

Name City of Baker
 By _____
 Address P.O. Box 650
Baker, OR 97814

5665

DESCRIPTION OF WATER RIGHT

Name of stream Marble Creek
 Trib. of _____ County of Baker
 Use Municipal
 Quantity of water 5.0 cfs No. of acres —
 Name of ditch —
 Date of priority 1862
 In name of City of Baker
Powder River Adjudication, Vol. _____, page 303
 App. No. _____ Per. No. D9600 Cert. No. 2608 500
 Certificate cancelled _____
 Notation made on record by _____

Change in POD
 Date filed July 3, 1985
 Date of hearing _____
 Place of hearing _____
 Date of order Jan. 19, 1988 Vol. 42, page 19
 Date for application of water Completed
 Proof mailed _____
 Proof received _____
 Certificate issued JAN 15 2004 Vol. _____, page 80496

REMARKS

Final

FEE PAID

Date	Amount	Receipt No.
<u>7-3-85</u>	<u>85.00</u>	<u>46776</u>
TOTAL . . .		
	Cert. Fee	

FEE REFUNDED

Date	Amount	Check No.

	Entered	Checked
<input checked="" type="checkbox"/> INDEX CARDS:		
<input checked="" type="checkbox"/> Name	<u>lpc</u>	—
<input checked="" type="checkbox"/> Stream	<u>lpc</u>	—
<input checked="" type="checkbox"/> Div. of Div.	—	—
<input checked="" type="checkbox"/> District	<u>lpc</u>	—
<input checked="" type="checkbox"/> CLAIMED TO RECORDS:		
<input checked="" type="checkbox"/> Title Page	<u>DRB</u>	—
<input checked="" type="checkbox"/> Description	<u>lpc</u>	—
<input checked="" type="checkbox"/> Decree/Map	<u>lpc</u>	—
<input checked="" type="checkbox"/> Cont. of W/R	<u>lpc</u>	—
<input type="checkbox"/> Plan Folder	—	—
<input type="checkbox"/> Claim Index	—	—
<input type="checkbox"/> Cross Ref.	—	—
<input type="checkbox"/> Power Claim	—	—
<input checked="" type="checkbox"/> Abstracts	<u>lpc</u>	—

REPORT ON INSPECTION OF TRANSFER
OF WATER RIGHT FOR CHANGE IN:

POD
POU
USE
Add'l POD

INSR
6-14-90 JLC

Transfer No. T-5665 County Baker

Old Certificate No. 9608

1. Name City of Baker

Address PO Box 650
Baker, OR 97814

2. Source of Water Marble Creek Trib of _____

3. Use Municipal

4. Amount of Water 5.0 cfs

5. Priority Date 1862

6. Proposed Point of Diversion 931.2 ft. South and 127.6 ft. East from the NW
corner of NW¼ being within the NW¼ NW¼ of Section 13, Township 9S, Range 38E W.M.

7. Completion Date Completed C Notice Received: Sp Orders

8. Place of Use: _____ Transfer Order: Vol 42, pg. 19

Township	Range	Section	Forty Acre Tract	Use for Which Transfer Made

7-3-90
JLC

BEFORE THE WATER RESOURCES DEPARTMENT OF OREGON

IN THE MATTER OF TRANSFER APPLICATION)	
T-5665 IN THE NAME OF THE CITY OF)	STATEMENT, FINDINGS OF FACT
BAKER FOR APPROVAL OF A CHANGE IN)	CONCLUSIONS OF LAW, AND
POINT OF DIVERSION OF WATER)	FINAL ORDER

STATEMENT

On July 3, 1985, the City of Baker filed Water Right Transfer Application 5665 for approval of a change in point of diversion of water under a right described by the certificate issued to the City of Baker and recorded at Page 9608, Volume 9, State Record of Water Rights Certificates. The subject water right was allowed by decree of the court in the Matter of the Determination of the Relative Rights to the Waters of Powder River and its tributaries, a tributary of Snake River, and is for the appropriation of not to exceed 5.0 cubic feet per second of water (cfs) from Big Marble Creek under a date of priority of 1862 for municipal purposes within the City of Baker.

The old point of diversion is described as being located 972 feet South and 339.8 feet East from the Northwest Corner of Section 13, Township 9 South, Range 38 East, WM, being within the NW 1/4 NW 1/4 of said Section 13. The new point of diversion is described as being located 931.2 feet South and 127.6 feet East from the said Northwest Corner of Section 13, and is also within the NW 1/4 NW 1/4 of Section 13.

On October 30, 1985, the Pocahontas Farmers' Ditch Company filed a protest against approval of pending Transfer Application T-5665. In protest it is alleged that:

- a) the proposed application would conflict with Pocahontas Farmers' Ditch Company's prior vested rights;
- b) the City of Baker has been illegally using Marble Springs water and the City of Baker has no water rights for use of said spring;
- c) the change in point of diversion by the City of Baker would be detrimental to the public's interest;
- d) the City of Baker's original point of diversion is above Marble Springs and Marble Springs was never intended by the City of Baker to be used as a part of its water source, and Marble Springs very well may be an independent source of water.

Pursuant to the Director's Notice of Hearing the matter was brought to hearing in Baker, Oregon, on November 19, 1986. The matter was heard by James W. Carver, Jr., an employee of the Water Resources Department, authorized to preside in behalf of the Director as a finder of fact. The City of Baker was represented by Richard M. Glick, Attorney at Law, Portland, Oregon. The Pocahontas Farmers' Ditch Company was represented by John L. Jacobson, Attorney at Law, Baker, Oregon.

Marble Creek (Big Marble Creek) is one of several mountain streams that form on the east slope of the Elkhorn Mountains and flow generally easterly toward the Baker Valley floor to become tributary to the Powder River. The flow of Marble Creek varies widely with the season of the year. The higher flows occur with run-out of snow melt and periods of intense precipitation within the drainage area of the stream.

Figure 1 which is a photoreduction of Exhibit "Baker B", shows the relative locations of Marble Creek, the "old" and "new" Marble Springs intake works, Pipeline Road and Old Mountain Line and other features in the vicinity.

A proposed order was issued by the Water Resources Director on September 30, 1987, and was mailed to the parties by first class mail, on that date. The Pocahontas Farmers' Ditch Company, acting by and through their secretary, Mr. Chet Smith, advised the hearing officer via telephone that they had not received the proposed order. A duplicate mailing was made by Certified Mail, Return Receipt, on October 21, 1987. The letter of transmittal with the duplicate mailing allowed Pocahontas Farmers' Ditch Company until the close of the business day on Friday, November 20, 1987 to file any exceptions and objections to the proposed order. No exceptions or objections to the proposed order were filed within the time allowed, of subsequent thereto.

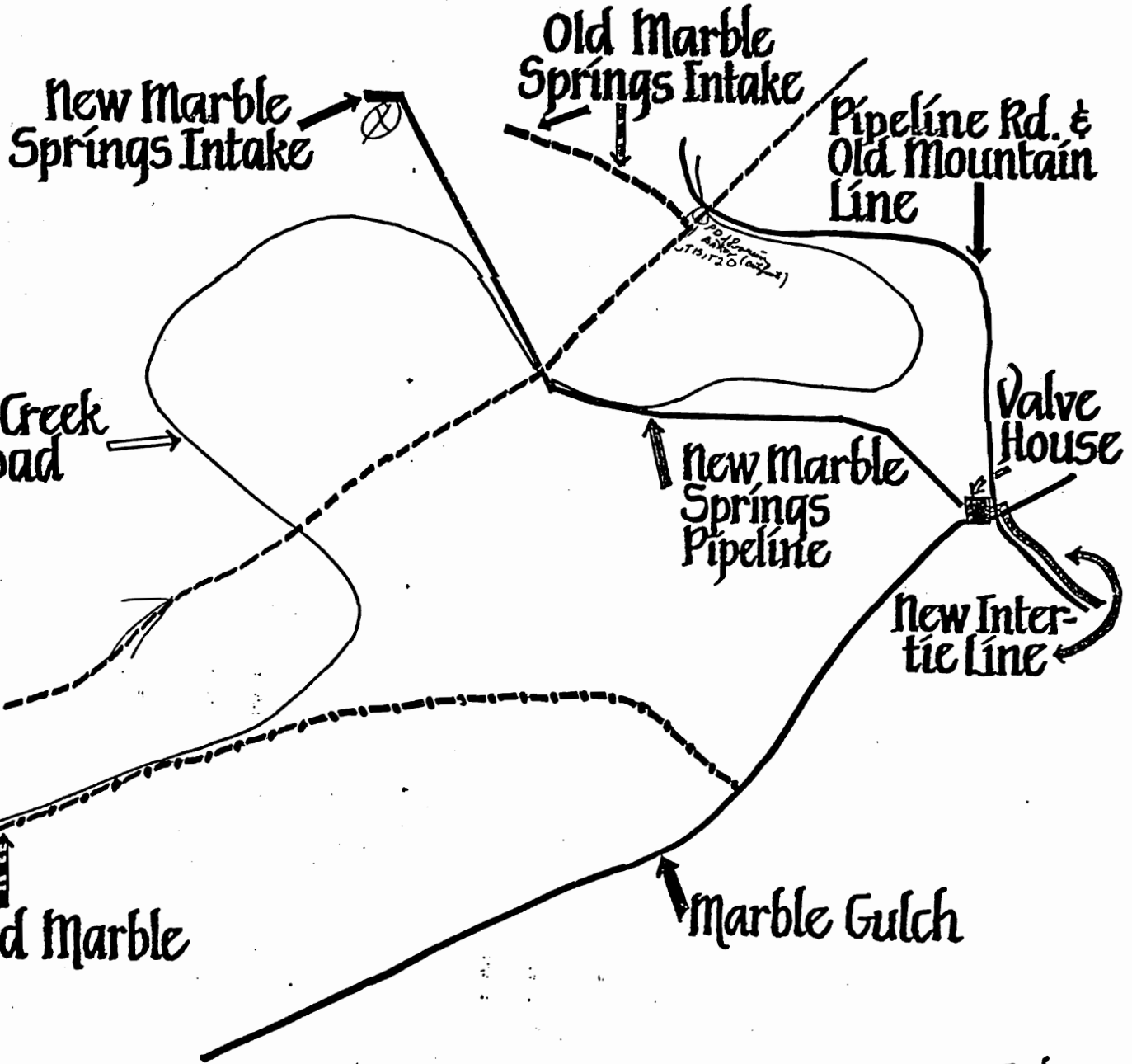
Now, therefore, acting pursuant to authority delegated to him from the Water Resources Commission, the Director makes the following:

FINDINGS OF FACT

Testimony and evidence established that the original diversion of water from Marble Creek under the subject right was from the channel of Marble Creek into the Auburn Canal. The Auburn Canal crossed the channel of Marble Creek in the immediate vicinity of where the "Pipeline Road and Old Mountain Line" intersects the "Original Marble Creek Location" channel as shown on Figure 1.

The old Marble Springs intake works were located in a shallow, steep draw which intersects with the original Marble Creek channel location above the original point of diversion from Marble Creek. (Exhibit "Baker G")

Marble Springs Vicinity



(Figure 1)

Original Marble Creek Location

Volume 42, page 21

Relocated Marble Creek

Figure 1

Scale
1" = 40 ft

About the year of 1916 the City of Baker moved its point of diversion from the channel of Marble Creek to the "Old Marble Springs Intake." Water that was intercepted at the "Old Marble Springs Intake." is water that would have otherwise found its way to the point of diversion in the creek channel.

Prior to 1931, there was no statutory provision for making application for approval of a change in point of diversion. However, the Oregon Supreme Court held in Whited v. Calvin, 55 OR 98 (December 1909) at page 106, "A change in point of diversion. . . may be made when it can be done without prejudice to the rights of others." The record does not disclose any prejudice to the water right of others having resulted from the change made in or about 1916. Therefore, the lawfully established point of diversion for the subject water right is at the "Old Marble Springs Intake."

The intake works at "The Old Marble Spring Intake" consisted of a timbered tunnel into the rocky hillside and a small "spring house" at the outer end of the tunnel. A concrete cut-off wall served to collect the water and direct it to the spring house.

The Chemical Lime Company began quarrying operations in the area shown on Figure 1, about the year 1957. By about 1963 or 1964, the quarrying operations which included the blasting of rock caused fractures in the rock in the vicinity of the "Old Marble Springs Intake." Mr. Vernon Jacobson who was the Director of Public Works for the City of Baker at that time, testified that "the ground was fracturing and water was percolating (seeping to the surface of the ground) all the way around." The "Old Marble Springs Intake" works were no longer able to intercept the waters of Marble Springs.

With permission of the land owner, the City of Baker excavated upslope from the old spring collection works by means of a bulldozer and a backhoe, and followed the flow of water upstream (upslope) to where it was issuing from a cavern and split in the rock face of the quarry. A new concrete cut-off wall and perforated concrete pipe was installed to collect the water. The collected water is conveyed into a 36-inch diameter culvert pipe. The collection works, including the upslope end of the 36-inch culvert pipe, is covered with treated timbers and rock fill.

Water collected at the "New Marble Springs Intake" is piped into the City of Baker's pipeline system via the Valve house shown on Figure 1.

If the water which flows from the rock face at the "New Marble Springs Intake" location were not intercepted by the intake works, it would flow to the channel of Marble Creek (now buried under quarry waste) above the location of the original point of diversion from Marble Creek.

The record does not establish whether the City of Baker is obtaining more or less water by means of the "New Marble Springs Intake" as compared to the "Old Marble Springs Intake." Metered measurements made during the period of October 25, 1985 to May 7, 1986, show an average flow of 0.849 cfs. Measurements made during the period of May 7, 1986 to May 21, 1986, show an average flow of 3.38 cfs.

The City of Baker's subject water right authorized the City to divert up to 5.0 cfs from the natural flow in Marble Creek at the point where the Auburn Canal crossed the channel of Marble Creek, for municipal purposes within the City of Baker. Pursuant to the provisions of ORS 540.610(1) and (2), which statutory provisions were originally adopted by the 1913 Legislative Assembly, the subject right is not subject to forfeiture through nonuse.

Whether the water appropriated were to be diverted from the channel of Marble Creek at the location of the former Auburn Canal crossing, or whether it is diverted from waters tributary to Marble Creek above that point, the effect on downstream appropriators from diversion of a given quantity of water would be no different. Neither is there any change in effect on other private or public interests as a result of diverting the waters of Marble Springs at the "New Marble Springs Intake" as compared to diverting the water at the "Old Marble Springs Intake."

The point of diversion of water from Marble Creek under the existing water rights of the protestant, Pocahontas Farmers' Ditch Company, is some distance downstream from the location where the old Auburn Canal crossed the channel of Marble Creek.

