

Application No. 520

Permit No. E-45

Certificate No. 7058

Name The Dry Creek Ditch Co.

By

Address Halfway, Ore.

Date filed

Action suspended until

Returned to applicant

Date completed

Date of approval

Stream Index, Page No.

Application Record, Book No.

FEEES PAID

Date	Amount	Receipt No.
Total		

FEEES REFUNDED

Date	Amount	Check No.

ASSIGNMENTS

Date	To whom	Address	Volume	Page

REMARKS

CONSTRUCTION

Date for beginning

Date for completion

Extended to

Date for application of water

Extended to

PROSECUTION OF WORK

Form "A" filed

Form "B" filed

Form "C" filed

FINAL PROOF

Blank mailed

Proof received

Date certificate issued

Receipt for recording fee No.

NOTICE OF PROSECUTION OF WORK WITH DILIGENCE

Form D

Permit No. 4-5

Application No. 520

Dry Creek Ditch Co, holder of Application No. *520*, being
irrigating Permit No. *45*, issued by the State Engineer of the State of Oregon,
 for the appropriation of *600* second feet of the waters of *Lake Tarn*
 have, during the year beginning *July 1*, 19*11*, and ending *July 1st*, 19*12*,
 expended *\$3525.25* dollars in the construction of works for the utilization of water
 under the aforesaid permit. Such construction work being more particularly described as follows:
Constructed 2144 foot new ditch
 Here describe briefly the extent of construction work, such as height of dam, length of canal or flume constructed, etc.,
 so that the Board may judge as to whether or not such work is being prosecuted with reasonable diligence as required by law.

IN WITNESS WHEREOF, I have hereunto set my hand this *10th* day of *July*, 19*12*.

Halsey one
 (Present Address)

Dry Creek Ditch Co
 (Signature of Applicant)
W. W. Weatherman Secy

Fill out, detach and mail to the Secretary, Board of Control, Salem, Oregon, on or before the expiration of one year from the date of beginning of work as fixed in your permit; also likewise for each succeeding year, until completion when the notice, Form B, especially prepared for such purpose shall be used.

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

State of Oregon)
)ss AFFIDAVIT ASSERTING NON-USE
County of) OF WATER RIGHT

Affiant information

1. I, Ronald R Still Jr
(Legal Name)
of 40657 Buchanan Loop
(Residential Address-and your mailing address if different)
Halfway, OR 97834
(City) (State) (Zip Code)
Phone (541) 663-6770, E-mail still@pinetel.com say that:

Certificate information (If you are alleging non-use of more than one certificate, complete a separate affidavit for each certificate.)

2. Water Right Certificate number 7058, issued to Dry Creek Ditch Company
authorizes use of water from (source) Lake Fork Creek of North Pine Creek
for (use) irrigation
under a priority date of 1910.
3. The total number of acres described in the certificate is 432.3.
4. The subject water right is located in Township 8 N / S, Range 46 E / W, in
the SW; SE; NE 1/4 SE; SE; NE 1/4, of Section(s) 12; 13, in
Baker County, Oregon.

Yes / No Certificate attached? Yes

Received
JUN 20 2024

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Affiant statement of personal knowledge

5. I know from personal observation and state with certainty that the entire water right X, or a portion ____ (check one, not both) of the water right has not been used for (write in the type of use and the dates during which the right was not used):

irrigation From January 2004 Through current 2024
(Use)(ex: irrigation) (Month & year)

Describe in detail below how you know with certainty that all, or a portion of, the water right has not been used on the authorized place of use for the period you assert above.

I am a neighboring property owner who has water rights from the same drainage.

I have never had the property owner/renter ask for their share of their water right.

There is a rock slide that has blocked the ditch for 20 years.

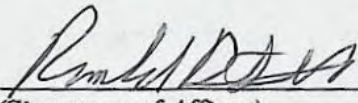
Received

JUN 20 2024

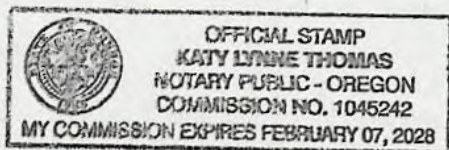
OWRD

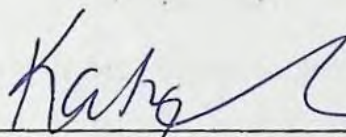
Signature and Oath

10. Under penalty of perjury, I do solemnly swear or affirm that the foregoing is a true statement of the facts as I know them to be from my personal knowledge.


(Signature of Affiant)

Sworn to and subscribed before me this 17 day of June, 2024.




(Notary Public of Oregon)

My Commission Expires Feb 07, 2028

(SEAL)

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JUN 20 2024
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**PROOF OF SERVICE OF
AFFIDAVIT ASSERTING NON-USE**

OAR 690-17-0400 requires that an affiant provide proof that an affidavit asserting non-use has been served upon the legal land owner and occupant of the lands to which the water right is appurtenant.

I certify that on the 17 day of June, 2024, I served the attached Affidavit Asserting Non Use of Water Right by mailing in a sealed envelope, with first class postage prepaid, a copy thereof addressed as follows:

Name: Terry Stromer

Name:

Address: 49922 Homestead Rd

Address:

City, State, Zip: Oxbow, OR 97840

City, State, Zip:

Name:

Name:

Address:

Address:

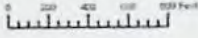
City, State, Zip:

City, State, Zip:

Attached additional page if needed

Received
JUN 20 2024
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THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY



SECTION 12 T.8S. R.46E. W.M.
BAKER COUNTY

1" = 400'

08S46E12



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JUN 20 2024
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AREA CANCELED
NON USE

Revised BPH
02/17/2000

08S46E12

STATE OF OREGON

COUNTY OF BAKER

CERTIFICATE OF WATER RIGHT

This is to Certify, That DRY CREEK DITCH COMPANY

of Halfway, 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 Lake Fork of North Pine Creek a tributary of Pine Creek for the purpose of Irrigation under Permit No. E 45 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 February 17, 1910;

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 6.50 cubic feet per second;

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

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 in case of rotation.

A description of the lands irrigated under the right hereby confirmed, and to which such right is appurtenant (or, if for other purposes, the place where the water is put to beneficial use), is as follows: 4 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, 4.6 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$, 13.6 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$, 11 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, 28.6 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$, 9.5 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 25, 22 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$, 2.4 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$, 13.6 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$, 11.8 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$, 10.7 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$, 15 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$, 1.4 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$, 2.6 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$, 15.4 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$, 30.3 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, 23.2 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, 0.2 acre in SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 26, 15.9 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$, 14.6 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$, 11 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$, 5.6 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, 12.5 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, 3.9 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 35, 24.2 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, 0.6 acre in SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 36, T. 7 S. R. — 46 E. W. M. 20 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$, 15 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$, 12 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, 20 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$, 20 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 2, 0.8 acre in SW $\frac{1}{4}$ SE $\frac{1}{4}$, 27.8 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 12, 4.5 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 13, T. 8 S. R. 46 E. W. M., being a total of 432.3 acres, in Baker County, Oregon.

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

Rights to the use of water for power purposes are limited to a period of forty years from the date of priority of the right, as herein set forth, subject to a preference right of renewal under the laws existing at the date of the expiration of the right for power purposes, as hereby confirmed and limited.

WITNESS the signature of the State Engineer,

affixed this 21st day
of January, 1927.

RHEA LUPER

State Engineer.

Received

JUN 20 2024

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Recorded in State Record of Water Right Certificates, Volume 7, page 7058.

A GUIDE TO AFFIDAVITS ASSERTING NON-USE

By submitting affidavits alleging non-use, you are making a statement under oath that the information you are giving about the water right is from your personal knowledge and is true. Based on this information, the Oregon Water Resources Department (Department) may initiate an administrative proceeding to cancel all or a portion of the water right.

You are also affirming that you have read Oregon Revised Statute (ORS) 540.610(2) and Oregon Administrative Rule (OAR) 690-017-0800, which set out the grounds by which the water right holder can rebut the presumption of forfeiture. Please see the attached copy of the statute and rules.

Your assertion that all or a portion of the water right has not been used beneficially for at least 5 successive years may be rebutted by the owner showing that one or more of the grounds listed in the statute or rule applies. If so, the non-use may be excused and the right will not be forfeit nor canceled. If the 5-year period of non-use ended more than 15 years ago, and the right has been used since then, no cancellation action can legally be initiated.

The water right certificate states the name of the person, or entity, the certificate was originally issued to, the source of water, the use of water, the number of acres and the location of the water right by county, township, range, section and $\frac{1}{4}$ $\frac{1}{4}$ (quarter-quarter) section. The tax lot number can be obtained from the county tax assessor's office for which the land in question is located.

You must include a copy of the county tax plat map with the affidavit and mark on the map the location of the water right, or the portion of the water right, you assert has not been beneficially used. Please see the example provided.

To locate the information for the water right certificate, you may contact your local Watermaster. Please see the RESOURCES section below for contact information.

You are stating that you are willing to testify in an administrative hearing to all allegations contained in your affidavit. **You have the burden to prove the alleged non-use by a preponderance of the evidence.**

The affidavit must describe your knowledge about the non-use, and it should be detailed. If you live next door, say how long you have lived there, what part of the land in question you have observed and the frequency of your observations. If you can only see the property from the road as you drive by explain what you can see and how frequently you drive by. Perhaps you walk along the stream, share a diversion or delivery system, perform regular ditch maintenance, or have some other reason to see the land, diversion, and/or delivery system so that you know no water has been diverted or applied. Describe this in detail. Perhaps you do not know about the diversion of water but are drawing the conclusion that water has not been used because you have not seen any evidence of irrigation and have not seen pipes, sprinklers, or water in the ditch. Whatever your basis is for knowledge about non-use on the property, describe it and give as many facts as possible.

Keep in mind, often the land for which a water right was originally obtained has now been subdivided into several different tax lots, each with a different owner. Some owners may have stopped using the water and others may still be using all or part of the right on their property.

The affidavit requires a statement of the time frame of the non-use that you *personally* know about. If you do not know from your own observations that this reported non-use occurred, do NOT include it. The only facts you should be relying on and including in your affidavit are what you have personally seen. The time frame you describe should be consistent with the reason you are familiar with the land and the water rights.

RESOURCES

Oregon Water Resources Website: www.oregon.gov/owrd

For Statutes and Rules, use the following address:

<https://www.oregon.gov/OWRD/programs/policylawandrules/Pages/default.aspx>

For a list of Oregon Watermaster Offices, use the following address:

<https://www.oregon.gov/OWRD/aboutus/contactus/Pages/RegionalOfficesandWatermastersDirectory.aspx>

For the water right certificate use the following address:

<https://www.oregon.gov/OWRD/programs/WaterRights/WRIS/Pages/default.aspx>

Use the Water Rights Information System (WRIS) to find a copy of the certificate (or other documents). Copies may also be requested by water right application number from the Water Rights Division at 503-986-0900 (copy fees will apply).

Oregon County Offices: <https://sos.oregon.gov/blue-book/Pages/local.aspx>

Map Information: The map submitted with the affidavit asserting non-use of a water right must clearly indicate the tax lot or property that the water right is attached to and show by drawing or some other form of demarcation where the water right is NOT being used. If it is only a portion of the water right that is not being used, only a portion should be marked. If the entire right is not being used, the area the right covers should be marked.

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**INSTRUCTIONS FOR COMPLETING THE
AFFIDAVIT ASSERTING NON-USE OF A WATER RIGHT**

1. Complete information regarding legal name, address, telephone number and email. The Department will contact you using this information.
2. Complete information regarding the water right certificate number, the name of the person(s) to whom the water right certificate was issued, the source of water, the use of water and the priority date of the water right.

Please see the "RESOURCES" portion of 'A Guide to Affidavits Asserting Non-Use' if you need help finding information to answer the questions in the affidavit.

