

Acct 7/0. 9 - 1883

N¹/₂ SW SW Sec. 15, T. 1 N. R. 42

Acct 7/0. 17 - 1893

S¹/₂ SE NW . 9, T. 1 N. R. 42





CITY OF
PORTLAND, OREGON

BUREAU OF WATER WORKS

MAR 3 1993

WATER RESOURCES DEPT.

SALEM, OREGON

Mike Lindberg, Commissioner

Michael F. Rosenberger, Administrator

1120 S.W. 5th Avenue

Portland, Oregon 97204-1926

Information (503) 823-7404

March 22, 1993

Mr. Don Knauer, PLS, WRE
Adjudications Section
Oregon Water Resources Dept.
3850 Portland Road
Salem, Oregon 97310

Dear Don:

The Portland Water Bureau filed 3 separate claims for pre-1909 surface water rights on December 31, 1992. One each for the Bull Run River, Little Sandy River, and the Willamette River. I would like to know if the WRD has set up a file for these claims as of yet. If you have not, when do you expect to do this so we can have a file # to reference these claims. I also was wondering about the technical review that goes along with the initial findings. When will that occur and do you expect to do a field inspection of the claim at that time? I'll be glad to set up any visits you need to make if that is required.

Thom Warren, PLS, WRE

Thom Warren
Portland Water Bureau



CITY OF

PORTLAND, OREGON

OFFICE OF CITY ATTORNEY

February 12, 1993

REED MARBUT
OREGON WATER RESOURCES DEPARTMENT
3850 PORTLAND RD NE
SALEM OR 97310

Re: Water Rights Registration

Dear Reed:

Thank you and Don Knauer for meeting with me and Thom Warren on January 14, to talk about the City of Portland's pre-1909 water rights registration filings. I wanted to confirm a few of the points we talked about.

First, you told us at our meeting that you had under consideration how to treat registration filings that are accompanied by inadequate fees. I have continued to think about this question and I wanted to add to what I said at our meeting. As I understood it, you were wrestling with the question of whether the failure to file fees sufficient to cover the full amount of a claim should be treated as a reparable error or as a jurisdictional failure. In the first instance, the Department would call the error to a claimant's attention and provide some reasonable time to cure. In the latter case, the failure to pay sufficient fees would mean that any claim made over and above the fees paid would be deemed null and void or, at the least, late, in the statutory sense. If "late," the claimant can challenge any "presumption" against his claim and pay a fifty percent penalty for his tardiness.

While I do not pretend to have a complete answer, it seems to me that under some circumstances the ability to correct a fee inadequacy should be granted without penalty. In particular, if a claimant registered for a certain amount of water but through arithmetical error, inadvertence, or legal ambiguity paid less than the full fee, his or her claim should not be rejected outright. If the fee is insufficient, the claimant should be able to cure the defect. For in that case, the amount of the claim in terms of water will have been identified, which is the central purpose of the law. Any filing fee deficiency in that case is incidental. I would understand if the Department charged interest on deficiencies of this sort, but such errors should not be considered fatal to the claim itself.

Jan 2/19
When you time we
should discuss this -
I think I agree w/
most of what Terry says.
Reed

REED MARBUT
OREGON WATER RESOURCES DEPARTMENT
SALEM, OREGON

This is important to the City because of the unique nature of the rights it claims on the Little Sandy and the Bull Run Rivers. As we noted in our filings, and discussed with you, we remain somewhat unsure of how best to calculate a fee for "full flows" of a river, especially when the claim is based on the unique status under federal law of the Bull Run forest area. We ultimately calculated fees based on the expected "conduit diversions" for reasonably possible water use over the next sixty years.

