SERVICE

State of Oregon,
County of Multnomah,

ss.

I, O. R. Merrill, being first duly sworn, on oath depose

and say: that I am a party to the within proceeding and over the age of twenty-one years; that on the 21 day of January, 1954 I exhibited the original subpoena and handed a copy personally to Arleigh Berger and at the same time tendered to him his statutory per diem and mileage as required by law.

subscribed and sworn to before me this 21 day of Jan, 1954

My commission expires March 21, 1957. Notary Public for Oregon.

John H. Kael
O. R. Merrill

Before the State Engineer of the State of Oregon

WASHINGTON

County

STATE OF OREGON,

County of Marion

} ss.

SUBPOENA

To

In the Name of the State of Oregon: You are hereby commanded to appear before the undersigned, State Engineer of the State of Oregon, ~~at~~ in the Circuit Court Room of the County Court House at Hillsboro in Washington County, Oregon, on the 18th day of May, 1937, at 10:00 o'clock A.M., to give evidence in a contest in the matter of the determination of the relative rights to the waters of an unnamed tributary and its tributaries, a tributary of the Tualatin River, wherein

W. A. Harris and Nelly Harris, husband and wife,

are

~~xx~~ contestant.s., and

C. B. Buchanan, Sr., and C. B. Buchanan, Jr.,

are

~~xx~~ contestee.s.

on the part of contestants.

WITNESS my hand this 12th day of May, 1937.

State Engineer.

STATE OF OREGON,

County of

} ss.

I hereby certify that I served the within subpoena within said State and County on
the day of, 192....., on the within named

by reading and showing the original and delivering a true copy thereof prepared and certified to by me as Sheriff to

Sheriff.

BEFORE THE STATE ENGINEER, State of Oregon

In the Matter of the Determination of the
Relative Rights to the Waters of

An Unnamed Tributary
and its tributaries, a tributary of
Tualatin River

W. A. Harris and Nelly Harris,
husband and wife,

Contestant.s.

vs.

C. B. Buchanan, Sr., and C. B.
Buchanan, Jr.,

Contestee.s.

STATE OF OREGON,

} ss.

County of

I hereby certify that the within is a true
and correct copy and the whole thereof of the
original subpoena.

Filed, 192.....

State Engineer.

IN THE CIRCUIT COURT OF THE STATE OF OREGON

for the County of Polk

To

J. W. Herber

and bring with you documents and records referred to on the reverse side hereof.

IN THE NAME OF THE STATE OF OREGON:

You are hereby commanded to appear in behalf of the plaintiff in the Circuit Court of the State of Oregon, for the County of Polk at the Court House in Dallas on the 30th day of January, 1953, at 9:30 o'clock A. M., to give evidence in a cause wherein

Henry Morrow is Plaintiff

and

Willamette Valley Lumber Company is Defendant.

WITNESS my hand and seal of said Court on this 28th day of January, 1953.

/s/ E. B. Hamilton Clerk.

By Deputy.

I HEREBY CERTIFY that the within is a true copy of the original Subpoena in the within entitled action, as the same appears in my hands for service.

Mumford

Attorney for plaintiff

No. 11348

IN THE CIRCUIT COURT

of the State of Oregon

for the County of Polk

Henry Morrow,

Plaintiff

vs.

Willamette Valley Lumber

Company,

Defendant

CIVIL SUBPOENA

From the office of
WINSLOW, HARLAND & GABRIEL
Salem, Oregon

Attorney for plaintiff

All records and documents
with reference to all
water rights with reference
to the LaCreole River, and
particularly any and all
water rights of the City of
Dallas, the Willamette Val-
ley Lumber Company, and
Henry I. Morrow.

BEFORE THE STATE ENGINEER OF OREGON

Washington County

IN THE MATTER OF PERMIT
NUMBERS R-950 and 18494
IN THE NAME OF HERMAN R.
AND HELEN HORNECKER

PROOF OF SERVICE
OF ORDER

STATE OF OREGON)
) ss.
County of Marion)

I, CHAS. E. STRICKLIN, State Engineer of the State of Oregon, do hereby certify that after the hearing held upon the above entitled permits I made and entered an Order on August 5, 1954 determining the extent to which the appropriations under Permit Numbers R-950 and 18494 have been completed.