3. List the total number of acres noted on the certificate, if applicable.
4. Identify the Township, Range, Quarter-Quarter Section(s), Section(s), and County. Attach a copy of the certificate.
5. If the **entire** water right, or a **portion** of a water right, is forfeit due to non-use, check the appropriate one, and complete the type of use and the alleged period of non-use by month and year. Explain your knowledge regarding the alleged non-use in as much detail as you can so that it would be clear to anyone reading your affidavit how you know the right has not been used. **Please contact the Department for assistance if you have questions. Phone: (503) 986-0801.**
6. Illustrate on the **county tax plat map** the lands to which the water right is appurtenant AND show the portion of the water right that has not been used (either the entire right or the portion that has not been used). You must state the number of acres of the right that has not been used.
7. List the tax lots within which the water right is located. If you are asserting that the entire right hasn't been used, you must still list the tax lots within which the right is located so the legal owners of the right can be notified. If you are asserting that a portion has not been used, you must do the same.
8. Indicate whether the subject water right is within the boundaries of an irrigation district or federal reclamation project.
9. Initial to show that you have read these laws: (ORS 540.610(2) and OAR 690-017-0800).
10. Initial to show that you have read this statement and understand your responsibilities as the proponent of this cancellation.
11. Sign the affidavit and have it notarized.

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12. Complete the Proof of Service which indicates you mailed a copy this affidavit to the legal land owner and occupant of the lands to which the water right is appurtenant.

**Mail to: Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271**

Received
JUN 20 2024
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BEFORE THE OREGON WATER RESOURCES DEPARTMENT

State of Oregon) AFFIDAVIT ASSERTING NON-USE
)ss OF WATER RIGHT
County of)

Affiant information

1. I, Martin Dry Creek Ranch LLC, Yvonne R Martin
(Legal Name)
of 18853 Market Rd
(Residential Address-and your mailing address if different)
Caldwell, ID 83607
(City) (State) (Zip Code)
Phone (541) 7094455, E-mail _____ say that:

Certificate information (If you are alleging non-use of more than one certificate, complete a separate affidavit for each certificate.)

2. Water Right Certificate number 7058, issued to Dry Creek Ditch Company
authorizes use of water from (source) Lake Fork Creek of North Pine Creek
for (use) irrigation
under a priority date of 1910.
3. The total number of acres described in the certificate is 432.3.
4. The subject water right is located in Township 8 N / S, Range 46 E / W, in
the SW; SE; NE 1/4 SE; SE; NE 1/4, of Section(s) 12; 13, in
Baker County, Oregon.

Yes / No Certificate attached? Yes

Affiant statement of personal knowledge

5. I know from personal observation and state with certainty that the entire water right X, or a portion ____ (check one, not both) of the water right has not been used for (write in the type of use and the dates during which the right was not used):

irrigation From January 2004 Through current 2024
(Use)(ex: irrigation) (Month & year)

Describe in detail below how you know with certainty that all, or a portion of, the water right has not been used on the authorized place of use for the period you assert above.

I am a neighboring property owner who has water rights from the same drainage.

I have never had the property owner/renter ask for their share of their water right.

There is a rock slide that has blocked the ditch for more than 20 years.

Received

JUN 11 2024

Tax Plat Map illustration A county tax plat map is required, no substitute is permitted. Please see the attached example.

- I have illustrated on the attached tax plat map, the location of the **portion or entirety** of the water right which has **not** been exercised, totaling 33.1 acres.
Please see the attached example.

8. Is the subject water right within the boundaries of an irrigation district or federal reclamation project? _____ Yes ☒ _____ No. If Yes, name of Irrigation District or Federal Reclamation Project: _____

- LM (Initial to indicate you have read these laws)

- Ben (Initial to indicate you have read this statement and understand your responsibilities).

Signature and Oath

10. Under penalty of perjury, I do solemnly swear or affirm that the foregoing is a true statement of the facts as I know them to be from my personal knowledge.

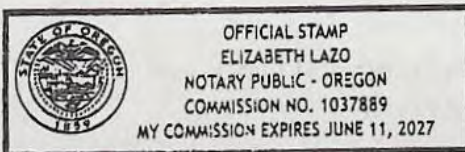
Martin Dry Creek Ranch LLC - Yvonne R. Martin
(Signature of Affiant)

Sworn to and subscribed before me this 31 day of May, 2024.

Elizabeth Lazo
(Notary Public of Oregon)

My Commission Expires June 11, 2027

(SEAL)



**PROOF OF SERVICE OF
AFFIDAVIT ASSERTING NON-USE**

OAR 690-17-0400 requires that an affiant provide proof that an affidavit asserting non-use has been served upon the legal land owner and occupant of the lands to which the water right is appurtenant.

I certify that on the 10 day of JUNE, 2024, I served the attached Affidavit Asserting Non Use of Water Right by mailing in a sealed envelope, with first class postage prepaid, a copy thereof addressed as follows:

Name: Terry Stromer

Name:

Address: 49922 Homestead Rd

Address:

City, State, Zip: Oxbow, OR 97840

City, State, Zip:

Name:

Name:

Address:

Address:

City, State, Zip:

City, State, Zip:

Attached additional page if needed



07 3W 23CB
SALEM

MARION COUNTY, OREGON
NW1/4 SW1/4 SEC23 T7S R3W W.M.
SCALE 1" = 100'

LEGEND

Section Boundary	Historical Boundary
Road Right-of-Way	Easement
Railroad Right-of-Way	Railroad Centerline
Private Road Right	Section Line
Subdivision Plot Boundary	Map Boundary
Waterline - Public Body	Waterline - Non Body

CORNER TYPES

1/4 Section Cor.	1/4 Section Cor.
D.E. Corner	1/4 Section Corner
	22.22

NUMBERS
Tax Code Number
000 00 00 0

Acreage
8.29 AC

NOTES
Tick Marks: A tick mark in the road indicates that the subdivided dimension extends into the public R/W.

CANCELLED NUMBERS

111	112	113	114
115	116	117	118
119	120	121	122
123	124	125	126
127	128	129	130
131	132	133	134
135	136	137	138
139	140	141	142
143	144	145	146
147	148	149	150

DISCLAIMER: THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY

Assessor's Office
Cartography Dept.

FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT
www.marion.or.us

PLOT DATE: 1/24/2018

SALEM
07 3W 23CB

Received
JUN 11 2024

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STATE OF OREGON

COUNTY OF BAKER

CERTIFICATE OF WATER RIGHT

This is to Certify, That DRY CREEK DITCH COMPANY

of Halfway, 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 Lake Fork of North Pine Creek a tributary of Pine Creek for the purpose of Irrigation under Permit No. E 45 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 February 17, 1910;

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 6.50 cubic feet per second;

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

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 in case of rotation.

A description of the lands irrigated under the right hereby confirmed, and to which such right is appurtenant (or, if for other purposes, the place where the water is put to beneficial use), is as follows: 4 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, 4.6 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$, 13.6 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$, 11 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, 28.6 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$, 9.5 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 25, 22 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$, 2.4 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$, 13.6 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$, 11.8 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$, 10.7 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$, 15 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$, 1.4 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$, 2.6 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$, 15.4 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$, 30.3 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, 23.2 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, 0.2 acre in SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 26, 15.9 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$, 14.6 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$, 11 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$, 5.6 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, 12.5 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, 2.9 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 35, 24.2 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, 0.6 acre in SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 36, T. 7 S. R. 46 E. W. M. 20 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$, 15 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$, 12 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, 20 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$, 20 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 2, 0.8 acre in SW $\frac{1}{4}$ SE $\frac{1}{4}$, 27.8 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 12, 4.5 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 13, T. 8 S. R. 46 E. W. M., being a total of 432.3 acres, in Baker County, Oregon.

Received

JUN 11 2024

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

Rights to the use of water for power purposes are limited to a period of forty years from the date of priority of the right, as herein set forth, subject to a preference right of renewal under the laws existing at the date of the expiration of the right for power purposes, as hereby confirmed and limited.

WITNESS the signature of the State Engineer,

affixed this 21st day
of January, 1927.

RHEA LUPER

State Engineer.

THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY

0 200 400 600 800 Feet

SECTION 12 T.8S. R.46E. W.M.
BAKER COUNTY

1" = 400'

08S46E12



Revised BPH
02/17/2003

08S46E12

Received
JUN 11 2024

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AREA CANCELED
NON USE

A GUIDE TO AFFIDAVITS ASSERTING NON-USE

By submitting affidavits alleging non-use, you are making a statement under oath that the information you are giving about the water right is from your personal knowledge and is true. Based on this information, the Oregon Water Resources Department (Department) may initiate an administrative proceeding to cancel all or a portion of the water right.

You are also affirming that you have read Oregon Revised Statute (ORS) 540.610(2) and Oregon Administrative Rule (OAR) 690-017-0800, which set out the grounds by which the water right holder can rebut the presumption of forfeiture. Please see the attached copy of the statute and rules.

Your assertion that all or a portion of the water right has not been used beneficially for at least 5 successive years may be rebutted by the owner showing that one or more of the grounds listed in the statute or rule applies. If so, the non-use may be excused and the right will not be forfeit nor canceled. If the 5-year period of non-use ended more than 15 years ago, and the right has been used since then, no cancellation action can legally be initiated.

The water right certificate states the name of the person, or entity, the certificate was originally issued to, the source of water, the use of water, the number of acres and the location of the water right by county, township, range, section and $\frac{1}{4}$ $\frac{1}{4}$ (quarter-quarter) section. The tax lot number can be obtained from the county tax assessor's office for which the land in question is located.

You must include a copy of the county tax plat map with the affidavit and mark on the map the location of the water right, or the portion of the water right, you assert has not been beneficially used. Please see the example provided.

To locate the information for the water right certificate, you may contact your local Watermaster. Please see the RESOURCES section below for contact information.

You are stating that you are willing to testify in an administrative hearing to all allegations contained in your affidavit. **You have the burden to prove the alleged non-use by a preponderance of the evidence.**

The affidavit must describe your knowledge about the non-use, and it should be detailed. If you live next door, say how long you have lived there, what part of the land in question you have observed and the frequency of your observations. If you can only see the property from the road as you drive by explain what you can see and how frequently you drive by. Perhaps you walk along the stream, share a diversion or delivery system, perform regular ditch maintenance, or have some other reason to see the land, diversion, and/or delivery system so that you know no water has been diverted or applied. Describe this in detail. Perhaps you do not know about the diversion of water but are drawing the conclusion that water has not been used because you have not seen any evidence of irrigation and have not seen pipes, sprinklers, or water in the ditch. Whatever your basis is for knowledge about non-use on the property, describe it and give as many facts as possible.

Keep in mind, often the land for which a water right was originally obtained has now been subdivided into several different tax lots, each with a different owner. Some owners may have stopped using the water and others may still be using all or part of the right on their property.

The affidavit requires a statement of the time frame of the non-use that you *personally* know about. If you do not know from your own observations that this reported non-use occurred, do NOT include it. The only facts you should be relying on and including in your affidavit are what you have personally seen. The time frame you describe should be consistent with the reason you are familiar with the land and the water rights.

RESOURCES

Oregon Water Resources Website: www.oregon.gov/owrd

For Statutes and Rules, use the following address:

<https://www.oregon.gov/OWRD/programs/policylawandrules/Pages/default.aspx>

For a list of Oregon Watermaster Offices, use the following address:

<https://www.oregon.gov/OWRD/aboutus/contactus/Pages/RegionalOfficesandWatermastersDirectory.aspx>

For the water right certificate use the following address:

<https://www.oregon.gov/OWRD/programs/WaterRights/WRIS/Pages/default.aspx>

Use the Water Rights Information System (WRIS) to find a copy of the certificate (or other documents). Copies may also be requested by water right application number from the Water Rights Division at 503-986-0900 (copy fees will apply).