ULTIMATE FINDINGS OF FACT

The standard for determining whether the proposed change in point of diversion from the "Old Marble Springs Intake" to the "New Marble Springs Intake" should or should not be approved is set out in ORS 540.530(1). Subsection(1) reads, in part, "If, after hearing or examination, the Water Resources Commission finds that the proposed change can be effected without injury to existing water rights, the commission shall make an order approving the transfer and fixing a time limit within which the approved changes may be completed."

The change in point of diversion from the "Old Marble Springs Intake" to the "New Marble Springs Intake" can be effected without injury to existing water rights including the water rights held by the protestant.

CONCLUSIONS OF LAW

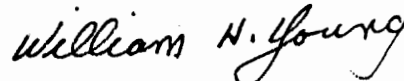
Water Right Transfer Application 5665 in the name of the City of Baker for approval of a change in point of diversion of water appropriated under the right described herein above should be approved pursuant to the provisions of ORS 540.510 to 540.530.

FINAL ORDER

NOW, THEREFORE, it is ORDERED that Water Right Transfer Application 5665 in the name of the City of Baker be approved for change in point of diversion from the location of the "Old Marble Springs Intake" to the location of the "New Marble Springs Intake." The location of the said new point of diversion is described as being 931.2 feet South and 127.6 feet East from the Northwest Corner of Section 13, Township 9 South, Range 38 East, WM.

It is FURTHER ORDERED that because the requested change in point of diversion has been made in fact, no time need be allowed for completion of the change.

Dated at Salem, Oregon, this 19th day of January, 1988.



WILLIAM H. YOUNG
Director

NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service (date of mailing) of this order. Judicial review is pursuant to the provisions of ORS 536.075 and 183.482.

6-14-90

Talked: Jim Adamson
Dir. Public Works

Mr A. claims SCFS from Marble Creek springs. on S-8-90 ave. 2500
gpm but dot was overflowing.

Marble Creek Spring - They dug out the sidehill to hardrock, then put in
a cut off wall. They ~~had~~ laid 4 lines of perforated pipe, then
back filled with gravel. These 4 lines run into a 36" pipe (collection)
They then have 16" & 8" coming out for approx 15' to spring box
(36" convert) where this 16" & 8" dump into it. They have a 12"
pipe to the valve house where the overflow is put into Marble
Gulch.

1057
6-14-90
W. H. H.



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

Date Mailed: January 15, 2004

NOTICE OF CERTIFICATE ISSUANCE

Attached is a certificate that confirms the water right established under the terms of a transfer order issued by this department. The water right is now appurtenant to the specific place where the use was established as described by the certificate. The owner of the land is the owner of the water right. The water right is limited to a specific amount of water, but not more than can be beneficially used for the purposes stated within the certificate.

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within **60 days of the mailing date stated above** as specified by ORS 183.484(2).

This statement of judicial review rights is required under ORS 536.075; it does not alter or add to existing review rights or create review rights that are not otherwise provided by law.

Oregon law does not allow the Director to reissue a certificate because of a change in the ownership. The water must be controlled and not wasted. To change the location of the point of diversion, the character of use, or the location of use requires the advance approval of the Water Resources Director.

If any portion of this water right is not used for five or more consecutive years, that portion of the right may be subject to forfeiture according to ORS 540.610. Land enrolled in a Federal Reserve Program is not subject to forfeiture during the period of enrollment. Other exceptions to forfeiture are explained in ORS 540.610.

If you have any questions please contact Steve Brown at 503-986-0809.

STATE OF OREGON

COUNTY OF BAKER

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

BAKER CITY
P.O. BOX 650
BAKER CITY, OR 97814

confirms the right to use OF 5.0 CUBIC FEET PER SECOND (CFS) OF THE WATERS OF GOODRICH CREEK, 0.5 CFS FROM COYOTE SPRINGS, 5.0 CFS FROM LITTLE MILL CREEK, 5.0 CFS FROM BIG MILL CREEK, 0.5 CFS FROM HAWK SPRINGS, 1.25 CFS FROM LITTLE MARBLE CREEK, 5.0 CFS FROM BIG MARBLE CREEK, 0.625 CFS FROM CAMPER SPRINGS, 0.5 CFS FROM HERMAN SPRINGS, 5.0 CFS FROM BIG SALMON CREEK, 0.625 CFS FROM HENRY SPRINGS, 0.625 CFS FROM FINLEY SPRINGS, 0.5 CFS FROM LITTLE SALMON SPRINGS, 1.25 CFS FROM LITTLE SALMON CREEK, 0.625 CFS FROM SLUM TOWN SPRINGS, 0.5 CFS FROM ROCK SPRINGS, 0.5 CFS FROM NORTH PRONG OF WASHINGTON GULCH, 0.5 CFS FROM MIDDLE PRONG OF WASHINGTON GULCH, 0.5 CFS FROM SOUTH PRONG OF WASHINGTON GULCH, 0.625 CFS FROM CONN SPRINGS, 0.25 CFS FROM BYAM SPRINGS AND 3.75 CFS FROM ELK CREEK WITH A DATE OF PRIORITY OF 1862; 1.25 CFS OF THE WATERS OF GEE CREEK, 6.25 CFS FROM GOODRICH CREEK, 6.25 CFS FROM MILL CREEK AND 5.0 CFS FROM MARBLE CREEK WITH A DATE OF PRIORITY OF 1868; AND STORAGE IN GOODRICH CREEK RESERVOIR, FROM GOODRICH CREEK WITH A DATE OF PRIORITY OF 1901; FOR MUNICIPAL PURPOSES WITHIN BAKER CITY, BAKER COUNTY, OREGON.

This right was confirmed by decree of the Circuit Court of the State of Oregon for BAKER COUNTY. The decree is of record at Salem, in the Order Record of the WATER RESOURCES DIRECTOR, in Volume 6, at Page 291.

The right to the use of the water is subject to all other conditions and limitations contained in said decree.

The use of water from the new points of diversion shall not exceed the quantity of water that is available at the old points of diversion.

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review of the order must be filed within the 60 days of the date of service.

The location of the points of diversion are not specifically described except as follows:

GOODRICH CREEK (OLD AUBURN DITCH DIVERSION) - E 1 /2 SW 1/4 SE 1/4, SECTION 34, TOWNSHIP 8 SOUTH, RANGE 38 EAST, W.M.; AND

GOODRICH CREEK (OLD NELSON OR NEWTON & STURGILL DITCH DIVERSION) - S 1/2 SW 1/4 SE 1/4, SECTION 34, TOWNSHIP 8 SOUTH, RANGE 38 EAST, W.M.


BIG MARBLE CREEK (OLD POINT OF DIVERSION) NW 1/4 NW 1/4, SECTION 13, TOWNSHIP 9 SOUTH, RANGE 38 EAST, W.M.; 972 FEET SOUTH AND 339.8 FEET EAST FROM THE NW CORNER OF SECTION 13.

MARBLE SPRINGS INTAKE (NEW DIVERSION) - NW 1/4 NW 1/4, SECTION 13, TOWNSHIP 9 SOUTH, RANGE 38 EAST, W.M.; 931.2 FEET SOUTH AND 127.6 FEET EAST FROM THE NORTHWEST CORNER OF SECTION 13.

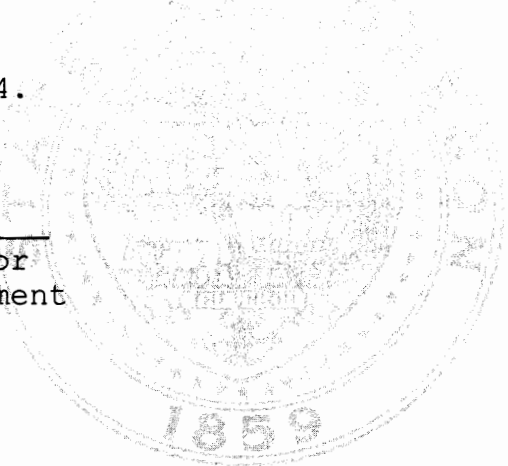
GOODRICH CREEK (NEW DIVERSION) - SE 1/4 SE 1/4, SECTION 35, TOWNSHIP 8 SOUTH, RANGE 38 EAST, W.M.; 80 FEET SOUTH AND 610 FEET EAST FROM THE NW CORNER, SE 1/4 SE 1/4, SECTION 35.

This certificate is issued to correctly describe the date of priority, confirms changes in POINTS OF DIVERSION approved by an orders of the Water Resources Director entered JANUARY 12, 1962, AND JANUARY 19, 1988, and supersedes Certificate 9608, State Record of Water Right Certificates.

Issued January 15, 2004.

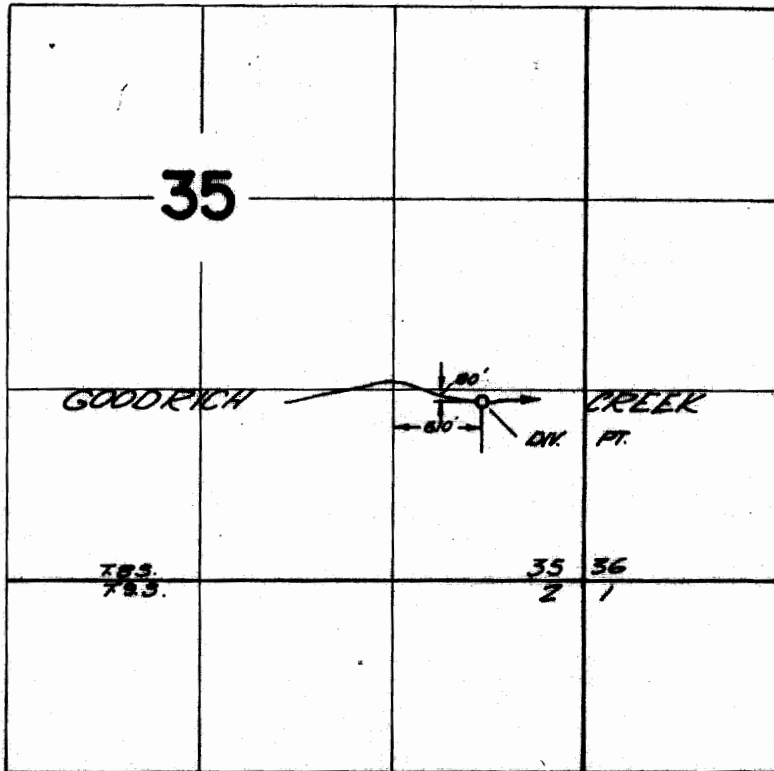


Paul E. Cleary, Director
Water Resources Department



Recorded in State Record of Water Right Certificates Number 80496.

T.8S. R.38 E. W.M.



FINAL PROOF SURVEY UNDER

TRANSFER B-125
Application No. Permit No.
IN NAME OF

CITY OF BAKER

Surveyed *Oct. 25 1967*, by *V. Gardner*

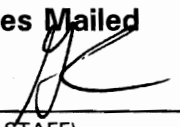
Mailing List for Certificate

Mailing Date: 1/15/2004

Application T-5665
Permit -
Certificate - 80496

Permit/Certificate Holder: (include copy of map)

BAKER CITY
P.O. BOX 650
BAKER CITY, OR 97814

Copies Mailed
By:  (STAFF)
on: 1/15/2004 (DATE)

Copies of Final Certificate to be sent to:

1. ~~Watermaster #8: Rick Lusk (include copy of map)~~
2. ~~Data Center (include copy of map)~~
3. ~~Water Availability~~

Other persons to receive copies: (Include map)

COUNTY OF BAKER

CERTIFICATE OF WATER RIGHT.

THIS IS TO CERTIFY, That THE CITY OF BAKER

of Baker State of OREGON, has a right to the use of

5.0 sec. ft. of the waters of Goodrich Creek, 0.5 sec. ft. from Coyote Springs, 5.0 sec. ft. from Little Mill Creek, 5.0 sec. ft. from Big Mill Creek, 0.5 sec. ft. from Hawk Springs, 1.25 sec. ft. from Little Marble Creek, 5.0 sec. ft. from Big Marble Creek, 0.625 sec. ft. from Campers Springs, 0.5 sec. ft. from Hermer Springs, 5.0 sec. ft. from Big Salmon Creek, 0.625 sec. ft. from Henry Springs, 0.625 sec. ft. from Finley Springs, 0.5 sec. ft. from Little Salmon Springs, 1.25 sec. ft. from Little Salmon Creek, 0.625 sec. ft. from Slum Town Springs, 0.5 sec. ft. from Rock Springs, 0.5 sec. ft. from North Prong of Washington Gulch, 0.5 sec. ft. from Middle Prong of Washington Gulch, 0.5 sec. ft. from South Prong of Washington Gulch, 0.625 sec. ft. from Con Springs, 0.25 sec. ft. from Byam Springs and 5.75 sec. ft. from Elk Creek with a date of priority of ~~1888~~ 1.25 sec. ft. of the waters of Gee Creek, 6.25 sec. ft. from Goodrich Creek, 6.25 sec. ft. from Mill Creek and 5.00 sec. ft. from Marble Creek with a date of priority of 1868; and storage in Goodrich Creek Reservoir, from Goodrich Creek with a date of priority of 1901; for municipal purposes within the City of Baker, Baker County, Oregon,

and that said right has been confirmed by decree of the Circuit Court of the State of Oregon for Baker County, and the said decree entered of record at Salem, in the Order Record of the STATE ENGINEER, in Volume 6, at page 291.

*On file at Div. of Water Rights
Goodrich Creek - 10 Dec. 1915
+ 1912*

*5-11-15
1115*

And said right shall be subject to all other conditions and limitations contained in said decree.

WITNESS the signature of the State Engineer,

affixed this 22nd day

of April, 1932.

CHAS. E. STRICKLIN
State Engineer.