That I did on the 5th day of August 1954, send by registered mail certified copies of said Order to John H. Hall, attorney for the protestant, O. R. Merrill and Francis E. Sturgis, attorney for the permittees, Herman R. Hornecker and Helen Hornecker; that envelopes containing such copies were securely sealed, with all postage fully prepaid thereon and addressed to the attorneys for the protestant and protestee at their post office addresses, as given by them in making their appearance at said proceedings; and that such envelopes were duly deposited and registered in the U. S. Post Office at Salem, Oregon, as shown by the registry receipts hereto attached, numbered 49352 and 49353.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of September, 1954.

CHAS. E. STRICKLIN
State Engineer

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR WASHINGTON COUNTY

In the Matter of Permit)
Numbers R-950 and 18494) No.
in the Name of Herman R.)
and Helen Hornecker.) STIPULATION

WHEREAS, Herman R. Hornecker and Helen Hornecker have
appealed from the following order of the State Engineer, dated 5
August 1954, to-wit:

"IT IS FURTHER ORDERED that a certificate of water
right be issued confirming the right under Permit
No. 18494 to the appropriation of not to exceed
0.005 second-foot of water from the unnamed stream
and reservoir constructed under Permit No. R-950
for stock water only in the SE Quarter of the SW
Quarter, Section 9, Township 1 South, Range 2 West,
W.M."

and

WHEREAS, the undersigned parties have evidenced to each
other that facts sufficient to show a limited beneficial use of
said water by the parties hereto are available and may be presen-
ted to the Court,

It is, Therefore, STIPULATED by and between the undersigned
parties hereto that the order of the State Engineer above set
forth be modified to read as follows:

It is hereby ORDERED that a certificate of water
right be issued confirming the right under Permit
No. 18494 to the appropriation of not to exceed
0.39 second-foot of water from the unnamed stream
and reservoir constructed under Permit No. R-950
for domestic and irrigation use in the SE $\frac{1}{4}$ of the
SW $\frac{1}{4}$ of Section 9, Township 1 south, Range 2 West,
W.M., subject only to the right of O.R. Merrill to
appropriate water from the unnamed stream in accord-
ance with Permit No. 22406, as hereinafter set
forth.

It is further ORDERED that the certificate of water
right to be granted by the State Engineer pursuant
to Permit No. 22406 shall limit the appropriation
of water from the unnamed stream to a 24-hour period
on the following days: Monday, Wednesday and Friday
of each week, said use to commence on the first subse-
quent Monday from the date of this order until further
order of the Court.

1 It is further ORDERED that the use of said
2 water by O. R. Merrill shall be discontinued
3 at 8 o'clock p.m. on each of the above days, and
4 shall commence any time after 8 o'clock p.m. on
5 the day preceding the above days of each week, com-
6 mencing from the first subsequent Monday from the
7 date hereof until further order of this Court.

8 It is further ORDERED that application of water
9 under permit no. 22406 shall at all times be in
10 conformance with the provisions of said permit;
11 and no enlargement of said permit rights shall be
12 made at any time by Odlat R. Merrill or his suc-
13 cessors in interest.

14 It is FURTHER STIPULATED by and between the parties here-
15 to that in the event the above order and stipulation is approved
16 by the State Engineer prior to its submission to the Court and
17 certificates of water right are issued pursuant to said stipulation
18 and order, that the parties hereto will dismiss the present suit
19 forthwith.

20 SIGNED and APPROVED this _____ day of July, 1955.

21 Herman R. Hornacker

22 Helen Hornacker

23 O. R. Merrill

24 Catherine Merrill

RECEIVED
AUG 18 1955
STATE ENGINEER
SALEM, OREGON

BEFORE THE STATE ENGINEER OF THE STATE OF OREGON.

In the Matter of Permits Number)
R-950 and 18494 in the name of)
Herman R. and Helen Hornecker.)

ORDER.