Oregon County Offices: <https://sos.oregon.gov/blue-book/Pages/local.aspx>

Map Information: The map submitted with the affidavit asserting non-use of a water right must clearly indicate the tax lot or property that the water right is attached to and show by drawing or some other form of demarcation where the water right is NOT being used. If it is only a portion of the water right that is not being used, only a portion should be marked. If the entire right is not being used, the area the right covers should be marked.

Received

JUN 11 2024

**INSTRUCTIONS FOR COMPLETING THE
AFFIDAVIT ASSERTING NON-USE OF A WATER RIGHT**

1. Complete information regarding legal name, address, telephone number and email. The Department will contact you using this information.
2. Complete information regarding the water right certificate number, the name of the person(s) to whom the water right certificate was issued, the source of water, the use of water and the priority date of the water right.

Please see the "RESOURCES" portion of 'A Guide to Affidavits Asserting Non-Use' if you need help finding information to answer the questions in the affidavit.

3. List the total number of acres noted on the certificate, if applicable.
4. Identify the Township, Range, Quarter-Quarter Section(s), Section(s), and County. Attach a copy of the certificate.
5. If the **entire** water right, or a **portion** of a water right, is forfeit due to non-use, check the appropriate one, and complete the type of use and the alleged period of non-use by month and year. Explain your knowledge regarding the alleged non-use in as much detail as you can so that it would be clear to anyone reading your affidavit how you know the right has not been used. **Please contact the Department for assistance if you have questions. Phone: (503) 986-0801.**
6. Illustrate on the **county tax plat map** the lands to which the water right is appurtenant **AND** show the portion of the water right that has not been used (either the entire right or the portion that has not been used). You must state the number of acres of the right that has not been used.
7. List the tax lots within which the water right is located. If you are asserting that the entire right hasn't been used, you must still list the tax lots within which the right is located so the legal owners of the right can be notified. If you are asserting that a portion has not been used, you must do the same.
8. Indicate whether the subject water right is within the boundaries of an irrigation district or federal reclamation project.
9. Initial to show that you have read these laws: (ORS 540.610(2) and OAR 690-017-0800).
10. Initial to show that you have read this statement and understand your responsibilities as the proponent of this cancellation.
11. Sign the affidavit and have it notarized.

12. Complete the Proof of Service which indicates you mailed a copy this affidavit to the legal land owner and occupant of the lands to which the water right is appurtenant.

**Mail to: Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271**

Received
JUN 11 2024

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OREGON WATER RESOURCES DEPARTMENT
OREGON REVISED STATUTES Chapter 540
Distribution of Water; Watermasters; Change in Use;
Transfer or Forfeiture of Water Rights

FORFEITURE OF WATER RIGHTS

- 540.610 Use as measure of water right; forfeiture for nonuse; confirmation of rights of municipalities
- 540.612 Exemption from forfeiture
- 540.621 Cancellation of abandoned water right upon request of owner
- 540.631 Cancellation of forfeited water right; notice
- 540.641 Protest of cancellation; procedure
- 540.650 Issuance of new water right certificate for water rights not canceled
- 540.660 Affidavit of watermaster that circumstances prevent use of water right in accordance with terms of certificate; procedures for cancellation of right
- 540.670 Effect of cancellation of primary water right on supplemental right; change from supplemental to primary right; priority date

FORFEITURE OF WATER RIGHTS

540.610 Use as measure of water right; forfeiture for nonuse; confirmation of rights of municipalities. (1) Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state. Whenever the owner of a perfected and developed water right ceases or fails to use all or part of the water appropriated for a period of five successive years, the failure to use shall establish a rebuttable presumption of forfeiture of all or part of the water right.

(2) Upon a showing of failure to use beneficially for five successive years, the appropriator has the burden of rebutting the presumption of forfeiture by showing one or more of the following:

(a) The water right is for use of water, or rights of use, acquired by cities and towns in this state, by appropriation or by purchase, for all reasonable and usual municipal purposes.

(b) A finding of forfeiture would impair the rights of such cities and towns to the use of water, whether acquired by appropriation or purchase, or heretofore recognized by act of the legislature, or which may hereafter be acquired.

(c) The use of water, or rights of use, are appurtenant to property obtained by the Department of Veterans' Affairs under ORS 407.135 or 407.145 for three years after the expiration of the period of redemption provided for in ORS 18.964 while the land is held by the Department of Veterans' Affairs, even if during such time the water is not used for a period of more than five successive years.

(d) The use of water, or rights of use, under a water right, if the owner of the property to which the right is appurtenant is unable to use the water due to economic hardship as defined by rule by the Water Resources Commission.

(e) The period of nonuse occurred during a period of time within which land was withdrawn from use in accordance with the Act of Congress of May 28, 1956, chapter 327 (7 U.S.C. 1801-1814; 1821-1824; 1831-1837),

Received 1
JUN 11 2024
OWRD

or the Federal Conservation Reserve Program, Act of Congress of December 23, 1985, chapter 198 (16 U.S.C. 3831-3836, 3841-3845). If necessary, in a cancellation proceeding under this section, the water right holder rebutting the presumption under this paragraph shall provide documentation that the water right holder's land was withdrawn from use under a federal reserve program.

(f) The end of the alleged period of nonuse occurred more than 15 years before the date upon which evidence of nonuse was submitted to the commission or the commission initiated cancellation proceedings under ORS 540.631, whichever occurs first.

(g) The owner of the property to which the water right was appurtenant is unable to use the water because the use of water under the right is discontinued under an order of the commission under ORS 537.775.

(h) The nonuse occurred during a period of time within which the water right holder was using reclaimed water in lieu of using water under an existing water right.

(i) The nonuse occurred during a period of time within which the water right holder was reusing water through land application as authorized by ORS 537.141 (1)(i) or 537.545 (1)(g) in lieu of using water under an existing water right.

(j) The owner or occupant of the property to which the water right is appurtenant was unable to make full beneficial use of the water because water was not available. A water right holder rebutting the presumption under this paragraph shall provide evidence that the water right holder was ready, willing and able to use the water had it been available.

(k) The holder of a water right is prohibited by law from using the water. If the prohibition is subject to remedial action that would allow the use of the water, the water right holder shall provide evidence that the water right holder is conducting the remedial action with reasonable diligence.

(L) The nonuse occurred during a period of time within which the exercise of all or part of the water right was not necessary due to climatic conditions, so long as the water right holder had a facility capable of handling the full allowed rate and duty, and was otherwise ready, willing and able to use the entire amount of water allowed under the water right.

(m) The nonuse occurred during a period of time within which the water was included in a transfer application pending before the Water Resources Department.

(n) The nonuse of a supplemental water right occurred during a period of time when the primary water right used in conjunction with that supplemental water right was leased as an in-stream water right pursuant to ORS 537.348.

(3) Notwithstanding subsection (1) of this section, if the owner of a perfected and developed water right uses less water to accomplish the beneficial use allowed by the right, the right is not subject to forfeiture so long as:

(a) The user has a facility capable of handling the entire rate and duty authorized under the right; and

(b) The user is otherwise ready, willing and able to make full use of the right.

(4) The right of all cities and towns in this state to acquire rights to the use of the water of natural streams and lakes, not otherwise appropriated, and subject to existing rights, for all reasonable and usual municipal purposes, and for such future reasonable and usual municipal purposes as may reasonably be anticipated by reason of growth of population, or to secure sufficient water supply in cases of emergency, is expressly confirmed.

(5) After a water right is forfeited under subsection (1) of this section, the water that was the subject of use shall revert to the public and become again the subject of appropriation in the manner provided by law, subject to existing

Received

2

JUN 11 2024

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priorities. [Amended by 1985 c.689 §5; 1987 c.339 §4; 1989 c.699 §1; 1989 c.833 §61a; 1991 c.370 §6; 1995 c.356 §2; 1995 c.366 §1; 1997 c.42 §5; 1997 c.244 §5; 1997 c.283 §1; 1999 c.335 §3; 1999 c.804 §§3,4; 2005 c.222 §1; 2005 c.542 §70; 2005 c.625 §70]

540.612 Exemption from forfeiture. If a district, as defined in ORS 540.505, petitions for a transfer as provided in ORS 540.574 no later than the end of the calendar year of the fifth year of nonuse under ORS 540.610 (1), the forfeiture provisions of ORS 540.610 shall not apply to the lands from which the water right is sought to be transferred pending approval of the district's petition. The time required for the processing of the petition, including any time required for hearings, appeals and completion of an authorized change, shall not be included when computing a five-year period of nonuse under the provisions of ORS 540.610 (1). [1991 c.957 §11]

540.615 [1961 c.140 §1; 1987 c.339 §5; repealed by 1989 c.699 §4]

540.620 [Repealed by 1955 c.671 §1]

540.621 Cancellation of abandoned water right upon request of owner. Whenever the owner of a perfected and developed water right certifies under oath to the Water Resources Commission that the water right has been abandoned by the owner and that the owner desires cancellation thereof, the commission shall enter an order canceling the water right. Effective upon the date of the entering of such order, the water which was the subject of use under the water right shall revert to the public and become again the subject of appropriation in the manner provided by law, subject to existing priorities. [1955 c.670 §1; 1979 c.67 §5; 1985 c.673 §96]

540.630 [Repealed by 1955 c.671 §1]

540.631 Cancellation of forfeited water right; notice. Whenever it appears to the satisfaction of the Water Resources Commission upon the commission's own determination or upon evidence submitted to the commission by any person that a perfected and developed water right has been forfeited as provided in ORS 540.610 (1), and would not be rebutted under ORS 540.610 (2), the commission shall initiate proceedings for the cancellation of such water right by causing written notice of such initiation of proceedings to be given by registered or certified mail, return receipt requested, to the legal owner of the lands to which the water right is appurtenant and to the occupant of such lands. The notice to the legal owner shall be addressed to the legal owner at the owner's last address of record in the office of the county assessor of the county in which the lands are located. The notice shall contain a complete description of the water right and of the lands to which the water right is appurtenant. The notice shall state that the legal owner or the occupant has a period of 60 days from the date of the mailing of the notice within which to protest the proposed cancellation of the water right. [1955 c.670 §2; 1985 c.673 §97; 1989 c.699 §2; 1991 c.249 §53]

540.640 [Repealed by 1955 c.671 §1]

540.641 Protest of cancellation; procedure. (1) If the legal owner or the occupant receiving notice as provided in ORS 540.631 fails to protest the proposed cancellation of the water right within the 60-day period prescribed in the notice, the Water Resources Commission may enter an order canceling the water right.

(2) If the legal owner or the occupant receiving notice as provided in ORS 540.631 files a protest against the proposed cancellation of the water right with the commission within the 60-day period prescribed in the notice, the commission shall fix a time and place for a hearing on the protest. The commission shall cause written notice of the hearing to be given at least 10 days prior to the hearing to the person protesting the cancellation of the water right and to any other person who in the opinion of the commission is an interested party to the proceeding. The hearing shall be held by the commission and shall be conducted under the provisions of ORS chapter 183 pertaining to contested cases. After the hearing the commission shall enter an order canceling the water right, canceling in part or modifying the water right, or declaring that the water right shall not be canceled or modified. [1955 c.670 §3; 1975 c.581 §26c; 1983 c.807 §3; 1985 c.673 §98]

Received

3

JUN 11 2024

OWRD

540.650 Issuance of new water right certificate for water rights not canceled. If the order of the Water Resources Commission or the final decree on the appeal therefrom under ORS 540.641 cancels in part or modifies the water right, that portion of the water right not canceled or continued as modified shall be reaffirmed by a new water right certificate issued by the commission. Such certificate shall be of the same character as that described in ORS 539.140. The certificate shall be recorded and transmitted to the owner of the water right as provided in ORS 539.140. [1955 c.670 §4; 1979 c.67 §6; 1985 c.673 §99]

540.660 Affidavit of watermaster that circumstances prevent use of water right in accordance with terms of certificate; procedures for cancellation of right. (1) If a watermaster has reason to believe that circumstances exist that prevent a water right from being exercised according to the terms and conditions of the water right certificate issued under ORS 537.250 or 539.140, such as the land to which the water right is appurtenant is covered by an impermeable surface, or the diversion mechanism used to appropriate water under a water right is no longer operable, the watermaster shall file an affidavit with the Water Resources Director. The affidavit shall state that to the best of the watermaster's knowledge, there is no physical way the water may be applied to a beneficial use in accordance with the terms and conditions of the water right certificate.