Name and Postoffice Address of Appropriator	Date of Relative Priority	Amount Cubic Feet Per Second	Number Acres	Use	Name of Ditch	Stream	Description of Land or Place of Use
Baker, City of by Chas. L. Palmer, Mayor, Baker, Oregon.	Nov. 5 1892		25	Irrigation	East Side	Powder	(See Finding #15 and 96) 25 acres in lots and blocks and City Park within the city limits of Baker, as the individual interests may appear. For municipal rights, see Findings 15 and 96)
Baker City Lodge #25, I.O.O.F. Baker, Oregon.	1876		15	Irrigation	Cemetery Ditch	Sutton Creek	15 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 21 T 9 S. R. 40 E. W. M.
Baker Lodge #47 A.F. & A.M. by Joe Woods, Baker, Oregon.	1876		20	Irrigation	Cemetery Ditch	Sutton Creek	20 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 21 T 9 S. R. 40 E. W. M.
Baker City Mutual Irrigation Company Baker, Oregon by H. Kirkpatrick Baker, Oregon. (Finding #97, 32 & 53)	1869		60	Irrigation	Baker City Mutual Co.	Powder	Place of use: Within City limits of City of Baker. (See Finding #98)
Baker City Packing Co. by Wm. DUBY Baker, Oregon.	1899		80	Irrigation	Williams McDougal	Powder	40 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$ 40 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ Section 3 T 9 S. R. 40 E. W. M.
Baldock, Emma	(See Edgar I. Hindman, successor in interest)						
Baldock, Priscilla Baker, Oregon T-4170 A P.D. (Finding #32 & 52)	1887		48	Irrigation	Baldock Slough	Powder	40 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ 8 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 3 T 9 S. R. 40 E. W. M.
Balm Creek Orchard Company by O.C. Finkelnburg Baker, Oregon. (Finding #82)	Aug. 1904		130	Irrigation	Fuchs	Balm Creek	30 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ 40 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$ 15 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 18 40 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 29 T 8 S. R. 43 E. W. M. 5 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 13 T 8 S. R. 42 E. W. M.
Barger, J. W. North Powder Oregon	July 14, 1887		18	Irrigation	Ashby	Jimmie Creek	5 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 24 13 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 25 T 6 S. R. 39 E. W. M.

57,375 cfs.

Municipal
Ch. 14 of Div. of 11.25 cfs from
Goodrich Ck. Sp. Or. Vol. 11, p. 376

Part of Div. of 11.25 cfs from
Vol. 6 p. 238

State Water Board
Order Record ~~Board of Control~~ State of Oregon

41.

POWDER RIVER

13.

Contest #3. Fountain Seacat, contestant, v. George F. Gardner, contestee, and Contest #17, George F. Gardner, contestant, v. Fountain Seacat and Henrietta Seacat, husband and wife, A. V. Swift, Edna Stuchell, D. F. Indermahl, Ida F. Lochner and Mary S. Gardner, contestees, were heard by the Superintendent of Water Division No. 2, and the testimony and all the proceedings in said contests were reported, transcribed and filed with all exhibits in this proceeding, and from all the testimony, proceedings, exhibits, data and information filed in these proceedings and applicable to these contests, the State Water Board finds that the first irrigation ditch upon the place now owned by G. F. Gardner was constructed in 1864, and covered about 21.5 acres; the second ditch was constructed in 1867, and covered about 40.5 acres, and the third ditch was constructed in 1896, and covered about twenty acres of land. That the irrigation of the place now owned by Fountain Seacat began in 1867. That the irrigation of the lands now belonging to Mary S. Gardner and Edna Stuchell began in 1875 (49 Or. 617-618); those belonging to D. F. Indermahl in 1875; A. V. Swift in 1884 (49 Or. 616), and Ida F. Lochner in 1893. That said dates of priority shall be set out in the tabulation herein as herein found. That D. F. Indermahl by stipulation has waived all priorities as to the lands of G. F. Gardner, and in the distribution of water such waiver shall be observed so long as no other rights are infringed. That except as otherwise herein provided, the water master shall distribute the water according to the dates of priority herein found, subject to the general findings herein.

14.

Contest #4. W. A. Green, J. O. Maxwell, H. K. Fisher, Asa L. Brown, W. L. Toney, Killamcoe Lake Reservoir & Rock Creek Irrigation Company, a corporation, and Rock Creek Protective Association, contestants, v. Eilert Eilertson, contestee, was settled by stipulation to the effect that contestee shall have the right to use water from Rock Creek to irrigate 18 acres under priority date of 1901, and for mining purposes under priority date of 1900, and that any rights claimed by contestee for sale or power, said contestee shall secure additional permits as may be required by law at time such permits are secured, and such development undertaken. That in accordance with said stipulation, said dates are established in the tabulation herein. That the amount of water to be used for irrigation shall be governed by the general findings as to the duty of water. That the amount of water to be used for mining shall not exceed five second feet, which is the present maximum capacity of contestee's ditch. That the amount of water to be stored in any one year for irrigation shall not exceed thirty acre feet, and for mining shall not exceed seventy acre feet.

Contest #5. The City of Baker, a municipal corporation, contestant, v. Gardner & Stuchell, Fountain Seacat and Arthur Swift, contestees, was called for hearing on the 12th day of May, 1915, and contestees each appeared before the Superintendent of Water Division No. 2, acknowledged the priority right of contestant and refused to appear further in this contest. It further appears that contestees were each served with notice of the hearing of such contest on the 25th day of March, 1914, and that the City of Baker has the following rights to the use of water: That in the year ~~1914~~ were initiated and thereafter the ~~City of Baker~~ for the purpose of utilizing such water right. That the ~~City of Baker~~ thence said canal runs in a southeasterly direction and takes water from the following springs and streams in the following amounts:- Coyote Springs, 0.5 sec. ft; Little Mill Creek, 5.0 sec. ft; Big Mill

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Creek, 5.0 sec. ft; Hawk Springs, 0.5 sec. ft; Little Marble Creek, 1.25 sec. ft; Big Marble Creek, 5.0 sec. ft; Campers Springs, 0.625 sec. ft; Herman Springs, 0.5 sec. ft; Big Salmon Creek, 5.0 sec. ft; Henry Springs, 0.625 sec. ft; Finley Springs, 0.625 sec. ft; Little Salmon Springs, 0.5 sec. ft; Little Salmon Creek, 1.25 sec. ft; Slum Town Springs, 0.625 sec. ft; Rock Springs, 0.5 sec. ft; North Prong of Washington Gulch, 0.5 sec. ft; Middle Prong of Washington Gulch, 0.5 sec. ft; South Prong of Washington Gulch, 0.5 sec. ft; Corn Springs, 0.625 sec. ft; Ryan Springs, 0.25 sec. ft. Elk Creek, 3.75 sec. ft; being a total of 39.25 second feet. That in the year 1868 and after the appropriation for the Auburn Canal, a water right was initiated through the Kelly Ditch for 6.25 second feet from Mill Creek, and 6.25 second feet from Marble Creek. That in 1868, a water right was initiated through the Nelson or Newton & Sturgill Ditch for 1.25 second feet from Gee Creek, 6.25 second feet from Goodrich Creek, 6.25 sec. ft. from Mill Creek and 5 second feet from Marble Creek; that each of said water rights were perfected and the water applied to beneficial use in placer mining and such use continued until the years 1898 to 1901, during which years, the Auburn Canal and the Nelson Ditch together with the water rights connected therewith were transferred to the City of Baker, who is the present owner thereof, and the Kelly Ditch and the water rights connected therewith were transferred to The Pocaahontas Mining & Irrigation Company who is the present owner thereof. That the City of Baker proceeded to change the use and the place of use of the waters under such water rights to municipal purposes. That in making such change it was necessary to expend large amounts of money and time, and during such time said city leased some of the ditches and rights for irrigation purposes. That said Pocaahontas Mining & Irrigation Company changed the use and place of use of the water through said Kelly Ditch to irrigation. That such changes did not infringe upon any other rights and the transferees of said rights secured by such transfers said water rights with their respective dates of priority.

That since the purchase of the ditches and water rights by the City of Baker as aforesaid, and until the decision of the Supreme Court of the State of Oregon in the case of Sherred vs. City of Baker, 63 Ore. 28, said city leased a part of the waters claimed under said water rights to the Pocaahontas Farmers Ditch Company; that since said decision of the Supreme Court the City of Baker has not made any use of that part of the waters theretofore leased to said ditch company. That said City of Baker has, since the purchase of said water rights always used a part of said water; that all of the parties using water from said streams have at all times recognized the rights of the City of Baker as being prior to any of said water users, and all of the improvements upon all of their farms have been made under conditions created by such recognition in such rights. That the decision of the Supreme Court of the State of Oregon in the case of Bowen et al. vs. Spaulding et al., 63 Ore. 392, and in the case of Sherred vs. Baker City, each recognized the right of the City of Baker as being absolute and prior to all others using water from said streams.

The amount of water as herein set forth as having been appropriated from the several streams for the water rights now owned by said City of Baker, is hereby reserved and expressly confirmed unto said City of Baker forever, as of the dates of priority as herein set forth.

That heretofore said Pocaahontas Mining & Irrigation Company and said City of Baker made and entered into an agreement, in writing, respecting the water rights of Marble and Mill Creeks, wherein and whereby it was agreed that when water was used through said Auburn Canal that all the water rights above the intake of said canal should be long exclusively to said City of Baker. That when the water is not used through said canal, when the flow of water in said Marble Creek is under 500 miners inches, said water in Marble Creek shall be divided equally, and when the flow in Mill Creek is under 500 inches, miners measurement, said water in Mill Creek shall be divided equally, and so long as the flow in Marble Creek is over 500 inches, said Pocaahontas Mining and Irrigation Company shall

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be entitled to the first 250 inches, and said City of Baker to the balance of the flow of said stream, and when the water is used through said Auburn Canal, except all the waters rising and flowing in said creeks below the intake of said canal, said Pochontas Mining & Irrigation Company shall be entitled to the first 250 inches flowing in each of said Marble and Mill Creeks, and all above such amount shall belong to said City of Baker.

That said stipulation as to the rights of said City of Baker shall be given full force in the distribution of water, provided, that in no case shall the amount of water taken from said creeks exceed the amount of the appropriation from said Mill and Marble Creeks as hereinabove set forth.

Contest #6. The City of Baker, a municipal corporation, contestant, v. Fred Cole and R. W. Littlefield, contestees, was stipulated to the effect that the contestant has the first and prior rights as against the contestees to the full flow of the waters of Elk Creek, and it appearing that the Cole & Littlefield appropriation was made as of date 1865 from Elk Creek, such appropriation was after the appropriation to which the City of Baker, the contestant, has succeeded in its rights as is more fully set out in Finding #15. It further appears that R. W. Littlefield has succeeded to the rights of D. S. Littlefield, as administrator.

17.

Contest #7. Fred Cole and Rufus W. Littlefield, as administrators of the Estate of David Littlefield, deceased, contestants, v. Bert Spalding and W. B. Vaughn, contestees, was called for hearing, and at said time E. G. Haskell and O. M. Haskell petitioned to intervene in said hearing; that insofar as said petition of intervention was attempted to contest the claims of the contestees herein, Bert Spalding and W. B. Vaughn, such intervention is disallowed as the time for filing had expired. That as between the contestants and the contestees, and as between said contestants and said intervenors, a stipulation was entered into which said stipulation is to the effect that the contestants had a right to the use of the waters of Elk Creek to the extent of 150 inches of water, miners measurement under a six inch pressure, with a priority of 1865, and that said right to the use of such water was prior in time and superior in right to that of the contestees, the intervenors, and it was further stipulated that said contestants should have and recover of the contestees herein, their costs and disbursements in this suit in the sum of \$69.50, and that said contestants have judgment against said contestees for said sum.

18.

Contest #8. Henry H. Moody, Geo. M. Moody, Bertha Morrison, Dan T. Jones, Mrs. C. S. McCarty, Henry L. Zeigler, Carl C. Mason and C. S. Summers, successors to heirs of Charles and Zarissia Zeigler, deceased, contestants, v. Catherine D. Vernon, now Catherine D. Owens, contestee, was stipulated to the effect that contestants and each of them have rights to the use of the water of Little Eagle Creek, a tributary of Powder River, prior in time and superior in right to that of the contestee. That by said stipulation the dates of priority of said contestee has been waived, and the water shall be distributed by the water master in accordance with said stipulation, and this decree.

Contest #9. City of Baker, a municipal corporation, contestant, v. John Steiger, Estate of Perry Baisley, Hattie Baisley executrix, J. H. Baisley and S. B. Baisley, contestees, was stipulated to the effect that the contestant is the owner of the Auburn Canal and water rights appertaining thereto,

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and the contestees are the owners of the Upper Never Sweat Ditch and Lower Never Sweat Ditch, and the water rights used through said ditches. That their predecessors in interest of said ditches and water rights settled their rights in a case in the Circuit Court of the United States for the District of Oregon, entitled David McClure, Jr., complainant, vs. Moses Carpenter, defendant, and that the relative rights to the use of water through said ditches was thereby settled, and that said decree so settling said rights should determine the rights of said contestant and contestees. That the rights of said contestant as heretofore found in Finding #15, as to the use of water from Salmon Creek through said Auburn Canal, is prior in time and superior in right to the rights of the contestants herein, and the water shall be distributed in accordance therewith. It further appearing that contestee, John Steiger, was not served in said proceedings, contestant in open court dismissed said contest as to said John Steiger.

20.

Contest #10. Amos Jard, contestant, v. Ross Wilson and H. Van Nordheim, contestees, was stipulated to the effect that the contestant have a date of priority for the use of the waters of Beaver Creek or Willow Creek, prior in time to that of the contestees, and the tabulation hereinafter set forth shall so state this in accordance with said stipulation; and it further appearing that the contestant has heretofore used the water in the irrigation of his premises in a manner that such water finds its way into the channel of said creek, and said contestant has so agreed to use such water in the future in consideration of this stipulation, the water master shall distribute the water to said contestant under such date of priority so long as the use of such water by said contestant is carried on in said manner, and in case such use be not carried on in said manner, then and in that event should such use interfere with the use of water by said contestees, then the water shall be distributed first to said contestees, and then to said contestant.

21.

Contest #11. W. A. Green, J. O. Maxwell, H. K. Fisher, Asa L. Brown, W. L. Toney, Willamette Lake Reservoir and Rock Creek Irrigation Company, a corporation, and Rock Creek Protective Association, contestees, v. Hattie H. Olsen, C. J. Osborn and A. B. Ringling, contestants, was dismissed upon the motion of the contestants herein.

22.

Contest #12. Eastern Oregon Light & Power Company, a corporation, contestant, v. Frank Vanderwall, Frank Leonig and Peter Paulson, contestees, was dismissed upon motion of contestant.

23.

Contest #13. W. A. Green, J. O. Maxwell, H. K. Fisher, Asa L. Brown, W. L. Toney, Willamette Lake Reservoir and Rock Creek Irrigation Company, a corporation, and Rock Creek Protective Association, contestants, v. D. M. Cartmill, contestee, was dismissed upon motion of contestants.

24.

Contest #14. W. B. Vaughn & Bird Spaulding, co-partners as Spaulding & Vaughn, contestants, v. Ed Bowen, contestee, was stipulated to the effect that contestants and contestee shall each be entitled to sufficient waters of Elk Creek as of date of priority of 1872, for the irrigation of 67.5 acres of land each, said water to be divided at a point near where Elk Creek crosses the west line of Section 6, Tp. 10 S. R. 40 E. W. M., and that all water in said Elk

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irrigate 100 acres; a priority date of 1889 for sufficient water to irrigate 50 acres; a priority date of 1892 for sufficient water to irrigate 63.5 acres; a priority date of 1893 for sufficient water to irrigate 50 acres; a priority date of 1905 for sufficient water to irrigate 59 acres.