Second, with respect to the specifics of the City's claims on the Bull Run and Little Sandy Rivers, I wanted to confirm your advice on the relationship of conduit diversions and storage structures. On both those rivers, the City has calculated fees based on estimates of maximum expected diversions into conduits for delivery to the place of use, that is, the Portland metropolitan area. On the Bull Run River, that amount is 1273 cfs. On the Little Sandy, it is 200 cfs. But, as we explain in our filings and we discussed with you, to assure those levels of diversion year round, the City pre-1909 rights must also allow it to store water, sometimes at a higher daily rate. As I understood you and Don, the fee is still set by reference to the conduit diversion, even though the City's claim includes the ability to store water.

Third, as I told you, we have not yet identified an exact priority date for the City's Willamette River claim. In our filing, we said it was some time in 1884. We now know that the pump station upon which the City bases its rights began operating on October 21, 1884. We do not know when construction began on the station. As I understand it, we may supplement or amend our original filings as we gather more information. If we do not soon confirm an earlier date, we will probably amend the filings to specify the October 21, 1884, date for priority purposes. We have good evidence for that date and it is hard to find evidence of when pump station construction commenced.

Fourth, as we discussed, the delineation of the "place of use" for City water is a complicated and time-consuming task. This is so, first, because the City's own boundaries are changing yearly and can be expected to expand into the future as annexations of areas within the urban services boundary continue. Additionally, by City Charter (Portland Charter § 11-101) and state statute (ORS 225.030), the City may and does sell water on a wholesale basis to other municipalities and districts, each of which also has boundaries that may occasionally change. Finally,


since the region is just about to embark on a major water supply planning effort, we cannot predict exactly to what other places of use Portland water may be conveyed if greater regional interconnection is achieved.

Given all this, the City has provided in its filings a general map showing past and current City boundaries. We also included a map showing the boundaries of current wholesale customers. In the next few weeks, we will provide the Department a map that will show the likely extent of areas which may use Portland water in the future. That map of the future areas of use, however, must necessarily be quite general. As I understand it, we will await a call from the Department before we produce a detailed "legal description" of the lands encompassed by the "place of use" maps.

As I told you, I do not believe that municipalities are bound in the typical way by the "appurtenance" doctrine. This is true both because municipalities can and do grow, see ORS 540.510(3), and because they have specific legislative authority to sell water outside their own boundaries. The City, of course, will provide the information required on place of use, in so far as it is possible to do so.

Again, I appreciate the time you and Don spent with us. I am sure we will have occasion to talk again about the pre-1909 registration process.

Sincerely yours,



Terence L. Thatcher
Deputy City Attorney

TLT:jtl
water\wtrright.tt\marbut.let
c: Jim Doane
Thom Warren



CITY OF

PORTLAND, OREGON

OFFICE OF CITY ATTORNEY

cc: DMK.
Dwight F
Jeffrey L. Rogers, City Attorney
1220 S.W. 5th Avenue
Portland, Oregon 97204
(503) 823-4047

January 7, 1993

JAN - 8 1993

A. REED MARBUT
MANAGER, ADJUDICATIONS SECTION
3850 PORTLAND ROAD NE
SALEM, OR 97310

WATER RESOURCES DEPT.
SALEM, OREGON

Re: City of Portland Registration Statements

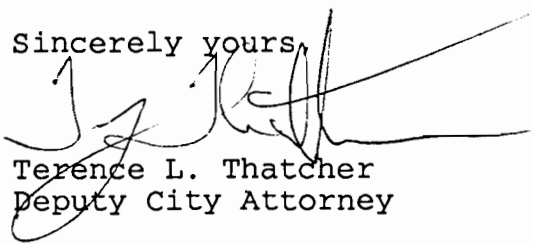
Dear Reed:

Thank you for agreeing to meet with us to talk about the City's recently filed water claim registration statements. Thom Warren and I will be at your office at 9 am on January 14, 1993.

When I spoke to you, I indicated that I would like our conversation to focus on the City's Little Sandy and Bull Run filings. Upon reflection, I would also like briefly to discuss with you some issues with respect to the Willamette River filing. In particular, I would like to talk about how to judge the priority date and size of the Willamette claim. As you will note in the statement, the City's claim is based on the previous operation of the Palatine Hill Pumping Station, which started operation in 1884 and was expanded in 1891.