(2) If the watermaster files an affidavit under subsection (1) of this section each year for five consecutive years, the affidavits shall constitute prima facie evidence that the water has not been applied to a beneficial use for five years and the Water Resources Commission shall initiate proceedings under ORS 540.631 to cancel the water right.

(3) The Water Resources Department shall provide notice of the affidavit filed with the Water Resources Director under subsection (1) of this section. The department shall provide such notice in the following manner:

(a) If there are 25 or fewer record owners of the land, the department shall mail a copy of the affidavit to each record owner.

(b) If there are more than 25 record owners, the department shall provide general notice by publication according to the procedures established in ORS 193.010 to 193.100.

(c) If the land is within the boundaries of an irrigation district, the department shall mail a copy of the affidavit to the irrigation district.

(4) As used in this section, "record owner" means the person shown as the owner of the land in the county deed records established under ORS chapter 93. [1987 c.339 §1]

540.670 Effect of cancellation of primary water right on supplemental right; change from supplemental to primary right; priority date. (1) The cancellation of a primary water right for nonuse under ORS 540.641 shall not also cancel a supplemental water right unless the supplemental water right also has not been used beneficially for five or more years.

(2) If the Water Resources Commission cancels a primary water right under ORS 540.641 the commission may issue a new water right certificate changing the supplemental water right to a primary right if the commission finds that the change would not result in injury to existing water rights.

(3) A supplemental right changed to a primary right under subsection (2) of this section shall retain the priority date of the supplemental right. [1987 c.339 §2]

Received

JUN 11 2004

4

OWRD

**OREGON ADMINISTRATIVE RULE CHAPTER 690; DIVISION 17
CANCELLATION OF PERFECTED WATER RIGHTS**

690-017-0005

Introduction

These rules define the process the Water Resources Department will follow when cancelling a perfected water right. The action to cancel the perfected water right can be initiated as the result of a request by the record owner of the land to which the water right is appurtenant, or as the result of a request to determine the validity of a water right which may be forfeited due to five successive years of non-use.

Stat. Auth.: ORS 183, ORS 339, ORS 536, ORS 537 & ORS 540

Stats. Implemented:

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90

690-017-0010

Definitions

- (1) "Affidavit" means a declaration upon oath, in writing, signed by the party and sworn to before a notary public.
- (2) "Affiant" means the individual completing, swearing to and signing an affidavit.
- (3) "Bankruptcy" means proceedings under federal bankruptcy statutes to relieve a debtor (the bankrupt) from insurmountable debt. The commencement of a bankruptcy action occurs with the date a petition for relief is filed by a debtor or creditor to the bankruptcy court.
- (4) "Cancellation" means the action taken by the Director, the Commission, or the courts to abolish all or part of a permit or certificate of water right.
- (5) "Deed-in-Lieu" means a deed tendered by the record owner to prevent the creditor from asserting a legal right to recover payment of a debt through a foreclosure action.
- (6) "District" has the meaning of the term as defined in ORS 540.505
- (7) "Foreclosure" means a proceeding in or out of court to extinguish all right, title and interest of the record owner(s) of property in order to sell or repossess the property to satisfy a lien against it. A foreclosure action begins on the date presentation of the official demand for payment is made to the debtor by the creditor by certified mail.
- (8) "Forfeiture" means the loss of a water right caused by the failure of the appropriator or record owner of the right to use the water for five successive years.
- (9) "Judicial Action" means a suit, injunction, or litigation filed with or allowed by the courts.
- (10) "Natural Disaster" means an act of God, such as flooding or erosion, which occurred with such magnitude that it either prohibited or severely limited the ability to use the water.
- (11) "Perfected Water Right" means a water right which has been confirmed by the issuance of a certificate of water right or by a court decree.
- (12) "Presumption of Forfeiture" means a conclusion established by statute that a water right, in whole or in part, is forfeited by nonuse of the right for five successive years.
- (13) "Principal Farm Operator" means the record owner, including a lessee to whom the right of possession of agricultural property has been granted by the lessor for a specified period of time in return for a consideration.
- (14) "Rebuttable Presumption" means a presumption which, by statute, may be overcome by evidence sufficient to explain or disprove the presumption.
- (15) "Record Owner" means the person shown as the owner of the land in the county deed records established under ORS Chapter 93.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.610-540.670

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90; WRD 7-2004, f. & cert. ef. 11-5-04

690-017-0100

Cancellation Authorized by Record Owner

- (1) Perfected water rights shall be cancelled by order of the Director in accordance with the provisions of ORS 540.621 when so requested by notarized affidavit of the record owner of the land to which the water right in question is appurtenant.
- (2) The affidavit shall contain, at a minimum, the following:
 - (a) A statement that the affiant is the record owner of the lands associated with the water right in question;
 - (b) The certificate number of the water right;
 - (c) A statement that the affiant has abandoned any and all interest in and to all or a specified portion of the water right;

Received

JUN 11 2024

OWRD

(d) Where only part of the right has been abandoned, a description of the specific place of use by quarter-quarter section and acres on which the right has been abandoned, with information sufficient to determine the lands on which the right is not to be cancelled; and

(e) A request that all or part of the certificate be cancelled.

(f) A statement of whether, to the best of the affiant's knowledge, the subject water right is within the boundaries of a district or federal reclamation project.

(3) Based on the best information available to the Department, if the subject water right is within the boundaries of a district or federal reclamation project, the Department shall, as applicable, provide the district and the United States Bureau of Reclamation notice of the water right cancellation request.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.610-540.670

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90; WRD 7-2004, f. & cert. ef. 11-5-04

690-017-0200

Watermaster Affidavit of Inability to Appropriately or Beneficially Use Water

(1) If a watermaster has reason to believe that circumstances exist that prevent a water right from being exercised, including but not limited to, the lands being covered by an impermeable surface or the diversion mechanism used to appropriate the water is no longer operable, the watermaster shall file an affidavit with the Water Resources Director.

(2) The affidavit shall state:

(a) The date and time the land or diversion mechanism or other evidence was inspected by the watermaster;

(b) The names of all record owners of the land where the water right is appurtenant and the owners' address as it appears in the county assessors' records; and

(c) The watermaster's findings during the inspection that indicate the water right cannot be exercised.

Stat. Auth.: ORS 183, ORS 339, ORS 536, ORS 537 & ORS 540

Stats. Implemented:

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90

690-017-0300

Notice of Watermaster Affidavit to Record Owner

(1) The Water Resources Department shall notify each record owner of the land described by an affidavit submitted by a watermaster under ORS 540.660 in the following manner:

(a) If there are 25 or fewer record owners of the land, the department shall mail a copy of the affidavit to each record owner;

(b) If there are more than 25 record owners, the department shall provide general notice by publication according to the procedures established in ORS 193.010 to 193.100; and

(c) If the land is within the boundaries of an irrigation district, the Department shall mail a copy of the affidavit to the irrigation district.

(2) The record owner named in an affidavit shall be given the option of voluntarily relinquishing the water right or portion thereof, continuing to be the subject of the filing of such affidavits each year for a period of five successive years, or of applying the water to the use authorized by the certificate.

(3) If the watermaster files an affidavit each year for five successive years, the Water Resources Department shall initiate proceedings under ORS 540.631 to cancel the water right.

Stat. Auth.: ORS 183, ORS 339, ORS 536, ORS 537 & ORS 540

Stats. Implemented:

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90

690-017-0400

Cancellation Initiated by Department

(1) The Department shall initiate proceedings to cancel a perfected water right, as provided in ORS 540.631 and these rules, whenever it appears that a right has been forfeited as provided in 540.610. The decision to initiate cancellation proceedings shall be based on evidence submitted to the Department, by any person, that alleges five or more years of nonuse so as to create a presumption of forfeiture, and from which evidence it further appears the presumption of forfeiture would not likely be rebutted under OAR 690-017-0800(2)(a), (d) or (e).

(2) Where the evidence submitted to the Department is in the form of affidavits, notarized affidavits from two individuals shall be required. An affidavit shall contain the following:

(a) Name, address and telephone number of affiant;

Received

JUN 11 2024

OWRD

- (b) Page number of the certificate in question as recorded in the State Record of Water Right Certificates, name of the person to whom the certificate was issued, and priority date of the certificate;
 - (c) Township, range, quarter-quarter section and number of acres to which the certificate in question is appurtenant;
 - (d) The use for which the water right was issued;
 - (e) The source of water to be used as provided in the certificate;
 - (f) A statement of the affiant's knowledge of the lands described in the certificate in question, and an explanation of how the affiant gained this knowledge;
 - (g) A statement that the affiant knows with certainty that no water from the allowed source has been used for the authorized use on the lands, or a portion of the lands, the portion being accurately described, under the provisions of the water right within a period of five or more successive years, and the beginning and ending years of the period of nonuse. Where possible, beginning and ending months should also be given;
 - (h) A statement that the affiant believes the allegation of nonuse will not be rebutted under any of the grounds for rebuttal set out in ORS 540.610;
 - (i) A copy of the county tax plat map illustrating the lands to which the subject water right is appurtenant, and if applicable, the location of the portion of the water right asserted to have been forfeited;
 - (j) The affiant's agreement to testify in a hearing before the Water Resources Department if necessary;
 - (k) To the best of the affiant's knowledge, a statement of whether the subject water right is within the boundaries of a district or federal reclamation project; and
 - (l) Proof that the affidavit(s) have been served upon the legal owner of the lands to which the water right is appurtenant and to the occupant of such lands.
- (3) Based on the best information available to the Department, if the subject water right is within the boundaries of a district or federal reclamation project, the Department shall provide notice of receipt of affidavits submitted under this rule, as applicable, to the district and the United States Bureau of Reclamation at least 90 days prior to initiating a cancellation proceeding.
- (4) Where the evidence submitted is solely from Department personnel, such evidence shall be submitted in the form of an affidavit and contain all information described in section (2) of this rule. In addition, the affidavit shall be supported by stream or canal gaging records, water or electric meter readings, static level measurements, system capacity calculations, a summary of field investigations, photos, maps, or other relevant data covering each year of the period of alleged nonuse.
- (5) The Department shall initiate proceedings to cancel a water right under ORS 540.631 within 180 days of receiving the evidence required under sections (1) and (2) of this rule.
- (6) The Department shall notify the record owner of the land to which a perfected water right is appurtenant that it intends to cancel all or a portion of the water right. The occupant of affected lands, if other than the owner, shall also be notified. If the subject water right is within the boundaries of a district or federal reclamation project, the Department shall, as applicable, mail a copy of the cancellation notice to the district and the United States Bureau of Reclamation. Notice shall be sent to the record owner of the land or occupant by certified mail, return receipt requested. The notice to the record owner shall be addressed to the owner at the owner's last address or record in the office of the county assessor of the county in which the lands are located. The notice shall contain the following:
- (a) A description of the water right and the land to which the water right is appurtenant;
 - (b) A statement that the information before the Director creates a rebuttal presumption of forfeiture;
 - (c) A statement that the record owner or the occupant has a period of 60 days from the date of the mailing of the notice within which to protest the proposed cancellation either by asserting that the water right has been used, or by making rebuttal in the manner and on the grounds provided in OAR 690-017-0600 and 690-017-0800;
 - (d) Notice that if the record owner intends to rebut the presumption of forfeiture, the protest shall include a statement of the grounds for rebuttal relied upon, and shall be accompanied by appropriate supporting documentation; and
 - (e) A statement that, following receipt of a protest against the proposed cancellation and determination that the presumption of forfeiture has not been rebutted, a contested case hearing will be scheduled.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.610-540.670

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90; WRD 7-2004, f. & cert. ef. 11-5-04

690-017-0500

Cancellation Not Protested

If the record owner or occupant receiving notice as provided in ORS 540.631 fails to protest the proposed cancellation of the water within the 60-day period prescribed in the notice, the Water Resources Department shall enter an order cancelling the water right as provided in ORS 540.641.