That Fred A. Phillips shall have a priority date of 1879 for sufficient water to irrigate 100 acres; a priority date of 1893 for sufficient water to irrigate 50 acres; a priority date of 1905 for sufficient water to irrigate 61.5 acres.

That Lulu Phillips shall have a priority date of 1905 for sufficient water to irrigate 20 acres.

That E. P. Cranston shall have a priority date of 1890 for sufficient water to irrigate 170 acres.

That the Estate of Herbert Cranston and Mary Cranston shall have a priority date of 1891 for sufficient water to irrigate 90.5 acres.

That Lena Cranston shall have a priority date of 1896 for sufficient water to irrigate 91 acres.

That Margaret Hulick shall have a priority date of 1897 for sufficient water to irrigate 58 acres.

That the Balm Creek Orchard Company, successors in interest to the Meadows Irrigation Service Company, shall have a priority date of 1804 sufficient to irrigate 130 acres.

That the distribution of water upon said creek shall be governed by the general finding herein as to rotation and such practical arrangements for the distribution of water as the water master may inaugurate.

That the decree of the Circuit Court of the United States for the District of Oregon, in the case wherein David McClure, Jr., was complainant, and Moses Carpenter was defendant, was filed with the claims of the Perry Baisley Estate and those of the Baisley owners who use the Upper Never Sweet and Lower Never Sweet Ditches, wherein the owners of the Auburn Canal were decreed a prior right for 350 miners inches of water, or 3.75 second feet. That the City of Baker has succeeded to the rights of plaintiff, David McClure, Jr., and the said Perry Baisley Estate, J. H. Baisley, Hattie Baisley, and C. B. Baisley have succeeded to the interests of Moses Carpenter, defendant, and it appearing by said decree that the said Auburn Canal was constructed in the year 1863, the rights to the use of water through the Auburn Canal by said City of Baker shall be of the date of priority of 1863. And it appearing by said decree that the date of priority of said Baisleys is later than said date, said Baisleys shall have a date of priority of not earlier than 1864, but in all cases shall be governed as to the date by the diligence of putting the water to a beneficial use.

That the decree of the Circuit Court of the State of Oregon for the County of Baker, in the suit of George Mitchell, plaintiff, v. S. E. Baisley, defendant, was filed herein with the claim of S. E. Baisley, and it appears by said decree that the waters of Hibbard Creek were involved therein, and that the defendant, S. E. Baisley was given the prior right to the use of said waters. It appears that the successor in interest to the use of said waters of the plaintiff, George Mitchell, are the Heirs of J. H. Lew, E. J. Lew, John H. Lew, and A. Caviness. The successors in interest to the rights of the defendant are S. E. Baisley and J. H. Baisley. That the Baisleys claim the right as of the priority date of 1869 from Hibbard Creek; that the Heirs of John H. Lew, E. J. Lew, and John H. Lew claim the rights from said Hibbard Creek, dating from 1854, 1870 and 1903. That A. Caviness claims the right from said creek under date of 1906, and in accordance with said decree and in order to give the successors of defendant in said suit the prior right, we have placed the priority dates of the Heirs of John H. Lew as 1870 out of

Findings

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said creek, and the rights of E. J. Lew with a priority date of 1870; the rights of John H. Lew with a priority date of 1870 and 1903, and A. Caviness with a priority date of 1896.

It further appears that said J. R. Baisley and J. B. Baisley, besides irrigating land from said stream, use some of the waters for storage and thereafter irrigate with the same, and such storage rights shall have the same date as the irrigation rights.

95.

That the decree of the Circuit Court of the State of Oregon for the County of Baker on the mandate of the Supreme Court of the State of Oregon, in the suit of J. C. Bowen and R. C. Bowen, respondents and cross appellants, vs. Bird Spaulding and W. B. Vaughn, respondents and cross appellants, Mary E. Smith and W. L. Smith, appellants, Baker City, a municipal corporation, F. Franklin and -, O. Haskell, respondents, was filed herein with the Statement and Proof of claim of the City of Ecker. It appears from said decree that said City of Baker has established a prior right to all the parties to said suit for the use of the waters of Elk Creek, and it further appearing that the claims of all of said other parties in said suit, set dates of priority subsequent to the dates of priority claimed by said City of Baker, such dates of priority established in the tabulation hereinafter set forth, so establishes the priority dates in accordance with said decree.

96.

That a decree of the Circuit Court of the State of Oregon for the County of Baker, in the suit wherein R. R. Palmer and H. E. Denham were plaintiffs, v. Geo. A. Richardson, Homer William, W. S. Metsker, Lucy Burden, Victor Hault, G. A. Conrad, Dan Stephenson, D. W. Holman, Chas. Ebell, Cleveland Ebell, Hugo Ebell, Della Ebell, Clara Ebell, Cecil Ebell, Armond Ebell, heirs at law of August Ebell, deceased; S. E. Willet and Minnie L. Willet, John Ingram, Ora H. Bennett, Elmer E. Bennett, and E. E. Bennett, administrator of the Estate of Nathan Bennett, deceased, defendants, was filed in connection with the claims of those parties whom said decree affects. It appears to the State Water Board that Sutton Creek is a tributary of Powder River, and that the plaintiffs, R. R. Palmer and H. E. Denham own lands upon Sutton Creek, and said lands are so located that said Palmer and Denham have access not only to Sutton Creek, but also to a tributary of Sutton Creek known as Ebell Creek, or East Sutton Creek. That said decree determines that said Palmer and Denham shall have a right prior to the right of all the defendants for the use of water upon what is known as the McCullough place, but that for the use of water out of East Sutton Creek or Ebell Creek, said Palmer and Denham shall have no priority rights prior to any of the defendants who use water out of said Ebell Creek.

That all of the parties to said suit or their successors in interest appeared in these proceedings, except W. S. Metsker who owned the E₂ of Section 24 and the E₂ of Section 25, Tp. 10 S. R. 40 E. W. M.; that said decree denied any use of water to said Metsker, and that not having appeared in these proceedings, default is hereby entered against him. That said Palmer and Denham shall have a priority date of 1873 for the irrigation of the lands in the E₂ of SE₂, NW₂, SE₂ and the SW₂ NE₂, Sec. 12, Tp. 10 S. R. 40 E. W. M., and shall have a priority date of 1896 for 21 acres of the lands irrigated in the NE₂ of NE₂, and the SE₂ NE₂, Sec. 13, Tp. 10 S. R. 40 E. W. M., and for the balance of said land shall have a priority date of 1907. Said water shall be for such priority dates from Sutton Creek.

It further appears that the parties who irrigate out of East Sutton or Ebell Creek have priorities from 1872 to 1905, and by said decree said Palmer and Denham can only use water from said East Sutton or Ebell Creek, after each of said parties have finished their irrigation, and the Board hereby

BEFORE THE WATER RESOURCES DEPARTMENT OF OREGON

IN THE MATTER OF TRANSFER APPLICATION)	
T-5665 IN THE NAME OF THE CITY OF)	STATEMENT, FINDINGS OF FACT
BAKER FOR APPROVAL OF A CHANGE IN)	CONCLUSIONS OF LAW, AND
POINT OF DIVERSION OF WATER)	FINAL ORDER

STATEMENT

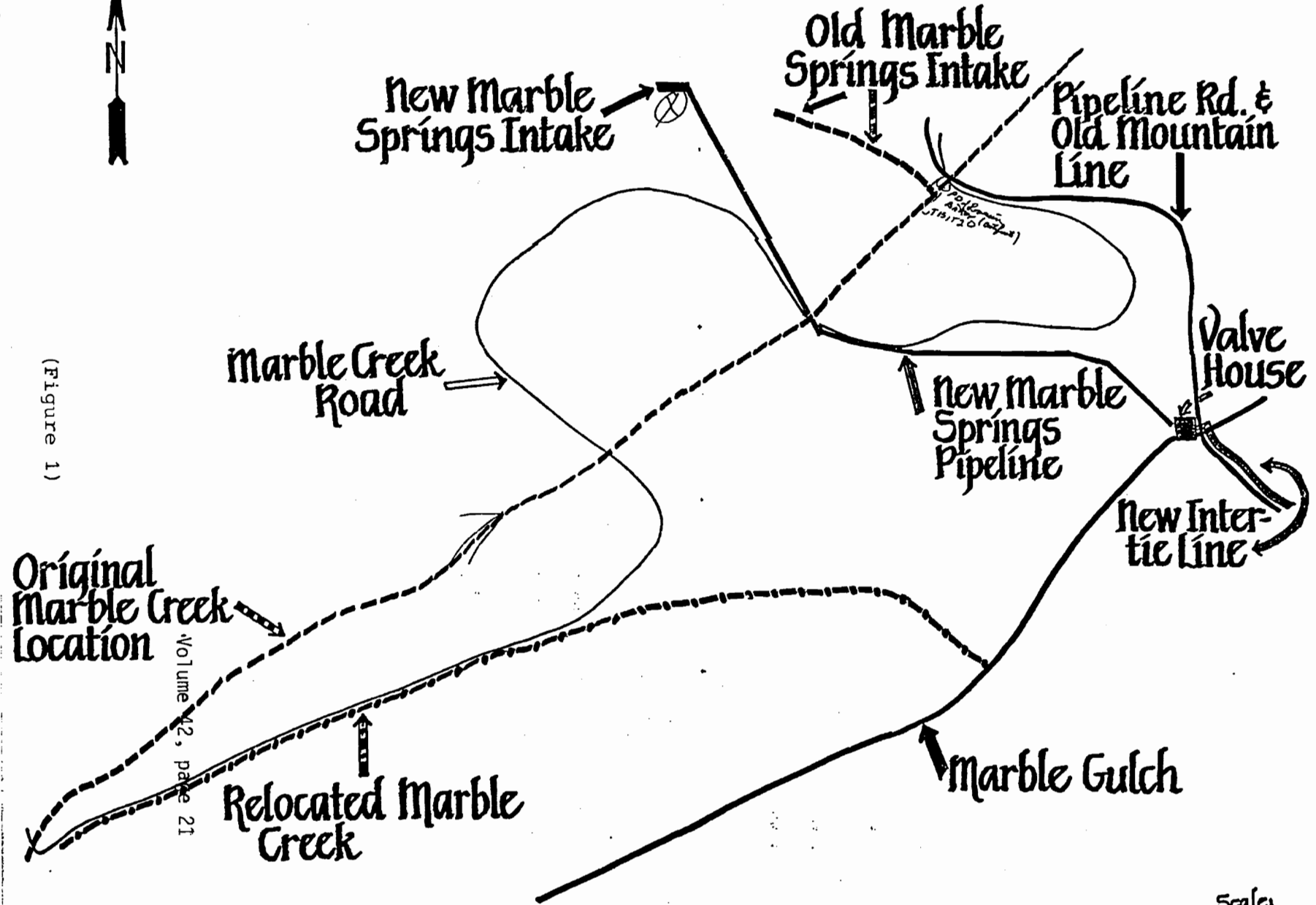
On July 3, 1985, the City of Baker filed water Right Transfer Application 5665 for approval of a change in point of diversion of water under a right described by the certificate issued to the City of Baker and recorded at Page 9608, Volume 9, State Record of Water Rights Certificates. The subject water right was allowed by decree of the court in the Matter of the Determination of the Relative Rights to the Waters of Powder River and its tributaries, a tributary of Snake River, and is for the appropriation of not to exceed 5.0 cubic feet per second of water (cfs) from Big Marble Creek under a date of priority of [REDACTED] for municipal purposes within the City of Baker.

The old point of diversion is described as being located 972 feet South and 339.8 feet East from the Northwest Corner of Section 13, Township 9 South, Range 38 East, WM, being within the NW 1/4 NW 1/4 of said Section 13. The new point of diversion is described as being located 931.2 feet South and 127.6 feet East from the said Northwest Corner of Section 13, and is also within the NW 1/4 NW 1/4 of Section 13.

On October 30, 1985, the Pocahontas Farmers' Ditch Company filed a protest against approval of pending Transfer Application T-5665. In protest it is alleged that:

- a) the proposed application would conflict with Pocahontas Farmers' Ditch Company's prior vested rights;
- b) the City of Baker has been illegally using Marble Springs water and the City of Baker has no water rights for use of said spring;
- c) the change in point of diversion by the City of Baker would be detrimental to the public's interest;
- d) the City of Baker's original point of diversion is above Marble Springs and Marble Springs was never intended by the City of Baker to be used as a part of its water source, and Marble Springs very well may be an independent source of water.

Marble Springs Vicinity



(Figure 1)

Original
Marble Creek
Location

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Relocated Marble
Creek

Marble Creek
Road

New Marble
Springs Intake

Old Marble
Springs Intake

Pipeline Rd. &
Old Mountain
Line

New Marble
Springs
Pipeline

Valve
House

New Inter-
tie Line

Marble Gulch

Scale:

1" = 40 ft

About the year of 1916 the City of Baker moved its point of diversion from the channel of Marble Creek to the "Old Marble Springs Intake." Water that was intercepted at the "Old Marble Springs Intake." is water that would have otherwise found its way to the point of diversion in the creek channel.

Prior to 1931, there was no statutory provision for making application for approval of a change in point of diversion. However, the Oregon Supreme Court held in Whited v. Calvin, 55 OR 98 (December 1909) at page 106, "A change in point of diversion. . . may be made when it can be done without prejudice to the rights of others." The record does not disclose any prejudice to the water right of others having resulted from the change made in or about 1916. Therefore, the lawfully established point of diversion for the subject water right is at the "Old Marble Springs Intake."

The intake works at "The Old Marble Spring Intake" consisted of a timbered tunnel into the rocky hillside and a small "spring house" at the outer end of the tunnel. A concrete cut-off wall served to collect the water and direct it to the spring house.

The Chemical Lime Company began quarrying operations in the area shown on Figure 1, about the year 1957. By about 1963 or 1964, the quarrying operations which included the blasting of rock caused fractures in the rock in the vicinity of the "Old Marble Springs Intake." Mr. Vernon Jacobson who was the Director of Public Works for the City of Baker at that time, testified that "the ground was fracturing and water was percolating (seeping to the surface of the ground) all the way around." The "Old Marble Springs Intake" works were no longer able to intercept the waters of Marble Springs.

With permission of the land owner, the City of Baker excavated upslope from the old spring collection works by means of a bulldozer and a backhoe, and followed the flow of water upstream (upslope) to where it was issuing from a cavern and split in the rock face of the quarry. A new concrete cut-off wall and perforated concrete pipe was installed to collect the water. The collected water is conveyed into a 36-inch diameter culvert pipe. The collection works, including the upslope end of the 36-inch culvert pipe, is covered with treated timbers and rock fill.