I look forward to our conversation.

Sincerely yours,



Terence L. Thatcher
Deputy City Attorney

TLT:jtl
water\wtrright.tt\marbut.ltr



CITY OF

PORTLAND, OREGON

BUREAU OF WATER WORKS

Thom Warren, P.L.S., W.R.E.

Surveyor III/Water Rights Examiner

823-7524

Phone:

~~(503) 796-7524~~

FAX: 796-6133

1120 S.W. 5th Avenue
Portland, Oregon 97204-1926

City of Portland, Oregon

SURFACE WATER REGISTRATION STATEMENT

for

PRE-1909 WATER RIGHT

to

WILLAMETTE RIVER

December 31, 1992

1120 SW 5th Avenue
Portland, Oregon 97204
Telephone (503) 796-7402

SURFACE WATER REGISTRATION CHECKLIST

(received after July 18, 1990)

CHECK BASIN MAP EX NAME Lower Williams # 2C UNADJUDICATED AREA ? YES
RECEIPT # 95718 & 95719 S W R NUMBER 392
CHECK ENCLOSURES none PRELIMINARY DATA BASE ENTRY out
ACKNOWLEDGEMENT LETTER none ENTER ON STREAM INDEX _____
CHECK QUADRANGLE MAP _____ CHECK GLO PLATS _____
WATERMASTER CHECKLIST _____ PUBLIC NOTICE PUBLICATION 1780

Fees fee 28 cfs
\$1,550

FORM REVIEW

_____ blanks filled in
_____ signed
_____ date received stamped

MAP REVIEW

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

WATER RIGHT RECORD CHECK _____ FIELD INSPECTION _____

FINAL FILE REVIEW _____ FINAL DATA BASE ENTRY _____

ENTER ON PLAT CARDS _____

March 24, 1993

WATER
RESOURCES
DEPARTMENT

THOM WARREN, PLS, WRE
C\O BUREAU OF WATER WORKS
1120 SW 5TH AVENUE
PORTLAND OR 97204-1926

RE: SWR-390, SWR-391, SWR-392

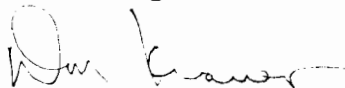
Dear Thom,

I am sending copies of our standard acknowledgement letters for the Surface Water Registration Statements (SWR) for the claims made by the City of Portland. I set the files up today.

We received over 400 SWR,s the last two weeks before the deadline. I have completed acknowledgement letters and sent receipts to about 60% of the claimants. Next I plan to return in chronological order to review the data thoroughly and remedy any problems with the SWR forms and maps. I don't know when I will get to the City of Portland's (within the year?). Eventually I plan to make a field inspection of the water use system and will allow plenty of notice for you to plan the trip.

If you have any questions, give me a call.

Sincerely,



Don Knauer
Adjudication Specialist

M:\W\S\C\SWR-0390.002



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

March 24, 1993

JOE GLICKER, DIRECTOR OF ENGINEERING SERVICES
BUREAU OF WATER WORKS OF THE CITY OF PORTLAND
1120 SW FIFTH AVENUE
PORTLAND OR 97204-1926

Dear MR GLICKER,

This will acknowledge that your Surface Water Registration Statement in the name of BUREAU OF WATER WORKS OF THE CITY OF PORTLAND has been received by our office. The fees in the amount of \$75,500.00 have been received and our receipt #95718 & 95719 were written. Your registration statement has been numbered SWR-392.