Stat. Auth.: ORS 183, ORS 339, ORS 536, ORS 537 & ORS 540

Received

JUN 11 2024

OWRD

Stats. Implemented:

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90

690-017-0600

Protest of Cancellation/Statement of Intent to Rebut Presumption of Forfeiture

(1) A protest submitted to the Water Resources Department by the record owner or occupant of the land on which a cancellation of a perfected water right is proposed shall include the following:

(a) A written statement citing the reasons the record owner or occupant believes the water right has not been forfeited by nonuse; and

(b) The statutory fee for filing the protest.

(2)(a) Where the record owner or occupant intends to rebut the presumption of forfeiture by claiming one or more of the grounds for rebuttal established in ORS 540.610(2) and as further defined in OAR 690-017-0800, grounds claimed for rebuttal shall be stated in the protest;

(b) Where applicable, documentary evidence in support of the rebuttal as described in OAR 690-017-0800(3) shall be submitted with the protest.

(3)(a) On receipt of a protest claiming rebuttal and supporting documentary evidence, a determination shall be made whether the presumption of forfeiture has been rebutted;

(b) Where rebuttal is found to have been made, the matter shall be closed and no further action taken to cancel the water right;

(c) Where it is determined that the presumption of forfeiture has not been rebutted, the Department shall initiate proceedings to cancel the right as provided in OAR 690-017-0700.

Stat. Auth.: ORS 183, ORS 339, ORS 536, ORS 537 & ORS 540

Stats. Implemented:

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90

690-017-0700

Cancellation Hearing

(1) If the Department receives a protest to the proposed cancellation of a water right within the prescribed 60-day period, a hearing on the protest shall be scheduled. The protestant shall be given not less than ten days notice of the hearing time and place.

(2) The hearing shall be held by the Department's Hearings Referee, and shall be conducted under the provisions of ORS 183.310 to 183.550 pertaining to contested cases.

(3) In contested case hearings where the initial determination was made that the presumption of forfeiture had not been rebutted, the owner may offer additional evidence in support of rebuttal.

(4) After the hearing the Hearings Referee shall enter a proposed order:

(a) Cancelling the water right;

(b) Cancelling in part or modifying the water right; or

(c) Declaring that the water right shall not be cancelled or modified.

(5) If no exceptions or objections to the proposed order are filed within the time allowed, the Hearings Referee shall issue a final order.

Stat. Auth.: ORS 183, ORS 339, ORS 536, ORS 537 & ORS 540

Stats. Implemented:

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90

690-017-0800

Grounds for and Manner of Rebutting a Presumption of Forfeiture

(1) Any record owner or occupant rebutting a presumption of forfeiture for nonuse of water under ORS 540.610(2), as provided in these rules, shall provide evidence that rebuts the presumption of forfeiture.

(2) A presumption of forfeiture may be rebutted by showing one or more of the following:

(a) The water right is for reasonable and usual municipal use of water;

(b) A finding of forfeiture would impair the rights of cities and towns to the use of water, whether acquired by appropriation or purchase, or previously recognized by legislative act, or which may be acquired in the future;

(c) The owner of the property was unable to use the water due to economic hardship as defined in section (3) of this rule;

(d) The period of nonuse occurred during a period of time within which land was withdrawn from use under the Federal Soil Bank Program or the Federal Conservation Reserve Program;

(e) The end of the alleged period of nonuse occurred more than 15 years before the date upon which evidence of nonuse was submitted or cancellation proceedings were initiated under ORS 540.631, whichever occurs first; and

Received

4

JUN 11 2021

OWRD

(f) The owner of the property to which the water right is appurtenant is unable to use the water because the use of water under the right is discontinued by an order of the Commission under ORS 537.775 (wasteful or defective wells).

(3) An economic hardship exists only during the following periods of time:

(a) During a bankruptcy action initiated by or for the record owner or principal farm operator;

(b) During a foreclosure of real or personal property of the record owner or principal farm operator. The foreclosure of personal property must directly affect the ability to use the water in question;

(c) During the redemption periods as provided in ORS 23.530 to 23.600;

(d) Three calendar years following the expiration of redemptions as provided in ORS 23.530 to 23.600; or, three years from the date of recording of a deed in lieu of foreclosure tendered by the record owner or principal farm operator in payment of debt owed; and

(e) The time during which judicial actions limit or prohibit the record owner's or principal farm operator's use of the water in question;

(f) The time during which a natural disaster would limit or prohibit the record owner's or principal farm operator's use of the water in question.

(4) Documentation supporting rebuttal based on enrollment in a federal program, bankruptcy, foreclosure or foreclosure redemption, natural disaster, or the 15-year statute of limitations on cancellation as provided for in ORS 540.610(2) may include, but is not limited to, the following items:

(a) The enrollment contract or agreement between the record owner, occupant, or principal farm operator and the appropriate federal jurisdiction;

(b) Affidavits by knowledgeable parties such as employees administering the federal programs;

(c) Court pleadings, filings or other legal documentation of bankruptcy or foreclosure;

(d) Documents from financial, mortgage, lending or title institutions; and

(e) Sworn statements by a watermaster, soil scientist, or insurance claim adjuster.

Stat. Auth.: ORS 183, ORS 339, ORS 536, ORS 537, & ORS 540

Stats. Implemented:

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90

690-017-0900

Time Period of Non-Use

Where the rebutted nonuse occurs as an intervening period within an unrebutted period of nonuse totally five or more years, the remaining unrebutted years of nonuse will be treated as consecutive and cancellation will be initiated.

Stat. Auth.: ORS 183, ORS 339, ORS 536, ORS 537 & ORS 540

Stats. Implemented:

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90

Received

JUN 11 2024

OWRD

Division No. 2 Enlargement Permit No. 45 County of Baker
Application No. 020

Proof of Appropriation of Water

(In accordance with the provisions of Chapter 216, Laws of Oregon for 1909, and the regulations of the State Water Board thereunder.)

From Lake Fork of north Pine Creek Tributary of Pine Creek

- Name The Dry Creek Ditch Company
- Postoffice address Halfway, Oregon
- For what purpose is water used? Irrigation (6.50 cfs at 250' + 3.33 per ft.)
- Did you begin the actual construction of the Danny and Melhorn diversion Ditch, of Fish Creek to Inter. of Dry Creek (or other distributing works described in said permit), on or before June 17, 1911?
Yes
- Give the date of completion of such construction work June 20th 1919
- When was all the water completely applied to the proposed use? June 22nd 1919
- 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. In the blank column on the right, headed "No. acres actually irrigated," fill in the number of acres you have irrigated in each of the tracts described.

Township	Range	Section	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
7 S	46 E	25	NE NW	10	10
		25	NW NW	15	15
		25	SE NW	10	10
		25	SW NW	40	34
		25	NW SW	25	25
		25	SW SW	20	20
		26	NE NE	20	X
		26	SE NE	40	25
		26	SW NE	35	35
		26	NE SE	20	10
		26	NW SE	35	35
		26	SW SE	40	40
		26	NE SW	25	25
		26	NW SW	10	10
		26	SW SW	40	40
		26	SE SW	25	25
		26	NE NW	20	20
		26	SE NW	30	30
		26	SW NW	5	5
		35	NW NE	40	30
		35	SW NE	35	20
		35	NW NW	20	20
		35	SW NW	20	20
		35	SE NW	40	39
		35	NW SW	20	7
		35	NE SW	40	40
		36	NE NW	40	30
		36	NW NW	20	X
		36	SE NW	10	X
		36	NE SW	30	X
		36	SE SW	30	X
		2	NE NW	40	X
8 S	46 E	2	SE NW	30	X
		2	SE NE	15	15
		2	SW NE	20	20
		2	NE SE	20	20
		2	NW SE	20	20
7 S	46 E	2	NE SW	40	X
		35	SE SW	40	X
8 S	46 E	12	SW SE	0.5	4
		12	SE SE	27.5	40
		13	NE NE	1.5	4

442.3

8. During what months is water beneficially used?
9. State the character of the soil and kind of crops raised
10. Does the accompanying blue print of the map filed with your permit show correctly the location of diverting works and area of land where water is used?

8. During what months is water beneficially used? *Apr May June July Aug Sept*
9. State the character of the soil and kind of crops raised *Any Corn
Wheat & Hay & vegetables*
10. Does the accompanying blue print of the map filed with your permit show correctly the location of diverting works and area of land where water is used?
11. If not, state wherein such map is in error *Some relinquished from Sec 36 &
applied in Sec 12 & 13 & 14*
12. If the dimensions of your ditch or dam do not correspond to those described in your permit, state what changes have been made, giving dimensions of ditch (or other distributing works)
no change
13. If water is used for power, mining, domestic, municipal, storage, manufacturing, or any other purpose than irrigation, give the extent and method of such use

STATE OF OREGON
County of *Baker* } ss.

I, *W. Weatherspoon*, 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 *1st* day of *October*, 191*9*.

Subscribed and sworn to before me this *1st* day of *October*, 191*9*.

(Notarial Seal)

W. Weatherspoon
Notary Public for Oregon.
My commission expires *Mar. 22-1920*

AFFIDAVIT OF WITNESSES

We, Zeno Lemmey, and W. H. Weatherspoon
of Halfway Oregon, 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. 45; 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.

Zeno Lemmey
W. H. Weatherspoon

Subscribed and sworn to before me this 1st day of October, 1919.

(Notarial Seal)

H. J. Langness
Notary Public for Oregon.
My commission expires Mar 22-1920

78	466	2	SW 1/4 NE 1/4	20	20
85	161	2	NE 1/4 SE 1/4	20	20
		2	NW 1/4 SE 1/4	20	20
		2	NE 1/4 SW 1/4	40	X
		2	SE 1/4 SW 1/4	40	X
		12	SW 1/4 SE 1/4		4
		12	SE 1/4 SE 1/4		40
		13	NE 1/4 NE 1/4		4

8. During what months is water beneficially used?
9. State the character of the soil and kind of crops raised
10. Does the accompanying blue print of the map filed with your permit show correctly the location of diverting works and area of land where water is used?