Water collected at the "New Marble Springs Intake" is piped into the City of Baker's pipeline system via the Valve house shown on Figure 1.

If the water which flows from the rock face at the "New Marble Springs Intake" location were not intercepted by the intake works, it would flow to the channel of Marble Creek (now buried under quarry waste) above the location of the original point of diversion from Marble Creek.

The record does not establish whether the City of Baker is obtaining more or less water by means of the "New Marble Springs Intake" as compared to the "Old Marble Springs Intake." Metered measurements made during the period of October 25, 1985 to May 7, 1986, show an average flow of 0.849 cfs. Measurements made during the period of May 7, 1986 to May 21, 1986, show an average flow of 3.38 cfs.

The City of Baker's subject water right authorized the City to divert up to 5.0 cfs from the natural flow in Marble Creek at the point where the Auburn Canal crossed the channel of Marble Creek, for municipal purposes within the City of Baker. Pursuant to the provisions of ORS 540.610(1) and (2), which statutory provisions were originally adopted by the 1913 Legislative Assembly, the subject right is not subject to forfeiture through nonuse.

Whether the water appropriated were to be diverted from the channel of Marble Creek at the location of the former Auburn Canal crossing, or whether it is diverted from waters tributary to Marble Creek above that point, the effect on downstream appropriators from diversion of a given quantity of water would be no different. Neither is there any change in effect on other private or public interests as a result of diverting the waters of Marble Springs at the "New Marble Springs Intake" as compared to diverting the water at the "Old Marble Springs Intake."

The point of diversion of water from Marble Creek under the existing water rights of the protestant, Pocahontas Farmers' Ditch Company, is some distance downstream from the location where the old Auburn Canal crossed the channel of Marble Creek.

ULTIMATE FINDINGS OF FACT

The standard for determining whether the proposed change in point of diversion from the "Old Marble Springs Intake" to the "New Marble Springs Intake" should or should not be approved is set out in ORS 540.530(1). Subsection(1) reads, in part, "If, after hearing or examination, the Water Resources Commission finds that the proposed change can be effected without injury to existing water rights, the commission shall make an order approving the transfer and fixing a time limit within which the approved changes may be completed."

The change in point of diversion from the "Old Marble Springs Intake" to the "New Marble Springs Intake" can be effected without injury to existing water rights including the water rights held by the protestant.

CONCLUSIONS OF LAW

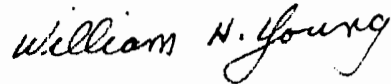
Water Right Transfer Application 5665 in the name of the City of Baker for approval of a change in point of diversion of water appropriated under the right described herein above should be approved pursuant to the provisions of ORS 540.510 to 540.530.

FINAL ORDER

NOW, THEREFORE, it is ORDERED that Water Right Transfer Application 5665 in the name of the City of Baker be approved for change in point of diversion from the location of the "Old Marble Springs Intake" to the location of the "New Marble Springs Intake." The location of the said new point of diversion is described as being 931.2 feet South and 127.6 feet East from the Northwest Corner of Section 13, Township 9 South, Range 38 East, WM.

It is FURTHER ORDERED that because the requested change in point of diversion has been made in fact, no time need be allowed for completion of the change.

Dated at Salem, Oregon, this 19th day of January, 1988.



WILLIAM H. YOUNG
Director

NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service (date of mailing) of this order. Judicial review is pursuant to the provisions of ORS 536.075 and 183.482.

BEFORE THE STATE ENGINEER OF OREGON

Baker County

IN THE MATTER OF THE APPLICATION)
OF CITY OF BAKER FOR THE APPROVAL)
OF A CHANGE IN POINT OF DIVERSION)
OF WATER FROM GOODRICH CREEK)

O R D E R

APPROVING APPLICATION

On July 6, 1961, the City of Baker filed an application in the office of the State Engineer for the approval of a change in point of diversion of water from Goodrich Creek, pursuant to the provisions of ORS 540.510 to 540.530.

By Decree of the Circuit Court for Baker County, Oregon, entered March 18, 1918, In the Matter of the Determination of the Relative Rights to the Use of the Waters of Powder River and its Tributaries, a water right was established in the name of the City of Baker for the use of 11.25 cubic feet per second of the waters of Goodrich Creek for municipal water supply within the corporate limits of the City of Baker, of which 5.0 cubic feet per second is diverted through the Auburn ditch with a date of priority of 1863 and 6.25 cubic feet per second is diverted through the Nelson or Newton and Sturgill ditch with a date of priority of 1868. The point of diversion of the Auburn ditch is within the E $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 34 and the point of diversion of the Nelson or Newton & Sturgill ditch is within the S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 36, all in Township 8 South, Range 38 East, W. M.

The applicants herein, owners of the water right above described, propose to change their point of diversion to a point to be located 1320 feet North and 710 feet West from the southeast corner of Section 35, and being within the E $\frac{1}{2}$ SE $\frac{1}{4}$, said Section 35, Township 8 South, Range 38 East, W. M.

Notice of the filing of the application was given by publication setting forth a time and place certain for hearing objections to the proposed change in point of diversion of water, if any there were, namely: at the

county courthouse in Baker, Oregon, on October 31, 1961, at 9:30 a.m. The notice was published in the Baker Democrat-Herald, a newspaper printed and having general circulation in Baker County, Oregon, for a period of three weeks in the issues of September 5, 12 and 19, 1961. The date set for hearing in said notice was not less than thirty days after the last publication of the notice.

No objections having been filed and it appearing that the proposed change in point of diversion may be made without injury to existing rights, the application should be approved.

NOW, THEREFORE, it hereby is ORDERED that the proposed change in point of diversion of water from Goodrich Creek, to-wit:

From a point located within the E $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 34, known as the Auburn ditch, and

From a point located within the S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 36, known as the Nelson or Newton & Sturgill ditch, all in Township 8 South, Range 38 East, W.M.

To a point to be located 1320 feet North and 710 feet West from the southeast corner of Section 35, and being within the E $\frac{1}{2}$ SE $\frac{1}{4}$, said Section 35, Township 8 South, Range 38 East, W.M.

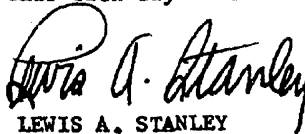
for the use of 11.25 cubic feet per second of water for municipal water supply within the corporate limits of the City of Baker, of which 5.0 cubic feet per second has a date of priority of 1863 and 6.25 cubic feet per second has a date of priority 1868, be and the same hereby is approved.

It is FURTHER ORDERED that the change in point of diversion of water shall be completed on or before October 1, 1963, or within such extension of time as may be granted by the State Engineer for good cause shown.

It is FURTHER ORDERED that the quantity of water diverted at the new point of diversion shall not exceed the quantity of water that is available at the old point of diversion.

Dated at Salem, Oregon, this 12th day of January, 1962.

Noted on Decree
Vol. 6 p. 303, 333, § 359
Cert. # 9608


LEWIS A. STANLEY
State Engineer

Trsf. "B-125"

377

Name and Postoffice Address of Appropriator	Date of Relative Priority	Amount Cubic Feet Per Second	Number Acres	Use	Name of Ditch	Stream	Description of Land or Place of Use
W. L. Meyers, successor to W. H. Shoemaker, Trustee	1885		60	Irrigation	Goffman	Big Creek	17 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ 7 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 25 12 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ 24 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 26
	1886 from Warm Ck. 1892 from Big Ck.	20			Marlin	Warm Creek & Big Creek	10 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ 5 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$ 5 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 26 T 6 S.R. 41 E.W.M.
A. H. Young Baker, Oregon	1898		69.5	Irrigation	Brent- Perkins	Powder	35.5 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ 1 acre in NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 27 33 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 26
	1880		60		Basche- Upper		4.5 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ 39 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ 16.5 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 27 T 8 S.R. 42 E.W.M.
Harlow J. Evans, Herman E. Jordan Mary E. Jordan Baker, Oregon	1864		128.7	Irrigation	Pocahontas	Marble Ck.	23.7 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$
	1876		8		Mining & Irrigation	Mill. Ck. Salmon Ck.	40 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ 40 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$
	1905		8		Co.		33 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ 8 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 4 T 9 S.R. 39 E.W.M.
A. Caviness	1866		68	Irrigation	Pocahontas	Salmon & Hibbard	32 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ 40 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 4
	1906		4		Farmers Ditch Co.	Creeks	T 9 S.R. 39 E.W.M.
	(Note: This land has a supplementary right from Marble, Mill and Goodrich Creeks under date of 1906)						
City of Baker, Oregon	1892 Nov. 5		25	Irrigation	East Side	Powder	25 acres in lots and blocks and City park within the City limits of Baker as the individual interests may appear.
				Municipal			For municipal rights see Findings of State Water Board #15 and 97 and their modifications.

State Water Board

Order Record ~~Board of Control~~ State of Oregon

POWDER RIVER

NAME AND POSTOFFICE ADDRESS OF APPROPRIATOR	DATE OF RELATIVE PRIORITY	AMOUNT CU. FT. PER SEC.	NO. ACRES	USE AND IRRIGATION SEASON	NAME OF DITCH	STREAM	DESCRIPTION OF LAND OR PLACE OF USE
Baker, Wm. Kenting, Ore.	1879		40	Irrigation & Storage 20 acre feet	Baker Reservoir & Ditches	Crows Springs	2 acres in NE ¹ / ₄ SW ¹ / ₄ ; 19 acres in NW ¹ / ₄ SW ¹ / ₄ ; 3.5 acres in SW ¹ / ₄ SW ¹ / ₄ ; Sec. 14; 9 acres in NE ¹ / ₄ SE ¹ / ₄ ; 6 acres in NW ¹ / ₄ SE ¹ / ₄ ; 1.5 acres in SE ¹ / ₄ SE ¹ / ₄ ; Sec. 15, Tp. 9 S. R. 41 E. T. 11 N.
Baker, City of by Chas. L. Palmer, Mayor. Baker, Ore. (Finding #15, 16, 19, 23, 25, 27)							(See Findings # 15 and 27)
Baker City Lodge #25, I.O.O.F. Baker, Ore.	1876		15	Irrigation	Cemetery Ditch	Sutton Creek	15 acres in NW ¹ / ₄ SE ¹ / ₄ ; Sec. 21, Tp. 9 S. R. 40 E. T. 11 N.
Baker Lodge #47, A.F. & A.M. by Joe Woods, Baker, Ore.	1876		20	Irrigation	Cemetery Ditch	Sutton Creek	20 acres in NW ¹ / ₄ SE ¹ / ₄ ; Sec. 21, Tp. 9 S. R. 40 E. T. 11 N.
Baker City Mutual Irrigation Company, Baker, Ore. by R. Kirkpatrick, Baker, Ore. (Finding #93, 52 & 53)	1869		60	Irrigation	Baker City Mutual Co. Powder		Place of use: Within City Limits of City of Baker. (See Finding #93)
Baker City Docking Co., by Wm. Doby, Baker, Ore.	1869		80	Irrigation	Williams McDougall	Powder	40 acres in SW ¹ / ₄ NW ¹ / ₄ ; 40 acres in SE ¹ / ₄ NW ¹ / ₄ ; Sec. 3; Tp. 9 S. R. 40 E. T. 11 N.
Baldock, Emma by Millie Allen, Baker, Ore.	1879		160	Irrigation	Stotes #5	Powder	40 acres in NE ¹ / ₄ NE ¹ / ₄ ; 40 acres in SE ¹ / ₄ NE ¹ / ₄ ; 40 acres in NE ¹ / ₄ SE ¹ / ₄ ; 40 acres in SE ¹ / ₄ SE ¹ / ₄ ; Sec. 13; Tp. 9 S. R. 40 E. T. 11 N.
Baldock, Priscilla Baker, Ore. (Finding #52 & 52)	1867		48	Irrigation	Baldock Ditch	Powder	40 acres in SW ¹ / ₄ NE ¹ / ₄ ; 8 acres in SE ¹ / ₄ NE ¹ / ₄ ; Sec. 3; Tp. 9 S. R. 40 E. T. 11 N.
Balm Creek Orchard Company by O.C. Finkelnberg, Baker, Ore. (Finding #82)	Aug. 1904		130	Irrigation	Fuchs	Balm Creek	20 acres in NW ¹ / ₄ NE ¹ / ₄ ; 40 acres in SW ¹ / ₄ NE ¹ / ₄ ; 15 acres in NE ¹ / ₄ NW ¹ / ₄ ; Sec. 13; 40 acres in SW ¹ / ₄ SW ¹ / ₄ ; Sec. 29; Tp. 9 S. R. 43 E. T. 11 N. 5 acres in SE ¹ / ₄ SE ¹ / ₄ ; Sec. 13; Tp. 9 S. R. 42 E. T. 11 N.

See Finding # 115.

PINE CREEK (Umatilla County)

5509 - 5543 incl.