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

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

Sincerely,



Don Knauer
Adjudication Specialist

Enclosure

M:\WP51\SWR\CLAIMANT\SWR-0392.001



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

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

RECEIPT # **95718**

3850 PORTLAND ROAD NE
SALEM, OR 97310
378-8455/378-8130 (FAX)

RECEIVED FROM: Treasury, City of
BY: Portland

APPLICATION	
PERMIT	
TRANSFER	

CASH: CHECK: # X24-12 OTHER: (IDENTIFY)

TOTAL REC'D \$ 500.00

01-00-0 WRD MISC CASH ACCT

842.010	ADJUDICATIONS / <u>SURFACE H₂O REGISTRATION</u>	\$ <u>500.00</u>
831.087	PUBLICATIONS/MAPS	\$
830.650	PARKING FEES Name/month	\$
	OTHER: (IDENTIFY)	\$

REDUCTION OF EXPENSE

CASH ACCT.	\$
COST CENTER AND OBJECT CLASS	VOUCHER #

03-00-0 WRD OPERATING ACCT

MISCELLANEOUS:		
840.001	COPY FEES	\$
850.200	RESEARCH FEES	\$
880.109	MISC REVENUE: (IDENTIFY)	\$
520.000	OTHER (P-6): (IDENTIFY)	\$
WATER RIGHTS:		
842.001	SURFACE WATER	\$
842.003	GROUND WATER	\$
842.005	TRANSFER	\$
WELL CONSTRUCTION		
842.022	WELL DRILL CONSTRUCTOR	\$
842.016	WELL DRILL OPERATOR	\$
	LANDOWNER'S PERMIT	\$

EXAM FEE		RECORD FEE
\$	842.002	\$
\$	842.004	\$
\$	842.006	\$
EXAM FEE		LICENSE FEE
\$	842.023	\$
\$	842.019	\$
	842.024	\$

06-00-0 WELL CONST START FEE

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

45-00-0 LOTTERY PROCEEDS

864.000	LOTTERY PROCEEDS	\$
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07-00-0 HYDRO ACTIVITY

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

RECEIPT # **95718** DATED: 12/31/92 BY: C. Engel

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

RECEIPT # **95719**

3850 PORTLAND ROAD NE
SALEM, OR 97310
378-8455/378-8130 (FAX)

RECEIVED FROM: BY:	<i>Treasury, City of Portland</i>	APPLICATION	
		PERMIT	
		TRANSFER	

CASH: <input type="checkbox"/>	CHECK: # <input checked="" type="checkbox"/> 124-12	OTHER: (IDENTIFY) <input type="checkbox"/>	TOTAL REC'D	\$ 75,000.00
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01-00-0 WRD MISC CASH ACCT

842.010	ADJUDICATIONS	<i>SURFACE H₂O REGISTRATION</i>	\$ 75,000.00
831.087	PUBLICATIONS/MAPS		\$
830.650	PARKING FEES Name/month		\$
	OTHER: (IDENTIFY)		\$

REDUCTION OF EXPENSE

CASH ACCT.	\$
VOUCHER #	

COST CENTER AND OBJECT CLASS

03-00-0 WRD OPERATING ACCT

MISCELLANEOUS:

840.001	COPY FEES	\$
850.200	RESEARCH FEES	\$
880.109	MISC REVENUE: (IDENTIFY)	\$
520.000	OTHER (P-6): (IDENTIFY)	\$

WATER RIGHTS:

842.001	SURFACE WATER	EXAM FEE	\$	842.002	RECORD FEE	\$
842.003	GROUND WATER	\$		842.004	\$	
842.005	TRANSFER	\$		842.006	\$	

WELL CONSTRUCTION

842.022	WELL DRILL CONSTRUCTOR	EXAM FEE	\$	842.023	LICENSE FEE	\$
842.016	WELL DRILL OPERATOR	\$		842.019	\$	
	LANDOWNER'S PERMIT			842.024	\$	

06-00-0 WELL CONST START FEE

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

45-00-0 LOTTERY PROCEEDS

864.000	LOTTERY PROCEEDS	\$
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07-00-0 HYDRO ACTIVITY

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

HYDRO APPLICATION \$

RECEIPT # **95719** DATED: *12/31/92* BY: *C. Engel*