PROOF OF APPROPRIATION

Permit No. *B 48*

100 fee paid

March 27 1919

RECEIVED

1919

SMITH

Approved:

Priority date - July 17, 1910

Halfway OK 10/1/10
State Engr
Salem Ore

Dear Sir

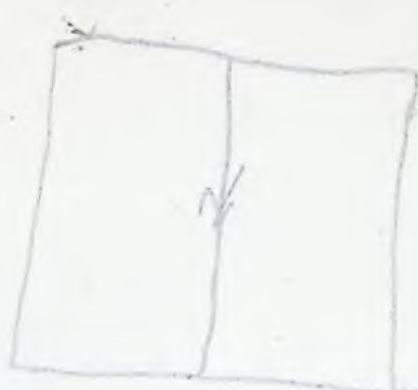
Enclosed OK for \$100
together with final proof and
blue prints of D C D Co

Yours truly

W. H. H. H. H. H.
Sey
D C D Co

35

36



(1)

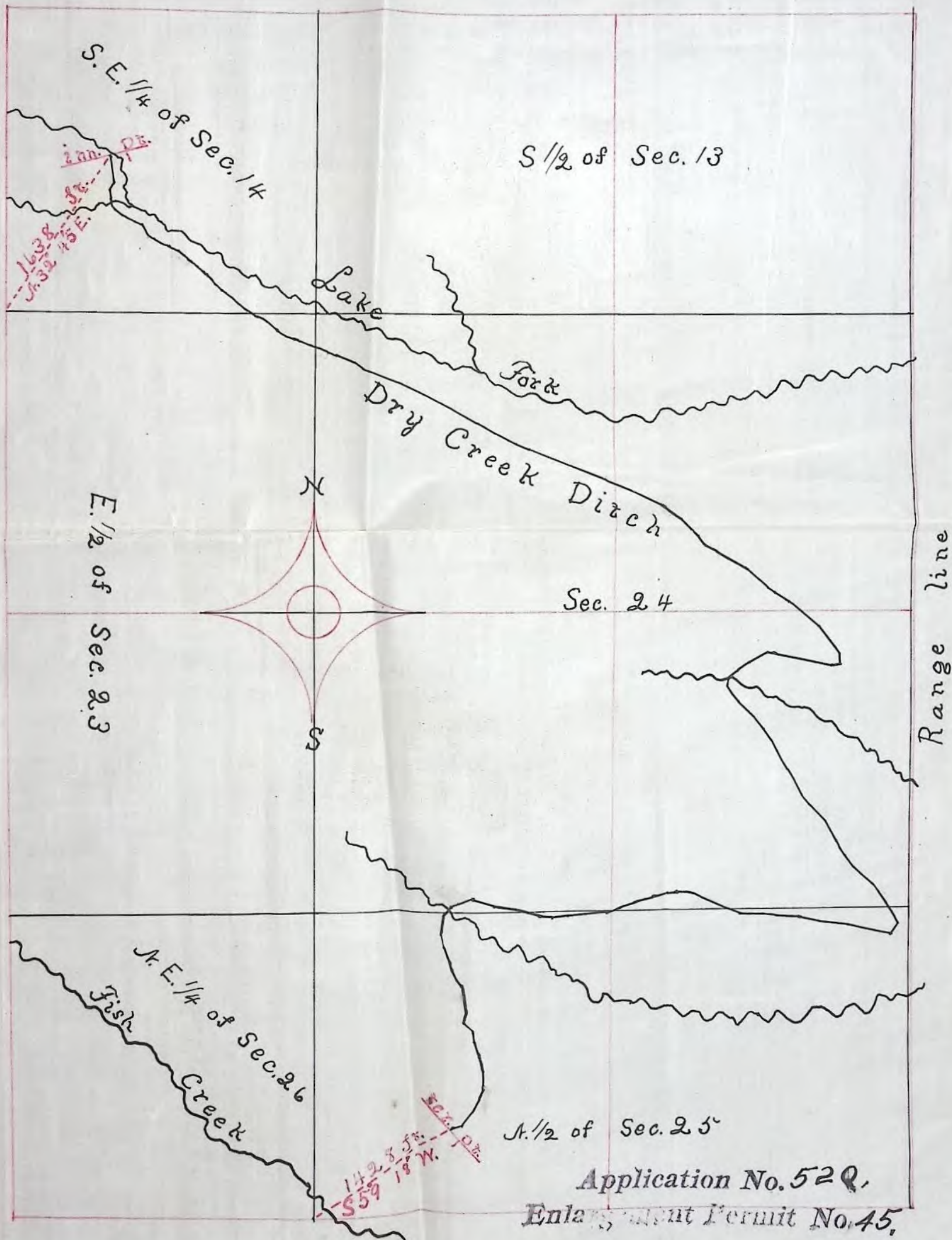
2p6

4b



map

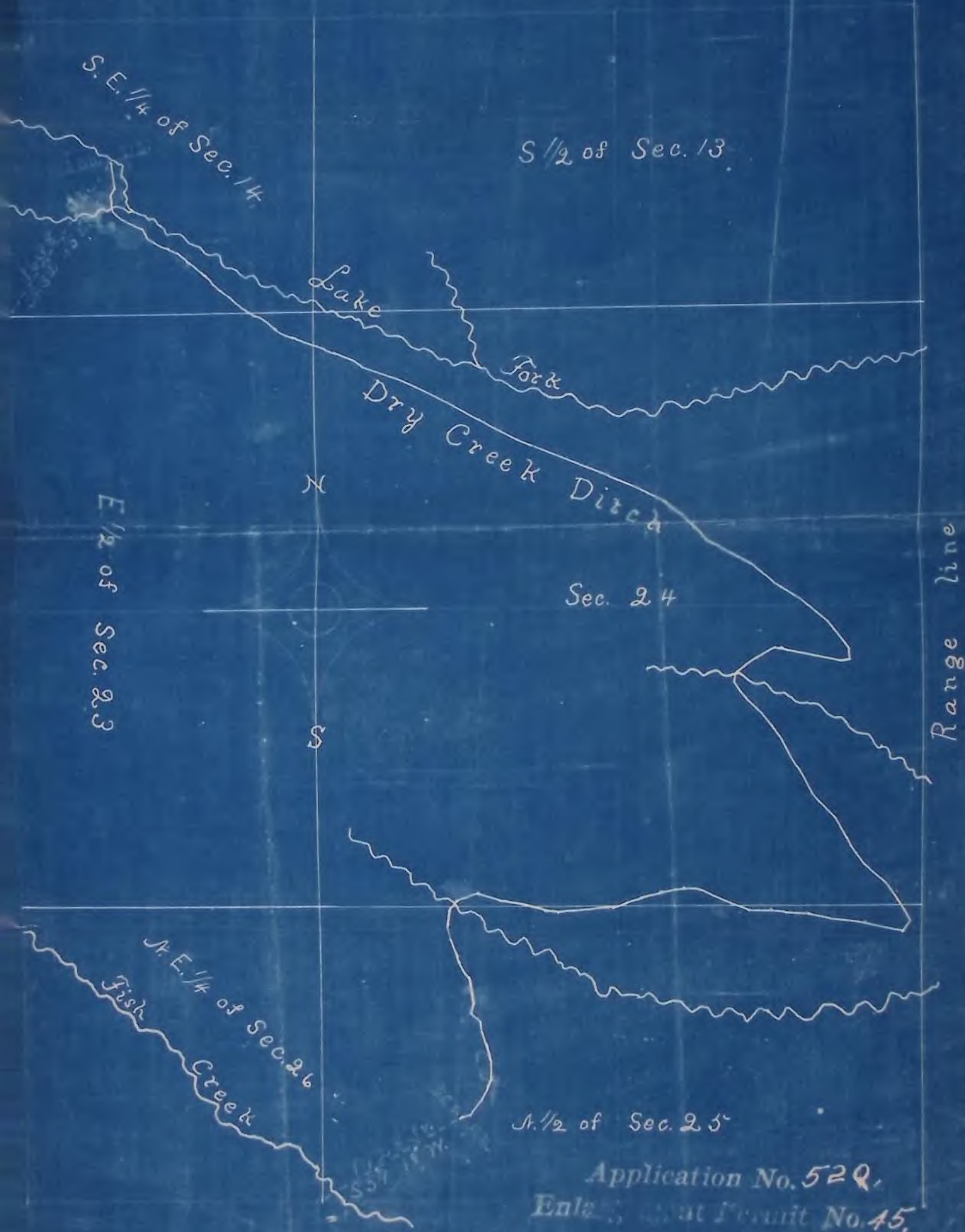
Showing a portion of Tp. 6 S. R. 46 E. W. m. Ore.
And survey of proposed Dry Creek Ditch
Scale 1000 ft. to an inch



Application No. 52 Q.
Enlargement Permit No. 45.

Map

Showing a portion of Tp. 6 S. R. 46 E. W. M. Ore.
And survey of proposed Dry Creek Ditch
Scale 1000 ft. to an inch



250

TP 6 S R 46 E W M.

R 47 E

22

23

24

25

27

24

25

30

End of Plummer Survey

Intersection with Fish Creek

34

35

36

31

TP 7 S 46 E W M

3

2

1

6

10

11

12

7

15

14

13

18

Range Line

Between

Ranges 46

of 47 East

Application No. 520
Enlargement Permit No. 45

22

23

24

29

27

26

25

30

34

35

36

31

TP 8 S 46 E W M

Certificate of Surveyor

I Williard B. Blakeslee of Pine Oregon do hereby Certify, that this Map was made from notes taken during actual Survey made by Me on from May 17th to June 20th 1909 and that it correctly represents the works described in the accompanying application, together with the location of streams and other ditches in the immediate vicinity, and has written thereon the area in each smallest legal subdivision, which it is proposed to irrigate as far as I extend my survey;

W B Blakeslee
Surveyor.

Scale 2 1/2" to the mile

1
This Ditch never did hold over
950" so I have made the Correction

MM

April 10, 1961

Banta, Silven, Horton & Young
Attorneys at Law
1950 Third Street
Baker, Oregon

Attention Mr. Banta

Gentlemen:

Pursuant to your request of April 5, I am enclosing a photocopy of permit No. E-45 issued in approval of application No. 520 and one print of each of two maps received with the application. Our bill for copying fees in the total amount of \$1.70 is also enclosed.

Very truly yours,

LEWIS A. STANLEY
State Engineer

By
James W. Carver, Jr., Assistant

JWC:eh
enclosures

HAROLD BANTA
DAVID C. SILVEN
JOHN S. HORTON
THOMAS F. YOUNG

LAW OFFICES
BANTA, SILVEN, HORTON & YOUNG
1950 THIRD STREET
BAKER, OREGON
JACKSON 3-4442

NICHOLS & HALLOCK
1919-1922
NICHOLS, HALLOCK & DONALD
1923-1929
HALLOCK, DONALD & BANTA
1930-1945
HALLOCK, DONALD, BANTA & SILVEN
1946-1950
HALLOCK, BANTA, SILVEN & HORTON
1951-1954
BANTA, SILVEN & HORTON
1955-1959

April 5, 1961

Office of the State Engineer
Water Resources Department
Salem, Oregon

RECEIVED
APR 6 1961
STATE ENGINEER
SALEM, OREGON

Gentlemen:

Will you please forward to us copies of the application of the Dry Creek Ditch Co. and accompanying plat which formed the basis of Permit No. E-45, covering waters of Lake Fork of North Pine Creek, a tributary of Pine Creek, with priority of February 17, 1910. The application was finally evidenced by certificate of water right dated January 21, 1927, and recorded in the State Records of Water Right Certificates Vol. 7 page 7058,

What I particularly need is the background data showing the point of diversion and the ditch system through which the waters were diverted from Lake Fork onto the lands in question. The suggestion has been made that a portion of these water rights have since been abandoned, and I gather some of the ditches fallen into disuse, and I want to be in a position to run down the facts. Of course the water right certificate does not show this information.

Upon receipt of statement we will immediately remit the amount of your fees.

Thanking you for your courtesy, we remain,

Yours sincerely,

BANTA, SILVEN, HORTON & YOUNG

By

Harold Banta

HB:dj

*In Ltr. 15 to re. E-45, 1961
E-45 Ltr. 15 re 520 re L
re Ltr. 20 re 1961
re Ltr. 20 re 1961*

August 19, 1926

Mr. W. H. Weatherspoon
Halfway
Oregon

Dear Sir:

This will acknowledge receipt of your letter of August 16, returning proof of appropriation under Permit No. E 45, which appears to be in proper form and has been placed on file, it will be taken up for the issuance of a water right certificate within a short time.

Yours very truly

HFH:FK

Rhea Luper
State Engineer

Hagerman on 9/16/26

State Engineer

In returning these final proof papers I wish to explain that the Pine Creek adjudication maps show certain ditches that were made to carry flood water out of Lost Pine Creek also water out of Fish Lake which was not enough in some instances the water from Permit #45 is used to help irrigate the land under these ditches we don't usually call on Lake Fork for water under permit #45 until about middle of June or 1st of July have plenty of flood water till then out of Lost Pine and Fish Creeks

I have indicated by line on final proof sheet # acres supposed to be irrigated under permit #45

Respectfully

W. H. Hagerman
Secy D.C.C.

STATE OF OREGON

RHEA LUPER, STATE ENGINEER
SECRETARY OF THE DESERT LAND BOARD
SECRETARY IRRIGATION AND DRAINAGE
SECURITIES COMMISSION

OFFICE OF THE
STATE ENGINEER
WATER RESOURCES DEPARTMENT
SALEM

C. E. STRICKLIN
ASSISTANT STATE ENGINEER

August 11, 1926.