Findings of State Water Board, March 30, 1923	7	148
Decree of Circuit Court, March 17, 1924	7	312

POWDER RIVER (Baker and Union Counties)

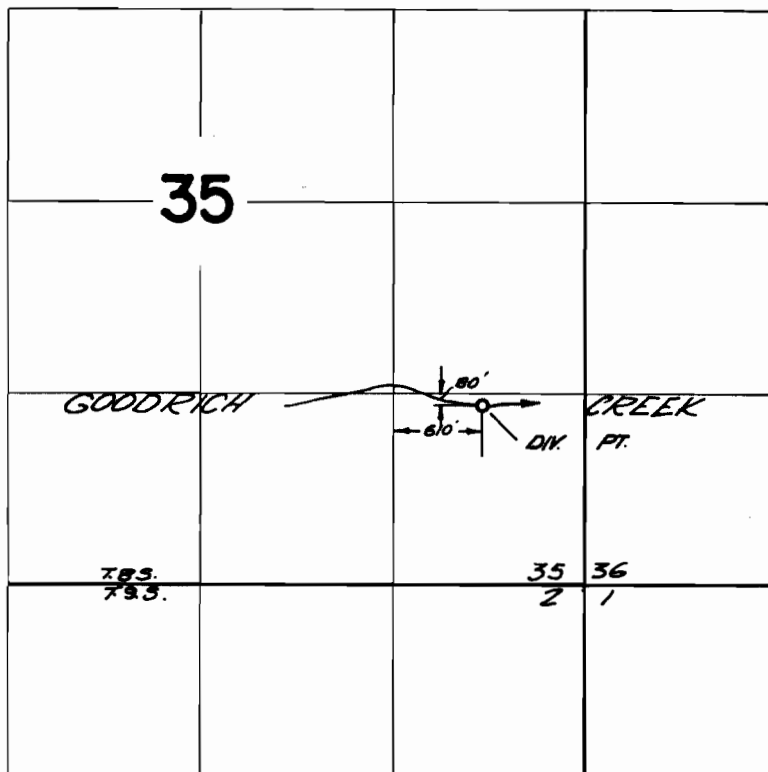
3972 - 4774 incl.
4777 - 4779 incl.
4787, 9167, 9608
10835, 11448, 11454,
11517, 11576, 11577,
12005, and 13430, 28855, 27738

Findings of State Water Board, November 17, 1915	2	32
Decree of Circuit Court, March 18, 1918	5	322
Consolidated Decree of Circuit Court, March 18, 1918	6	291
Order Correcting Findings, March 28, 1918	5	371
Order Correcting Decree, May 14, 1918	5	373
Order Correcting Decree, May 23, 1918	5	375
Order Correcting Findings, June 28, 1918	5	379
Decree of Circuit Court, March 31, 1919 re: Chas N. Gould	7	404
Order Modifying Decree, June 16, 1919 re: Chas. D. Dunn.....	13	490
Decree of Circuit Court, May 4, 1920 re: McCord Ditch	13	52
Order Correcting Decree, September 19, 1921	6	179
Order of Court, May 31, 1924 re: Willow Ck., W. A. Green	7	437
Supplemental Decree of Court, July 23, 1924, Hutton & Jones ..	7	444
Supplemental Decree of Court, March 22, 1930, Grover C. Ison .	10	300
Supplemental Decree of Court, June 18, 1936 re: Chas. W. Kelly	12	385
Supplemental Decree of Court, May 4, 1939 re: Chas. W. Kelly .	13	1
Decree on Mandate, February 28, 1942 re: Kelly Est. vs Perry .	13	502
Supplemental Decree, February 9, 1944 modifying Decree of March 18, 1918	14	340
Supplemental Findings of State Engineer, April 5, 1945 re: Inchoate Rights	14	359
Supplemental Decree of Circuit Court, March 28, 1946 re: Inchoate Rights	14	384
* Judgement of Court re: acreage under priorities, O'Bryant - - <u>PRATHER CREEK</u> (Harnay County) <i>Sept. 17, 1960</i>	16	447

Findings and Decree of Circuit Court, November 20, 1931 See Miscellaneous Decree Vol. 1, Page 48		
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* Order Modifying Decree, Oct. 20, 1967	16	543
Order of Circuit Court, Aug. 24, 1967, Modifying Decree entered Mar. 18, 1918.....	16	547

T.8S. R.38 E. W.M.



FINAL PROOF SURVEY UNDER

TRANSFER B-125

Application No. Permit No.

IN NAME OF

CITY OF BAKER

Surveyed Oct 25 1967, by V. Gardner

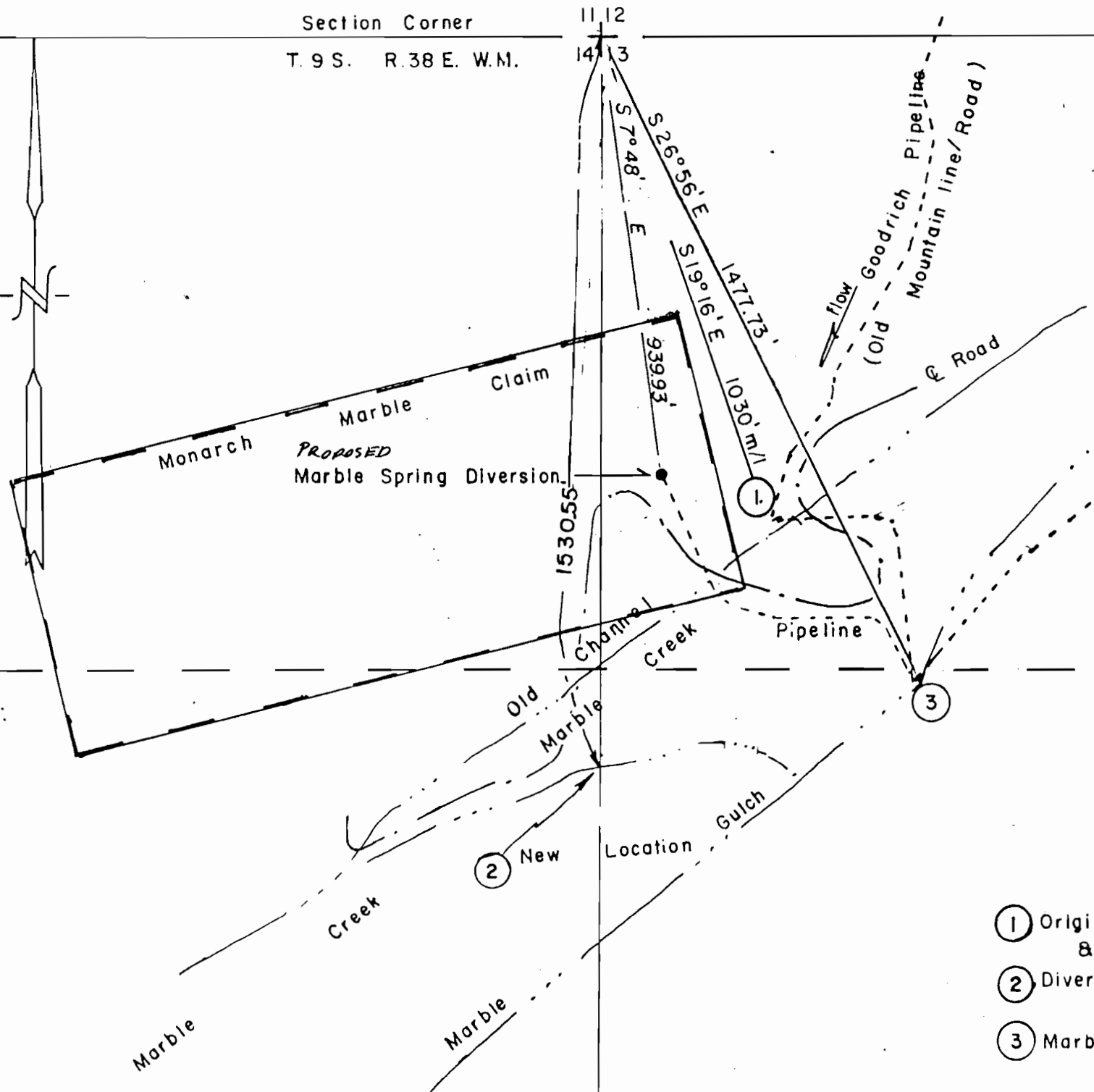
Section Corner
T.9 S. R.38 E. W.M.

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WATER RESOURCES DEPT
SALEM, OREGON

T-5665



- Legend
- Scale = 1" = 300'
- ① Original Marble Spring Diversion & Marble Creek Diversion
 - ② Diverted Marble Creek
 - ③ Marble Creek Diversion

BEFORE THE STATE ENGINEER OF OREGON

Baker County

IN THE MATTER OF THE APPLICATION)
OF CITY OF BAKER FOR THE APPROVAL)
OF A CHANGE IN POINT OF DIVERSION)
OF WATER FROM GOODRICH CREEK)

ORDER

APPROVING APPLICATION

*cut
9/6/08*

On July 6, 1961, the City of Baker filed an application in the office of the State Engineer for the approval of a change in point of diversion of water from Goodrich Creek, pursuant to the provisions of ORS 540.510 to 540.530.

By Decree of the Circuit Court for Baker County, Oregon, entered March 18, 1918, In the Matter of the Determination of the Relative Rights to the Use of the Waters of Powder River and its Tributaries, a water right was established in the name of the City of Baker for the use of 11.25 cubic feet per second of the waters of Goodrich Creek for municipal water supply within the corporate limits of the City of Baker, of which 5.0 cubic feet per second is diverted through the Auburn ditch with a date of priority of 1863 and 6.25 cubic feet per second is diverted through the Nelson or Newton and Sturgill ditch with a date of priority of 1868. The point of diversion of the Auburn ditch is within the E $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 34 and the point of diversion of the Nelson or Newton & Sturgill ditch is within the S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 36, all in Township 8 South, Range 38 East, W. M.

1862

*Used
POD #1
see info
&
cancel*

*Used
POD #24
see info
&
cancel*

The applicants herein, owners of the water right above described, propose to change their point of diversion to a point to be located 1320 feet North and 710 feet West from the southeast corner of Section 35, and being within the E $\frac{1}{2}$ SE $\frac{1}{4}$, said Section 35, Township 8 South, Range 38 East, W. M.

*see
map
page*

Notice of the filing of the application was given by publication setting forth a time and place certain for hearing objections to the proposed change in point of diversion of water, if any there were, namely: at the

Transfer

county courthouse in Baker, Oregon, on October 31, 1961, at 9:30 a.m. The notice was published in the Baker Democrat-Herald, a newspaper printed and having general circulation in Baker County, Oregon, for a period of three weeks in the issues of September 5, 12 and 19, 1961. The date set for hearing in said notice was not less than thirty days after the last publication of the notice.

No objections having been filed and it appearing that the proposed change in point of diversion may be made without injury to existing rights, the application should be approved.

NOW, THEREFORE, it hereby is ORDERED that the proposed change in point of diversion of water from Goodrich Creek, to-wit:

From a point located within the E $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 34, known as the Auburn ditch, and

From a point located within the S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 36, known as the Nelson or Newton & Sturgill ditch, all in Township 8 South, Range 38 East, W.M.

To a point to be located 1320 feet North and 710 feet West from the southeast corner of Section 35, and being within the E $\frac{1}{2}$ SE $\frac{1}{4}$, said Section 35, Township 8 South, Range 38 East, W.M.

for the use of 11.25~~0~~ cubic feet per second of water for municipal water supply within the corporate limits of the City of Baker, of which 5.0 cubic feet per second has a date of priority of ¹⁸⁶²1863 and 6.25 cubic feet per second has a date of priority 1868, be and the same hereby is approved.

It is FURTHER ORDERED that the change in point of diversion of water shall be completed on or before October 1, 1963, or within such extension of time as may be granted by the State Engineer for good cause shown.

It is FURTHER ORDERED that the quantity of water diverted at the new point of diversion shall not exceed the quantity of water that is available at the old point of diversion.

Dated at Salem, Oregon, this 12th day of January, 1962.

Other limits = Diversion \leq quantity available at POD # 1 + 24

/s/ LEWIS A. STANLEY
State Engineer

*Add
POD

28
with two
priorities*

T-5665

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JUL 3 1985

WATER RESOURCES DEPT
SALEM, OREGON

Application for Transfer of Water Right

To the WATER RESOURCES DIRECTOR OF OREGON:

I, City of Baker (Name of applicant)
of P.O. Box 650 (Mailing address), Baker (City),
State of Oregon (Zip Code) 97814, 523-6541 (Phone number), do hereby make application for change
point of diversion
(In point of diversion; place of use; use heretofore made of the water)

1. Is the water right recorded in your name? yes (If not, give name)
2. Was your water right determined by Decree of Court? yes (Yes or No) If so, give title of proceedings
Powder River Adjudication, Baker County Cir. Ct. Number of certificate none; recorded
in State Record of Water Right Certificates, Volume 9, Page 9608 (April 22, 1932).
3. Was your water right acquired by Water Right Permit? no (Yes or No) If so, give number
of permit Number of certificate

NOTE: If the entire right of record is not directly involved in the requested change, only that part of the right that is directly involved should be considered in answering the balance of the questions on this form.

4. The source of water is Marble Spring, tributary to Marble Creek
5. What is the date of priority of your water right? 1868 1862 sub
6. The authorized point of diversion is located 972M/Lft. (N. or S.) S. and 3398 (E. or W.) M/L ft. E. from the NW corner of NW 1/4 being within the NW 1/4 NW 1/4 of Section 13 Tp. 9S R. 38E W. M., (No. N. or S.) (No. E. or W.)
in the county of Baker The name of the ditch used is City of Baker Municipal Pipeline

NOTE: Answer question if the application is for change in point of diversion.

7. The proposed point of diversion is located 931.2 ft. (N. or S.) S. and 127.6 ft. (E. or W.) E. from the NW corner of NW 1/4 being within the NW 1/4 NW 1/4 of Section 13 Tp. 9S R. 38E W. M., (No. N. or S.) (No. E. or W.)
in the county of Baker The name of the ditch to be used is City of Baker Municipal Pipeline

8. The use to which the water is applied is Municipal
(Irrigation, Mining, Power, Manufacturing, etc.)

Location of area irrigated, or place of use if other than irrigation:

Township North or South	Range E. or W. of Willamette Meridian	Section	List ¼-¼ of Section	Number Acres Irrigated
T9S	R40E	7	E½ SE¼	Municipal Use
T9S	R40E	8	S½	Municipal Use
T9S	R40E	9	S½	Municipal Use
T9S	R40E	16	All	Municipal Use
T9S	R40E	17	All	Municipal Use
T9S	R40E	18	E½ NE¼, E½ SE¼	Municipal Use
T9S	R40E	19	E½ NE¼, E½ SE¼	Municipal Use
T9S	R40E	20	All	Municipal Use
T9S	R40E	21	All	Municipal Use
T9S	R40E	28	N½	Municipal Use
T9S	R40E	29	N½	Municipal Use
T9S	R40E	(If more space required, attach separate sheet) 30	E½ NE¼	Municipal Use

9. Are you the legal owner of the above described lands? No, but lands are within
municipal water service area.
(If not owner, explain your interest)

10. To your knowledge, has any portion of the water right above described undergone a period of five or more consecutive years of nonuse? no
(Yes or No)

NOTE: Answer questions 11, 12 and 13 if application is for change in use or place of use.