THIS MATTER is before the Court upon the stipulation of
the parties hereto by their respective attorneys for an order of
dismissal; and

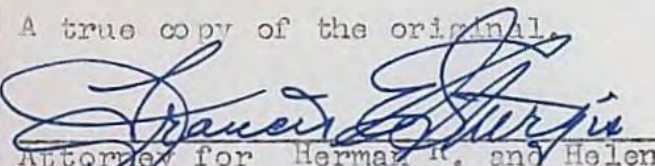
It appearing to the Court that said cause has been fully
compromised and settled,

It is, therefore, by the Court CONSIDERED and ORDERED
that the appeal herein filed be, and the same hereby is dismissed
with prejudice and without costs.

DATED this 17th day of August, 1955.

R. Frank Peters
J U D G E

A true copy of the original.


Attorney for Herman R. and Helen
Hornecker.

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1 p. m. on each of the above days, and shall commence at any time after 8 o'clock p. m.
2 on the day preceding the above days of each week, commencing from the first subsequent
3 Monday from the date of this stipulation.

4 V.

5 That appropriation of water under permit number 22406 shall at all times be
6 in conformance with the provisions of said permit, and that no enlargement of said per-
7 mit rights shall be made at any time by O. R. Merrill or by his successors in interest.

8 VI.

9 That in the event Helen R. Hornecker and Herman R. Hornecker are granted a
10 certificate of water right pursuant to permit number 18494, then, and only then, shall
11 the above restrictions become permanent.

12 VII.

13 That in the event the Horneckers do not comply with the requirements of the
14 State Engineer within the time hereinabove set forth, the foregoing restrictions up-
15 on the certificate of O. R. Merrill shall be null and void, and no restrictions shall
16 be placed upon its use and the appropriation of water, except as set forth in said
17 permit number 22406.

18 VIII.

19 That the order of the State Engineer with respect to permit number ^{R-}1950 and
20 permit number 18464, in the name of Herman R. Hornecker and Helen Hornecker, being
21 dated August 5, 1954, shall be vacated.

22 IX.

23 That the appeal from the said order of the State Engineer, which is pending
24 in the Circuit Court of the State of Oregon for Washington County, shall forthwith be
25 dismissed.

26 IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and
27 seals this 9th day of August, 1955.

28 Catherine Merrill Herman R. Hornecker
29 O. R. Merrill Helen Hornecker

30 The foregoing stipulation is hereby approved, this 10th day of August, 1955.

31 Lewis A. Stanley
32 State Engineer



UNITED PACIFIC
Insurance Company

SEATTLE, WASHINGTON

In the Circuit Court of the State of Oregon,

FOR THE COUNTY OF.....

.....
.....
.....
vs.
.....
.....
.....
Defendant

Plaintiff

No.....

Undertaking for Costs on Appeal

WHEREAS, the.....

.....in the above entitled
.....appeals to the Supreme Court of the State of Oregon from
a.....made and entered against
.....in the said.....in the said Circuit Court, in
favor of the.....in the said.....
and against the.....
on the.....day of.....A. D. 193....., for
.....Dollars,
.....damages,
and.....Dollars,
.....costs and
disbursements.....

NOW, THEREFORE, in consideration of the premises, and of such appeal, the undersigned UNITED PACIFIC INSURANCE COMPANY, a corporation organized and existing under the laws of the State of Washington, and authorized and empowered under the laws of the State of Oregon to become surety upon bonds, undertaking, etc., in the State of Oregon, does hereby jointly and severally undertake and promise, on the part of the appellant, that said appellant will pay all damages, costs and disbursements which may be awarded against..... on the appeal.

UNITED PACIFIC INSURANCE COMPANY


By

John E. Melke
.....
Attorney-in-Fact.

Filed this 25th day of August, 1954.

Chas. E. Stuckley
State Engineer.

Seal of the State of Oregon

		
UNITED PACIFIC <i>Insurance Company</i>		
SEATTLE, WASHINGTON		
In the Circuit Court STATE OF OREGON		
COUNTY OF		
Plaintiff	vs.	Defendant
Undertaking for Costs on Appeal		
Filed 193.....		
Clerk.		
By		Deputy

Due and regular service of the foregoing undertaking for costs on appeal is hereby accepted within Multnomah County, Oregon, on this 23rd day of August, 1954.

John H. Hall
Attorney for Protestant, O. R. Merrill.