Mr. W. H. Weatherspoon,
Halfway, Oregon.

Dear Sir:

With further reference to the water rights of the Dry Creek Ditch Company under permit No. E. 45 referred to in your letter of August 6, I will say that we have made a check of the final proof submitted by your company in 1919 with the map made in the adjudication of the water rights on Pine Creek and its tributaries.

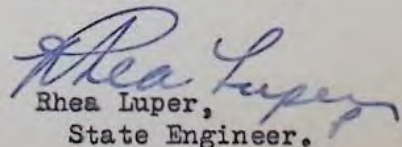
We are a little in doubt as to the result of this check by reason of the fact that a portion of the lands appear to be irrigated from two or more streams or sources of supply and it is rather difficult to segregate the lands which have received irrigation from the Lake Fork of North Pine Creek covered by the permit in question.

I am, therefore, enclosing the proof herewith and would suggest that you go over it carefully and set forth, if possible, the lands which have received water from this source. In doing this, you might find it necessary to consult a copy of the Pine Creek adjudication maps of which there are several in Halfway, one being on file at the bank.

In making such proof, you do not need to confine yourself strictly to the acreage covered by the permit in each sub-division, but you should take care not to exceed the total acreage for which the permit was granted.

Trusting that you will be able to supply this information at an early date, I am

Yours very truly,


Rhea Luper,
State Engineer.

RWP:EB

August 6, 1926

Mr. W. Weatherspoon
Halfway
Oregon

Dear Sir:

Your letter pertaining to final proof under permit No. 45 received.

We will make a check of the lands claimed to be irrigated under your final proof, with maps made and other data in this office.

If other information is necessary we will advise you. Our correspondence shows that final proof papers were sent to R. P. Anderson, but evidently he failed to send in his report. We will endeavor to handle this from the office and with the next two weeks you ought to receive our report.

Yours very truly

Rhea Luper
State Engineer

WFC:FK

1/2 way one 7/27/26

State Engr

Salem one

STATE ENGINEER

RECEIVED

JUL 28 1926

Dear Sir

SALT LAKE CITY

In 1918 we made proof
of water taken out of Lake Fork
under permit 45 June 17-1910
The proof was sent to Supervisor
Turner at Baker to go over
the ditch & report after he
had papers in his possession
I don't know how long Anderson
succeeded him but could not
find the proof papers in May
1925 I went over the acreage with
Asst Engr at Halfway he took
over Blue print & said he would
have our deed or patent sent
to me as soon as he went
back to Salem was talking
to Anderson other day he seemed
surprised that I had not
reel the patent we made

Final proof your office sent
papers to Lurman at Lanken one
now they are lost & we have
no deed sent any one
in that office seem interested
I went over Humphreys survey with
your asst Esqr in May 1925
I think he told me it would
not be necessary for the
supervisor to go over the ditch
Can you advise me what to
do

Respectfully
Yours
Geo
D C D C

July 31, 1924.

Mr. R. P. Anderson,
Water Master,
Baker, Oregon.

Dear Sir:

I am in receipt of your letter of July 30th relative to final proof of appropriation of water under Permit No. E 45, in the name of the Dry Creek Ditch Company.

According to our records, we sent you a copy of this proof on February 29th, 1924, for the required inspection and report. If you are unable at this time to locate the proof in your files, we will mail you another copy upon hearing from you.

Yours respectfully,

H.

Rhea Luper,
State Engineer.



PACIFIC DEPARTMENT
223-231 SANSOME ST.
SAN FRANCISCO

ALLIANCE INSURANCE COMPANY
OF PHILADELPHIA.

R. P. ANDERSON & CO., Agents

Baker, Oregon

July 30, 1924.

Mr. Rhea Luper,
State Engineer.
Salem, Oregon.
Dear Mr. Luper:

Our attention has been called to the matter of the issuance of the final Certificate to Permit No. E 45, of The Wy Creek Ditch Co., by Mr. H. Wetherspoon, Secy.

According to a letter written by Mr. Potter Dec. 7, 1921, relates to the fact that Mr. Turner should have made his report to the State Water Board on that matter.

Mr. Wetherspoon states that, "nothing has been done with the matter," and he wants a final proof for the permit:

Will you send me the final proof of appropriation, and I shall make the necessary inspections and return it to your office with my report.

I am enclosing Mr. Potter's letter for your observation.

Very truly yours
R. P. Anderson
By E.

February 29, 1924.

Mr. R. P. Anderson,
Water Master,
Baker, Oregon.

Dear Sir:

Final proofs of appropriation of water under permits numbers 245 and 2802 have been received in this office some time ago. The proofs appear to be in proper form, however we have withheld the issuance of final water right certificates under these permits until an inspection could be made.

I am enclosing herewith a copy of the two proofs and we would be glad to have you make the necessary inspection at this time.

The fees have been paid, and therefore upon receipt of your report and recommendations final water right certificates will be issued.

Yours respectfully,

H.
Enclosures.

Rhea Luper,
State Engineer.

October 6, 1919.

The Dry Creek Ditch Company,

Halfway, Oregon.

Gentlemen:

Proof of appropriation of water under Enlargement Permit No. 45, together with \$1.00 recording fee, has been received and filed in this office.

This proof appears to be in proper form and will be presented to the Board at its next meeting for approval and issuance of final water right certificate.

Yours very truly,

R. E. Potter,
Secretary.

GB.

App. 520.

October 2, 1919.

Mr. J. R. Lee,
Sec. Dry Gulch Ditch, Co.,
Richland, Oregon.

Dear Sir:

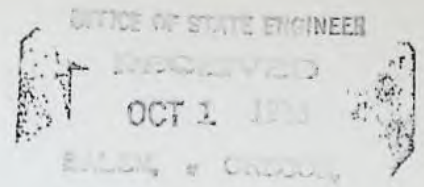
In reply to your letter of September 25,
I am sending you under separate cover, a copy of
the Second Biennial Report of this office, on pages
47 to 53 of which you will find information in regard
to the construction of weirs. I am also sending a
copy of the plans prepared by this office showing the
construction of head-gates and weirs, and I trust
this will give you the desired information.

The weirs should be constructed under the super-
vision of the Water Master of your District, and I would
suggest that you call upon him for assistance.

Trusting this will give you the desired infor-
mation, I am,

Very respectfully,

DRY GULCH DITCH CO.



RICHLAND, OREGON, 9/25, - 1919

Mr. Percy A. Cupper, State Engineer
Salem, Ore

Dear Sir:

The Dry Gulch Ditch Co intends
to install weirs for measuring water
according to (Crippler system) which I
believe has been adopted by Oregon.

Will you kindly send me information
as to how to construct these weirs, also
how to measure with them?

Thanking you in advance for
your prompt attention, I am,

Yours truly,
J. R. Lee,
Sec. Dry Gulch Ditch Co.

November 25, 1918.

Mr. W. Weatherspoon

Halfway, Oregon.

Dear Sir:

The State Water Board at its meeting on the 20th., granted an extension of time until October 1, 1919 within which to completely apply water to the proposed use under Enlargement Permit No. 45 of the Dry Creek Ditch Company.

Yours very truly,

R. W. Potter,
Secretary.

GB.

September 11, 1918

Mr. W Weatherspoon,
Secretary D.C.D.Co.,
Halfway, Baker Co.,
Oregon.

Dear Sir:-

I am in receipt of your letter of the 8th inst. requesting extension of time within which to completely apply the water to a beneficial use under Application No. E 620, En. Permit No. 45.

I will recommend to the State Water Board that an extension of one year to October 1st, 1919, be granted.

Trusting that this will be satisfactory, I remain

Very respectfully,

John H Lewis,

PAC-LA

State Engineer.

(E 520
Per - 43-)

Halfway Ore 9/8/18

John Lewis

State Engineer Salem Ore

OFFICE OF STATE ENGINEER
RECEIVED
SEP 11 1918
SALT. - OREGON

Dear Sir

I have proof appropriation
blowers for Encouragement Permit #117
of the Dry Creek Ditch Co I wish
to say that about all of the share
holders of the Co are ready to make
proof of their application of the
water except one who traded
for the piece of land last spring
and on acct of shortage of labor
he has not been able to meet the
requirements with his ditch to
cover all of the land for
which the water was intended

and in order that this man
may not lose out I ask for
extension of another year until
Oct 1st 1919

The man that owns the piece of
land in question informs me
that he did not know that
appropriation group had to be
made Oct 1st 1918 until it was
so late and labor was so scarce
he could not possibly get to
it

This request if granted will
not interfere with the development
of water for others because all
the available water is being put to
a beneficial use

If request cannot be granted please
advise and we who have met the
requirements will furnish proofs

Yours truly W. W. Henderson May 20th 1919

December 11, 1917.

Mr. W. Weatherspoon, Secy.
Dry Creek Ditch Co.
Halfway, Oregon.

Dear Sir:-

The State Water Board at its meeting on the 7th., granted an extension of time until October 1, 1918 within which to completely apply water to the proposed use under Enlargement permit No. 45 of your company.

Yours very truly,

GE.

Secretary.

Application No. 520.

December 7, 1917.

Mr. W. Weatherspoon,
Sect. Dry Creek Ditch Co.,
Halfway, Oregon.

Dear Sir:

I am in receipt of your letter of the 2d instant making application for a further extension of time in which to completely apply the water to the proposed use under application No. 520, permit No. E 45, in the name of the Dry Creek Ditch Co., and I will recommend to the State Water Board that an extension of time be granted until October 1, 1918, in which to apply the water under this permit.

Very respectfully,

John H. Lewis,

RS.

State Engineer.

OFFICE OF STATE WATER BOARD
RECEIVED

RECEIVED

DEC 7 1947

SALEM,

OREGON

Salem.

Highway over 17th of 17
M.H. & Maria Perry Plate W Board
Dean Sir

1. Referring to Proof of Appropriation of Water under enlargement permit # 45 of the Dry Creek Ditch as I find in going over the grounds to be watered as specified in the permit that C. L. Low, Jacob Behner J. D. Crook & M. J. Johnson have not as yet applied the Water on all the land specified to a beneficial use I wish to say that they have paid all their part of Contribution and upkeep of the main ditch and it now seems impossible for them to complete the application

of water before next June or
July

The balance of the season includ-
ing myself can file proof
of appropriation of our shares
of water and I suppose according
to law take their water but it
would not be right

all of this ditch is furnished
like 14 Miles long and it falls
heavy on a poor man at the
lower end

I wish to say that all the water
of Lake Fort our source of
supply is being used by our
Company for irrigating purposes
there would be nothing fast in
granting the delinquents a little
more time to apply the water

Completely if the Board
cannot see their way clear
to grant extension of time
Please advise & I will
furnish proof of application
for the Shareholders that have
complied with the law

Very truly
Wm. Thompson
Secy D C B Co

October 19, 1917.

Mr. W. Weatherspoon, Secy
Dry Creek Ditch Co.,
Halfway, Oregon.

Dear Sir:-

I am enclosing blank for proof of appropriation of water under Enlargement permit No. 45 which you will please fill out and return to this office, together with \$1.00 to cover recording fee, the matter will be presented to the Board at its next meeting for approval and issuance of final water right certificate.

Yours very truly,

GB.

Secretary.

M

October 17, 1917.

Mr. W. Weatherspoon, Secy.
Dry Creek Ditch Co.,
Halfway, Oregon.

Dear Sir:-

Replying to your letter of October 15th., blank for
proof of appropriation of water under Enlargement permit No. 45
will be mailed you in the near future.

Yours very truly,

GB.

Secretary.

Heffernan on 10/24/17
State Water Board
J. J. Dallen on
Matthew

In reply to yours of 10/24/17
regarding Permit No. E 45. Re: to advise
that construction work of Ditch &
Ditch Co. has been completed and
complete application of water has been
made by all except a delinquent share
holder or two.