11. Are the lands from which you propose to transfer your water right free of all encumbrances, including taxes, mortgages, liens, etc.?
(Answer Yes or No)

12. If not, give below a description of existing encumbrances:

NATURE OF ENCUMBRANCE	HELD BY	AMOUNT

13. The use to which the water is to be applied is
(Irrigation, power, mining, manufacturing, domestic supplies, etc.)

Location of area to be irrigated, or place of use if other than irrigation:

Township North or South	Range E. or W. of Willamette Meridian	Section	List ¼-¼ of Section	Number Acres To Be Irrigated

(If more space required, attach separate sheet)

Continued - Attached

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RAGEN, ROBERTS, TREMAINE, KRIEGER,
SCHMEER, O'SCANNLAIN & NEILL

LAWYERS

1600 ORBANCO BUILDING
1001 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204-1157
TELEPHONE (503) 241-2300
TELECOPIER (503) 223-7732

WATER RESOURCES DEPT
SALEM, OREGON

DAVID C. BACA
DUANE A. BOSWORTH II
PETER M. BURRELL
MARY CHAFFIN
CLAUDIA M. COLEMAN**
SEAN DONAHUE
HUNTER B. EMERICK
DOUGLAS E. GOE
FRANK G. HAUSMANN, JR.
THOMAS S. HILLIER
WILLIAM L. LARKINS, JR.
JAMES S. SMITH**
PAMELA S. STEBBEDS
JOSEPH M. VANLEUVEN
TIMOTHY R. VOLPERT

OREGON AND CALIFORNIA BARS*
OREGON AND WASHINGTON BARS**
OREGON AND TEXAS BARS***
OREGON AND NEW YORK BARS****

July 16, 1985

FRED M. AEBI
GARY M. ANDERSON
DOUGLAS G. BECKMAN
PATRICK G. BOYLSTON
DOUGLAS R. COURSON
RICHARD M. GLICK*
TIMOTHY W. HELTZEL, P.C.
DAVID J. KRIEGER, P.C.
MILTON C. LANKTON, P.C.
RODNEY E. LEWIS, JR.
D. CHARLES MAURITZ***
WILLIAM R. MILLER, JR.
CHRIS L. MULLMANN
JAMES K. NEILL, JR.
ROBERT D. NEWELL*
DIARMUID F. O'SCANNLAIN****
RONALD K. RAGEN
RICHARD D. ROBERTS
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MICHAEL H. SCHMEER, P.C.
VICTOR D. STIBOLT
H. STEWART TREMAINE, P.C.

OF COUNSEL
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RICHARD E. KENT
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WATSON D. ROBERTSON

WASHINGTON, D.C. OFFICE
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2300 M STREET, N.W.
WASHINGTON, D.C. 20037
(202) 333-6400

WALTER H. EVANS III
OF COUNSEL

Mr. Samuel R. Allison
Water Resources Department
Mill Creek Office Park
555 - 13th Street, N.E.
Salem, Oregon 97310

Re: City of Baker Water Right
Transfer Application (WRD File T-5665)

Dear Mr. Allison:

In the Application for Transfer of Water Right filed on behalf of the City of Baker, dated July 3, 1985, we inadvertently indicated 1868 as the date of priority of the City's water right. That date should be 1862, as shown on the Certificate of Water Right, dated April 22, 1932, attached to the Application for Transfer of Water Right as an exhibit. Please correct your files accordingly. We apologize for any inconvenience this may have caused you.

We would appreciate your stamping the enclosed copy of this letter "received" and returning the same in the postage paid envelope provided. Thank you for your cooperation.

Very truly yours,

RAGEN, ROBERTS, TREMAINE, KRIEGER,
SCHMEER, O'SCANNLAIN & NEILL



Richard M. Glick

RMG:dw

Enclosure

cc: V. Kent Searles, Watermaster
Timothy M. Collins
James L. Adamson

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JUL 3 1985

WATER RESOURCES DEPT
SALEM, OREGON

Item 14:
Application for Transfer
of Water Right of
City of Baker

T-5665

STATEMENT OF NEED FOR CHANGE

IN POINT OF DIVERSION

The City of Baker operates a municipal water supply system serving approximately 10,000 residents. The City has two primary sources of water. The first is the Baker City Watershed located on the east side of the Elkhorn Ridge. The watershed includes approximately 10,000 acres owned by the City and the U.S. Forest Service. The watershed is supplemented by a deep well located at the City's reservoir. Together, these water sources provide a maximum capacity of approximately 9,000,000 gallons per day. Figure 1 is a map showing the location of the Baker City watershed in relation to the City of Baker, and the location of the various points of diversion.

A critical water source within the watershed is the Marble Spring diversion. The City acquired rights to the use of Marble Creek circa 1900. The right to Marble Creek is for five cubic feet per second (cfs), and has a priority date of 1868. The right was confirmed in the Powder River Decree of 1918, and reaffirmed in the City's Certificate of Water Right, issued by the State Engineer on April 22, 1932 (see enclosed Exhibit 1).

In 1916, the City developed facilities to capture Marble Creek waters at their source, Marble Spring. As a result of limestone quarry operations in the late 1950's to early 1960's which disrupted the flow of Marble Creek and Marble Spring, the City relocated its spring diversion. The area in which the original and new spring diversion are located is quite steep. The location of the new spring diversion was determined by digging up the ground in order to follow the source of water up the hill several hundred feet until the water was found to issue from a solid rock wall. The City installed a perforated pipe at this rock wall which collects the water and carries it directly into a City pipeline which continues on to the City's aquifer. This arrangement has continued without interruption since 1971. Figure 2 is a detail map showing the locations of the original and relocated spring diversions.

There can be no doubt that Marble Spring - either at the old or new diversion point - is tributary to Marble Creek. A visit to the site reveals that there is but one source of water at that location, the spring, and the water issuing from the spring has no alternative drainage than the Marble Creek channel.

The City's diversion from Marble Spring has never exceeded the 5 cfs authorized in its Water Rights Certificate for Marble Creek. The City's technical services personnel believe that 5 cfs is the maximum output from the spring.

Marble Spring is an extremely important resource to the City of Baker. Since water from the City watershed is brought to town by a gravity system, the water has a low production cost. The quality of the water is excellent, and chlorination is presently the only treatment used. During the spring thaw and after heavy storms, water from other sources within the watershed has high levels of turbidity, which sometimes renders this water unfit for domestic purposes. The use of water from Marble Spring is critical since many times it is the only source of useable surface water during the periods of high turbidity.

The City well, constructed in 1977, represents a supplemental source of water for the City. The well has a capacity of 2400 gallons per minute (gpm) or 3.5 million gallons per day (mgd). While the water quality from the well is good, it is inferior to Marble Spring water. The temperature of the well water is 68 degrees Fahrenheit. Manganese concentrations exceed State minimum standards and the total dissolved solids are slightly high. By itself, the well water is relatively undesirable for domestic use. Currently, the City blends the well water with watershed water when system demands exceed watershed supply or when watershed water quality is poor.

At the time of the limestone quarry development, the mining operations took place in the gully formed by Marble Creek, and the mining company rerouted Marble Creek from its original channel into an adjoining gully called Marble Gulch. The diversion away from the old channel was located approximately a quarter mile above the City pipeline and the length of the diversion, between the original channel in Marble Creek to the new channel in Marble Gulch, is some 200 yards. The City currently uses Marble Gulch as a conduit for spring water. The City intends either to install measuring devices to confirm that it does not take Marble Gulch waters that the City has no entitlement to under its Marble Creek right, or to file a new water right application for the use of Marble Gulch waters.

The purpose of the current Application for a Transfer of Water Right is to conform the City's recorded water rights to the actual use of the water that has occurred with only slight modification since 1916. The City does not with this filing request increased diversions or any changes in use.

Section Corner
T. 9 S. R. 38 E. W.M.

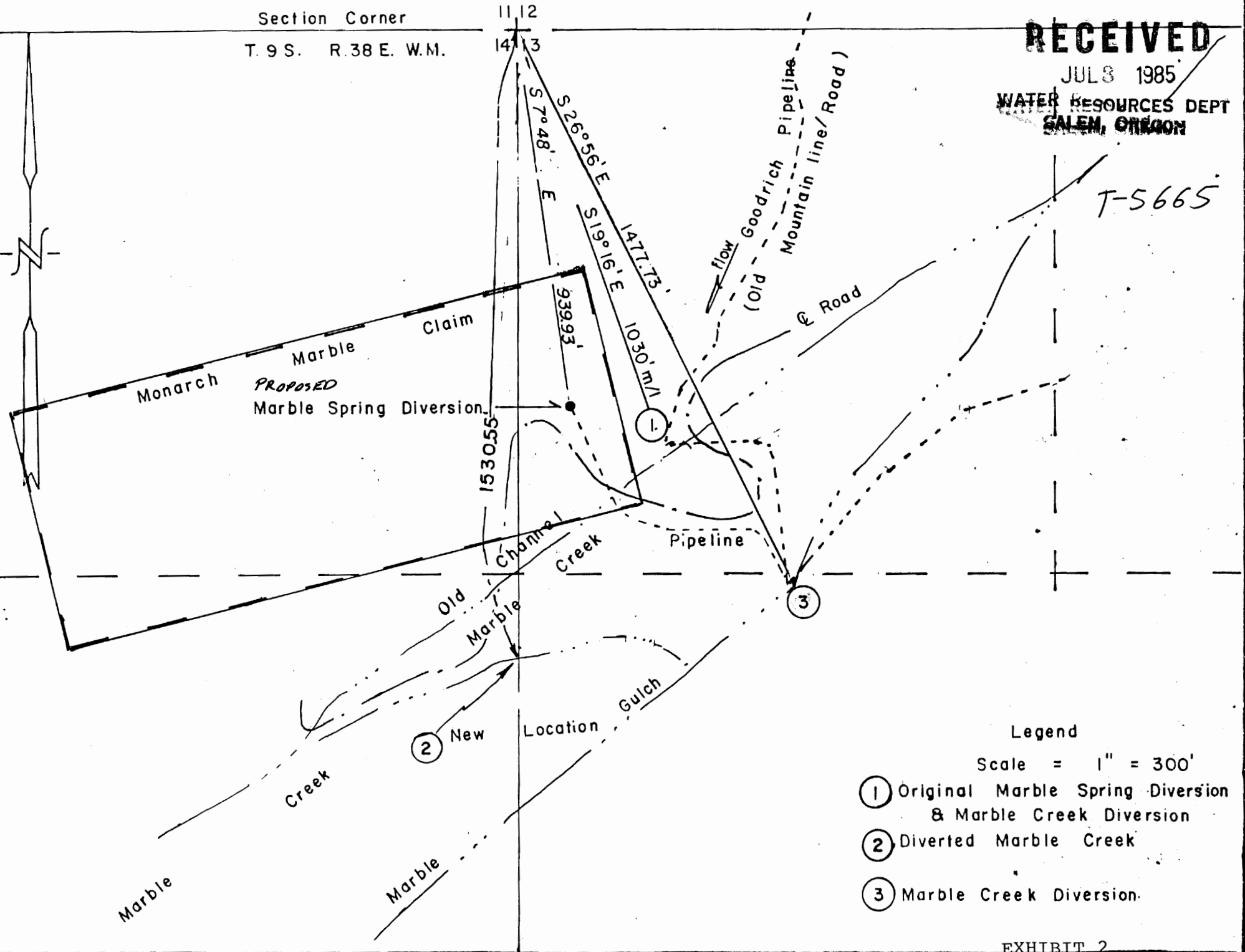
11 12
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WATER RESOURCES DEPT
SALEM, OREGON

T-5665



Legend

Scale = 1" = 300'

- ① Original Marble Spring Diversion & Marble Creek Diversion
- ② Diverted Marble Creek
- ③ Marble Creek Diversion

14. Reasons for the proposed changes are see attached

15. Construction work will be completed on or before all completed

16. The water will be completely applied to the proposed use on or before 7/5/85

Remarks

NOTE: THIS APPLICATION MUST BE ACCOMPANIED BY A MAP OR MAPS SHOWING THE BEFORE AND AFTER LOCATIONS OF THE POINT OF DIVERSION AND/OR PLACE OF USE, AS THE CASE MAY BE.

AFFIDAVIT OF APPLICANT

I, Arthur F. Reiff, the applicant herein, being first duly sworn, depose and say that I have read the above and foregoing application for transfer of water right; that I know the contents thereof and that the statements therein made are true and correct to the best of my knowledge and belief.

In Witness Whereof, I have hereunto set my hand this 1st day of July, 1985

Arthur F. Reiff
(Name of applicant)

Subscribed and sworn to before me this 1st day of July, 1985

[Notarial Seal]

Karen J. Woodard
NOTARY PUBLIC FOR OREGON

My commission expires 2/27/86

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS



SENDER INSTRUCTIONS

Print your name, address, and ZIP Code in the space below.

- Complete items 1, 2, 3, and 4 on the reverse.
- Attach to front of article if space permits, otherwise affix to back of article.
- Endorse article "Return Receipt Requested" adjacent to number.



PENALTY FOR PRIVATE
USE, \$300

RETURN
TO

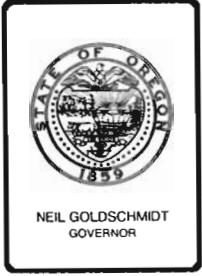


Print Sender's name, address, and ZIP Code in the space below.

WATER RESOURCES DEPT.

3850 PORTLAND ROAD N.E.

SALEM, OREGON 97310



Original
letter to
Both

Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310

PHONE 378-3066

January 19, 1988

Richard M. Glick
Ragen, Tremaine, Krieger,
Schmeer & Neill
2300 First Interstate Tower
Portland, OR 97201

Chet Smith, Secretary
Pocahontas Farmers' Ditch Company
PO Box 843
Baker, OR 97814

REFERENCE: Transfer Application 5665, City of Baker

A true copy of the Water Resources Director's final order document in the matter of Transfer Application 5665 in the name of the City of Baker is enclosed.

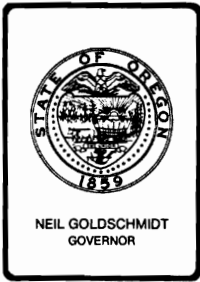
The date of service is the date of mailing of this letter.

Sincerely,

JAMES W. CARVER, JR.,
Hearing Supervisor

JWC/jw
CERTIFIED MAIL-----Return Receipt Requested
Enclosures

cc: V. Kent Searles, Watermaster, District #8



Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310

PHONE 378-3066

October 21, 1987

Chet Smith
Secretary
Pocahontas Farmers' Ditch Company
PO Box 843
Baker, OR 97814

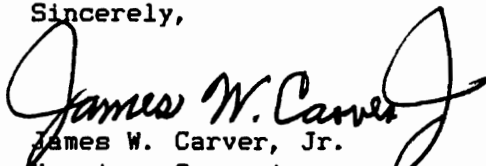
Re: Transfer Application 5665, City of Baker

Dear Mr. Smith:

This will confirm our telephone conversation on Tuesday, October 20, 1987, wherein you told me that you have not received a copy of the proposed order in the matter of Water Right Transfer Application 5665 in the name of the City of Baker and the protest by Pocahontas Farmers' Ditch Company. The promised duplicate mailing of a copy of the proposed order and cover letter is enclosed.

The date of service which starts the time running on the 30-day time for filing of exceptions and objections with the Water Resources Commission is the date of this letter. If exceptions and objections are filed, they must be received in this office by the close of the business day on Friday, November 20, 1987.