Please forward me final proof of same.

Yours truly

W. H. H. H. H. H.

Deary

October 6, 1927.

Dry Creek Ditch Co.,
Mr. W. Weatherspoon, Sect.,
Halfway, Oregon.

Permit No. E 45.

Gentlemen:

I note from the records of this office that the Dry Creek Ditch Company has not filed the notice of completion of construction work or complete application of water to the proposed use under its permit No. E 45, which covers the use of 13.32 second feet from Lake Fork or North Pine Creek for the irrigation of 1065 acres, altho the time for the completion of this water right as extended by the Board expired June 1, 1916. In view of the fact that these notices have not been filed, we presume you have abandoned this water right and if so, we would be glad to have you authorize the cancelation of the permit on the records of this office as this will eliminate the necessity of following the regular procedure for the cancelation of the same.

However, if the terms of the permit have been complied with, we will be glad to forward final proof blanks upon receipt of the required notices.

We are endeavoring to bring our records up to date and would be glad to have you give this matter early attention.

Very respectfully,

RS.

M. F. Mers, Secretary.

September 2, 1915.

W. Weatherspoon,

Halfway, Oregon.

Dear Sir:-

You are hereby notified that the State Water Board at a special meeting held yesterday, granted you an extension of time within which to apply water to the proposed use until June 1, 1916, under permit E. 45.

Very respectfully,

Secretary.

SUBJECT:

STATE OF OREGON

OFFICE OF THE
STATE ENGINEER

Application No. 520.

JOHN H. LEWIS, STATE ENGINEER
PRESIDENT OF THE STATE WATER BOARD
SECRETARY OF THE DESERT LAND BOARD

PERCY A. CUPPER
ASSISTANT STATE ENGINEER

SALEM, OREGON, June 25, 1915.

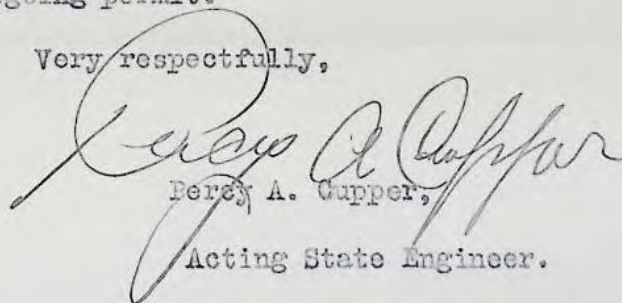
OFFICE OF STATE WATER BOARD
RECEIVED
JUN 25 1915.
SALEM, - OREGON.

State Water Board,
Building.

Gentlemen:

I am transmitting herewith application of W. Weatherspoon for an extension of time in which to apply the water to the proposed use under application No. 520, permit No. E. 45, and I would recommend that the State Water Board grant an extension of time until June 1, 1916, in which to apply the water to the proposed use under the foregoing permit.

Very respectfully,


Percy A. Cupper,
Acting State Engineer.

RS.

Enc.

Application No. 520.

June 25, 1915.

Mr. W. Weatherspoon,
Sec. Dry Creek Ditch, Co.,
Halfway, Oregon.

Dear Sir:

I am in receipt of your letter of the 20th instant requesting an extension of time in which to completely apply the water to the proposed use under application No. 520, permit No. E. 45, and I have recommended that the State Water Board grant an extension of time until June 1, 1916, in which to completely apply the water to the proposed use under the foregoing permit.

Very respectfully,

Percy A. Cuyper,

Acting State Engineer.

RS.

OFFICE OF STATE ENGINEER
RECEIVED
JUN 24 1915
SALEM, OREGON.

Halfway on left of 15

Mr John H Lewis
State Engineer
Salem OR

Dear Sir

Mr C. L. Law successor to John Edson
who owns one share in Dry Creek Ditch
Co Permit #45 June 1910 wishes extension of
time of one year to get the water on his
land

Mr Law's intention was to exchange the Koopman ditch
for about 1/4 mile and run his water in
it but Mr Koopman objects. Now he will
have to build his own ditch just below
Mr Koopman's then cross it before he can
get the water on his land

1065 acres.

520-E 45

begin June 17-11

comp June 17-13-

water June 17-15

notice completed

W. M. Mentherspoon

Secy D C D Co

E 17

OFFICE OF BOARD OF CONTROL
RECEIVED

JAN 19 1912
SALEM, OREGON.

1/10/12
Mr John H Lewis
Place Eugene
Salem Ore

Dear Sir

Herewith I send you form
to Notice of Proo of work on Dry Creek
Co's ditch in 1911

We understand from permit that we have
until 4/17/12 to finish ditch and
apply water for beneficial use
if I am wrong pls advise & I will apply
for extension of time We have about
1 mile of new ditch & 2 miles to suberge
a lot of work to do on ditch that we
made in 1910 - 11 Slapping banks etc

Yours Truly
W Wetherpoon

53a

October 17, 1910.

Mr. L. C. McCoy, Secretary,
Dry Creek Litch Co.,
Halfway, Oregon.

Dear Sir:-

Replying to your letter of the 11th inst. will say that in your proposed enlargement application the survey for the map can be commenced where the survey was terminated as indicated on the map filed with your application No. 520, and if you desire a tracing and blue print showing such extension can be filed. It would be preferable, I believe, however, if the entire ditch, including the proposed extension were shown on one map drawn on the scale of two inches to the mile. On such map a proposed extension could be distinguished from the present ditch, and only the land to be irrigated by the extension need be shown on the map filed with this enlargement application.

Very respectfully,

HCB/DB

State Engineer

Apr #520

Per. 2 45

#53^a Halfway Ore
10-11-1910

John H. Quinn

Salem Ore

Dear Sir:

I thank you very much
for your information
in regard to taking another
party into the Dry Creek Ditch
Co. ditch. If you will be
so kind as to give me the
following information
Will not the map you have
there of the Dry Creek Ditch
be sufficient - as it covers
the entire ditch with except-

The proposed extension of
the party that wants to
come in the ditch? Cannot
be have the survey made
from the terminus of our
ditch with blue prints &
line tracing of the same?
And by paying the examination
fee & also the amt. required
for filing on the amt. of acres
he wants to irrigate

Please advise me as to
this I remain

Yours very truly
L. O. McCoy

Sec. Dry Creek Ditch Co.

Application No. 520.

PAC/LC

53a

June 21, 1910.

Dry Creek Ditch Company,
Halfway, Oregon.

Gentlemen:

I enclose herewith your application, No. 520, approved, being
enlargement permit No. 45.

Very respectfully,

State Engineer.

(1 enclosure.)

53a

May 9, 1910.

Mr. L. O. McCoy,

Sec'y Dry Creek Ditch Co.,

Halfway, Oregon.

Dear Sir:

I beg to acknowledge receipt of \$61.05, recording fee on application No. 520. Upon receipt of the application and maps, which you state are forwarded under separate cover, the same will be taken up for approval.

Very respectfully,

State Engineer.

RECEIVED
MAY 9 1910

520

53a

Halfway Ore.
May 5 1910

John H. Lewis
Taleum Ore.

Dear Sir:

\$61

85

We are sending under separate cover
the map of the Dry Creek Ditch.
The trust this time it will be 211.
We are sending enclosed check for
\$61.00

Yours Very Truly
Dry Creek Ditch Co
L. C. McCoy Sec.

53 a

April 27, 1910.

Dry Creek Ditch Company,
Halfway, Oregon.

Gentlemen:

Upon taking up your application, No. 520, for approval, I find that the number of acres to be irrigated in each forty-acre tract has not been shown on the map, nor has it been indicated in the answer to question 7, so that the correction can be made in this office. I am therefore returning herewith the above application and will suggest that you describe the land by forty-acre tracts, designating the number of acres to be irrigated in each forty-acre tract, and also have this acreage marked on the map, so that it can be readily checked in this office. The total fees on this application will be \$64.05, or \$61.05 in addition to the \$3.00 already received. This application should be returned to this office at the earliest possible date.

Very respectfully,

State Engineer.

(Enclosures.)

app. - 520

#53a

Hadaway Dr.
11.25.10.

John H. Lewis
Salem Dr.

Dear Sir.

We sent you some time
ago our papers with
corrections of the
Dry Creek Ditch Co.

We are very anxious to
hear from you in regard
to the matter so
we want to commence
work so as to get water in
time for this crop.

That is it will benefit
part of the owners this
year. We trust we may
hear from you
in the very near future
so we can go to work
on the ditch

Your very truly
Dry Creek Ditch Co
Per L. O. M. & Coy
Sec.

app. - 520

53a

Halfway Ore
3/28. 10

John H Lewis
Salem Ore
Dear Sir.

We are returning the
papers you returned to
us to have rectified.
We trust they will meet
your approval this time.
We think the trouble that
the permit has caused us
in filling out is that it
should be a new appropri-
-ation instead of ~~an~~ a
permit for enlargement

There is only about 1 mile of the
whole ditch. That is to be
enlarged. By referring to
map you will see Denny
& Melhorn Ditch. We will take
our water through their ditch
that for and the balance
is all new work. We have
expended \$800⁰⁰ already
surveying & have 1 mile of the
ditch completed. The latter
we did before we learned
we had to apply for water
through your office. We thought
all was necessary was to file
at the County Court, which

we did, and in the mean
time they referred us to
you. While we were waiting
on them we did the work
on the ditch as above stated
we trust our papers will meet
with your approval so we may
commence work so as to get
the water in time to benefit
some of the meadows this year.

We remain
your very truly

Very Crank Ditch Co
Geo. L. O. McCoy Sec.

53a

March 15, 1910.

Dry Creek Ditch Company,

Halfway, Oregon.

Gentlemen:

I am returning herewith your application, No. 520, for correction, in accordance with the provisions of Section 47 of the 1909 water law. The necessary corrections in this case will be the answers to questions 2, 6, 7, 10, 11, 12 and 13, and signature of applicant and witnesses. It will be necessary to correct the map so as to show the number of acres to be irrigated in each forty-acre tract and I will suggest that you color or cross-hatch the land to be irrigated, so that it can be readily seen on the map.

In order to retain its original date of priority, this application, corrected; must be received in this office on or before April 15th.

I am returning the maps under separate cover.

Very respectfully,

State Engineer.

(Enclosures.)

53a

February 17, 1910.

Mr. L. O. McCoy,

Halfway, Oregon.

Dear Sir:

I beg to acknowledge receipt of \$3.00, together with application by the Dry Creek Irrigation Company for permit to appropriate water, No. 520. This application will be examined as soon as the same can be reached and if insufficient will be returned for correction, as provided by law.

Very respectfully,

State Engineer.

#53a

Halfway Oregon

Feb 14 1910

OFFICE OF STATE ENGINEER

RECEIVED

FEB 17 1910

State Engineer
Salem Ore.

Dear Sir:-

I am sending you under separate cover all necessary papers for filing on Waters of Lake Fort. & tributary of Pine Creek. We have a government-Permit- for crossing reserve and have 3 yrs. to complete it. We wish you would give us the same length of time.

I am also enclosing a permit from Mr. A. Shanks & Adrian now owners of the Denny & Melhorn ditch. We take our water through their ditch & it will become necessary to enlarge it. Enclosed find \$3.00 check for examination.

Yours Very Truly

L. O. McCoy

Halfway Oregon

300

Surveyors' Affidavit.

I V. W. Plummer do here-by swear that on August 18 to the 24th 1908 I was employed by the Dry Creek Ditch Company to survey an irrigating ditch from Lake Fork of North Pine to Fish Creek as described in the accompanying maps and field notes. That I did the work in person, that I have carefully surveyed and mapped same using the proper instruments and have faithfully complied with all the requirements of law, to the best of my ability.

Signed, V. W. Plummer Surveyor.

Subscribed and sworn to before me this the 15th day of October A.D. 1908

William R. Usher

Notary Public for Oregon.

App. 520
Per. F-45