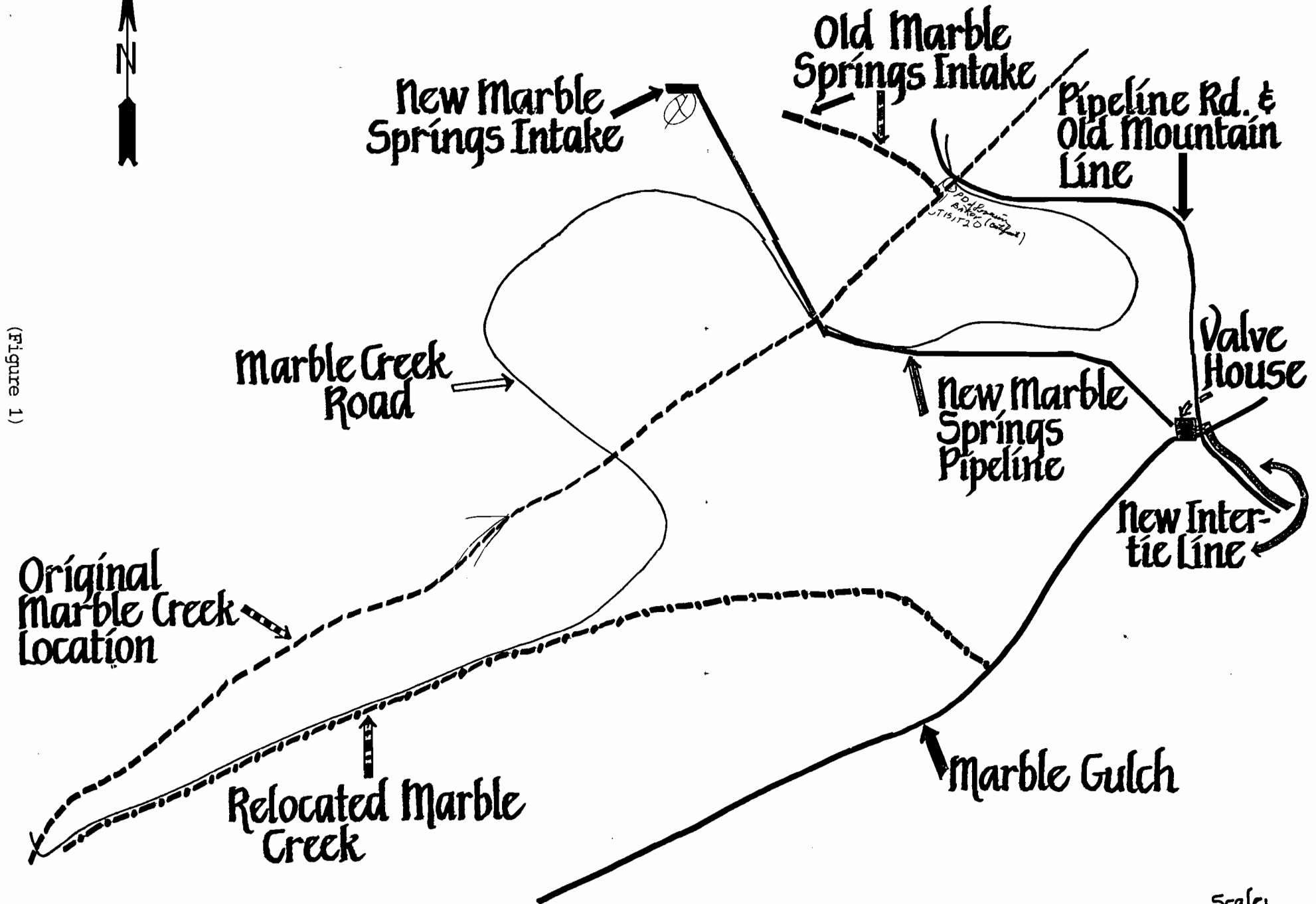
Sincerely,


James W. Carver, Jr.
Hearings Supervisor

cc: Richard M. Glick, Attorney at Law
Kent Searles, Watermaster, District 8

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Marble Springs Vicinity



(Figure 1)

Baker 11

Scale:
1" = 40 ft.

RAGEN, ROBERTS, O'SCANNLAIN, ROBERTSON & NEILL
LAWYERS

RONALD K. RAGEN
RICHARD D. ROBERTS
DIARUID F. O'SCANNLAIN
WATSON D. ROBERTSON
JAMES K. NEILL, JR.
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1600 ORBANCO BUILDING
1001 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204-1157
TELEPHONE (503) 224-1600
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PATRICK G. BOYLSTON
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RICHARD M. GLICK
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TIMOTHY R. VOLPERT
THOMAS S. HILLIER
MARK F. LEROUX
PAMELA S. STEBBEDS
HUNTER B. EMERICK

July 3, 1985

WASHINGTON, D. C. OFFICE
SUITE 800
REGENT OFFICE BUILDING
2300 M STREET, N.W.
WASHINGTON, D. C. 20037
(202) 333-6400

WALTER H. EVANS, III
OF COUNSEL

WILLIAM A. MARTIN
OF COUNSEL

T-5665

Mr. Larry Jebousek
Water Resources Department
Mill Creek Office Park
555 - 13th Street, N.E.
Salem, Oregon 97310

RECEIVED
JUL 3 1985
WATER RESOURCES DEPT
SALEM, OREGON

Re: City of Baker

Dear Mr. Jebousek:

Enclosed please find an Application for Transfer of Water Right, together with our check in the amount of \$85.00 for the appropriate filing fee. The City seeks to change its point of diversion with regard to Marble Creek and Marble Spring, and encloses with its application (a) a map showing the existing City water system, (b) a detail map showing locations of the original Marble Spring and Marble Creek diversions, the relocation of Marble Creek and the Marble Creek diversion, and (c) a photocopy of the City's Certificate of Water Right.

Enclosed also is a copy of the Application which we would appreciate your stamping "received" and returning to us in the self-addressed envelope provided. We would further appreciate your attaching to the returned copy of the Application your receipt for the filing fee.

Please send copies of any official correspondence or notices to the undersigned and to Mr. Timothy M. Collins, City Attorney, P.O. Box 650, Baker, Oregon 97814. If there is any further information you require, please do not hesitate to ask. Thank you for your assistance.

Very truly yours,

RAGEN, ROBERTS, O'SCANNLAIN,
ROBERTSON & NEILL


Richard M. Glick

RMG:dw
Enclosures
cc: James L. Adamson
Timothy M. Collins
V. Kent Searles, Watermaster

COUNTY OF BAKER

CERTIFICATE OF WATER RIGHT.

THIS IS TO CERTIFY, That THE CITY OF BAKER

of Baker State of OREGON, has a right to the use of

5.0 sec. ft. of the waters of Goodrich Creek, 0.5 sec. ft. from Coyote Springs, 5.0 sec. ft. from Little Mill Creek, 5.0 sec. ft. from Big Mill Creek, 0.5 sec. ft. from Hawk Springs, 1.25 sec. ft. from Little Marble Creek, 5.0 sec. ft. from Big Marble Creek, 0.625 sec. ft. from Campers Springs, 0.5 sec. ft. from Herman Springs, 5.0 sec. ft. from Big Salmon Creek, 0.625 sec. ft. from Henry Springs, 0.625 sec. ft. from Finley Springs, 0.5 sec. ft. from Little Salmon Springs, 1.25 sec. ft. from Little Salmon Creek, 0.625 sec. ft. from Slum Town Springs, 0.5 sec. ft. from Rock Springs, 0.5 sec. ft. from North Prong of Washington Gulch, 0.5 sec. ft. from Middle Prong of Washington Gulch, 0.5 sec. ft. from South Prong of Washington Gulch, 0.625 sec. ft. from Con Springs, 0.25 sec. ft. from Byam Springs and 3.75 sec. ft. from Elk Creek with a date of priority of 1962; 1.25 sec. ft. of the waters of Gee Creek, 6.25 sec. ft. from Goodrich Creek, 6.25 sec. ft. from Mill Creek and 5.00 sec. ft. from Marble Creek with a date of priority of 1868; and storage in Goodrich Creek Reservoir, from Goodrich Creek with a date of priority of 1901; for municipal purposes within the City of Baker, Baker County, Oregon,

1862

(57,375 c.f.s.)

and that said right has been confirmed by decree of the Circuit Court of the State of Oregon for Baker County, and the said decree entered of record at Salem, in the Order Record of the STATE ENGINEER, in Volume 6, at page 291.

Ch. Pt of Div. of 11.25 cfs from Goodrich Ck - Sp. Or. Vol. 11, p 376 # B-125

see Findings #15

And said right shall be subject to all other conditions and limitations contained in said decree.

WITNESS the signature of the State Engineer,

affixed this 22nd day

of April, 1932.

CHAS. E. STRICKLIN State Engineer.

Recorded in State Record of Water Right Certificates, Volume 9 , Page 9608.

T-5665 ROD MARBLE CR

COUNTY OF BAKER

CERTIFICATE OF WATER RIGHT.

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5.0 sec. ft. from Little Mill Creek, 5.0 sec. ft. from Big Mill Creek, 0.5 sec.
ft. from Hawk Springs, 1.25 sec. ft. from Little Marble Creek, 5.0 sec. ft. from
Big Marble Creek, 0.625 sec. ft. from Campers Springs, 0.5 sec. ft. from Herman
Springs, 5.0 sec. ft. from Big Salmon Creek, 0.625 sec. ft. from Henry Springs,
0.625 sec. ft. from Finley Springs, 0.5 sec. ft. from Little Salmon Springs,
1.25 sec. ft. from Little Salmon Creek, 0.625 sec. ft. from Slum Town Springs,
0.5 sec. ft. from Rock Springs, 0.5 sec. ft. from North Prong of Washington Gulch,
0.5 sec. ft. from Middle Prong of Washington Gulch, 0.5 sec. ft. from South Prong
of Washington Gulch, 0.625 sec. ft. from Con Springs, 0.25 sec. ft. from Byam Springs
and 3.75 sec. ft. from Elk Creek with a date of priority of 1962; 1.25 sec. ft. of
the waters of Gee Creek, 6.25 sec. ft. from Goodrich Creek, 6.25 sec. ft. from Mill
Creek and 5.00 sec. ft. from Marble Creek with a date of priority of 1868; and
storage in Goodrich Creek Reservoir, from Goodrich Creek with a date of priority of
1901; for municipal purposes within the City of Baker, Baker County, Oregon,

1862

(57.315 c.f.s.)

and that said right has been confirmed by decree of the Circuit Court of the State
of Oregon for Baker County, and the said decree entered of record at Salem, in the
Order Record of the STATE ENGINEER, in Volume 6, at page 291.

Ch. Pt of Div. of 11.25 cfs from
Goodrich Ck - Sp. Or. Vol. 11, p 376
B-125

see Findings
#15

And said right shall be subject to all other conditions and limitations contained
in said decrees.

WITNESS the signature of the State Engineer,
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of April, 1932.

CHAS. E. STRICKLIN
State Engineer.

Recorded in State Record of Water Right Certificates, Volume 9 , Page 9608.

T-5665 ROD MARBLE CR

RAGEN, ROBERTS, O'SCANNLAIN, ROBERTSON & NEILL
LAWYERS

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DIARNUID F. O'SCANNLAIN
WATSON D. ROBERTSON
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PAMELA S. STEBBEDS
HUNTER B. EMERICK

July 3, 1985

T-5665

WILLIAM A. MARTIN
OF COUNSEL

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(202) 333-6400

WALTER H. EVANS, III
OF COUNSEL

Mr. Larry Jebousek
Water Resources Department
Mill Creek Office Park
555 - 13th Street, N.E.
Salem, Oregon 97310

RECEIVED
JUL 3 1985
WATER RESOURCES DEPT
SALEM, OREGON

Re: City of Baker

Dear Mr. Jebousek:

Enclosed please find an Application for Transfer of Water Right, together with our check in the amount of \$85.00 for the appropriate filing fee. The City seeks to change its point of diversion with regard to Marble Creek and Marble Spring, and encloses with its application (a) a map showing the existing City water system, (b) a detail map showing locations of the original Marble Spring and Marble Creek diversions, the relocation of Marble Creek and the Marble Creek diversion, and (c) a photocopy of the City's Certificate of Water Right.

Enclosed also is a copy of the Application which we would appreciate your stamping "received" and returning to us in the self-addressed envelope provided. We would further appreciate your attaching to the returned copy of the Application your receipt for the filing fee.

Please send copies of any official correspondence or notices to the undersigned and to Mr. Timothy M. Collins, City Attorney, P.O. Box 650, Baker, Oregon 97814. If there is any further information you require, please do not hesitate to ask. Thank you for your assistance.

Very truly yours,

RAGEN, ROBERTS, O'SCANNLAIN,
ROBERTSON & NEILL


Richard M. Glick

RMG:dw
Enclosures
cc: James L. Adamson
Timothy M. Collins
V. Kent Searles, Watermaster

Year	Acres	Use	Water Right	Location	Notes
1869	4	Storage 1 ac. ft.	Reservoir Never Sweet & Upper Never Sweet	Hibbard Creek & & Lateral 2/5 int. in Spill- man Spring	16 acres in T. 9 S. R. 39 E.W.M. 16 acres in Section 9
1864 1867 1898	75 365 190	Mining & Irrigation	Upper Never Sweet Ditch & Lower Never Sweet Ditch	Salmon Creek (for all dates Slough between Secs. 35 & 36 Waggie Creek & Spring Creek Dams & Taps for last two dates only	40 acres in SW 1/4 SW 1/4 40 acres in SE 1/4 SW 1/4 35 acres in SW 1/4 SE 1/4 35 acres in SE 1/4 SE 1/4 Section 25 40 acres in NE 1/4 NE 1/4 40 acres in NW 1/4 NE 1/4 40 acres in SW 1/4 NE 1/4 40 acres in SE 1/4 NE 1/4 40 acres in NE 1/4 NW 1/4 40 acres in NW 1/4 NW 1/4 40 acres in SW 1/4 NW 1/4 40 acres in SE 1/4 NW 1/4 40 acres in NE 1/4 SE 1/4 40 acres in NW 1/4 SE 1/4 40 acres in SW 1/4 SE 1/4 40 acres in SE 1/4 SE 1/4 Section 35 T. 8 S. R. 39 E.W.M.
1364 1375 1394 1904 1869	100 30 10 67	Mining & Irrigation Storage 1 ac. ft.	Upper Never Sweet Reservoir pipeline & Laterals Lower Never Sweet	Salmon Creek Hibbard Creek Lower Never Sweet	8 acres in NE 1/4 SW 1/4 10 acres in SW 1/4 SW 1/4 39 acres in SE 1/4 SW 1/4 Section 4 40 acres in NE 1/4 NW 1/4 19 acres in NW 1/4 NW 1/4 40 acres in SE 1/4 NW 1/4 30 acres in SW 1/4 NW 1/4 20 acres in NE 1/4 SW 1/4 1 acres in NW 1/4 SE 1/4 Section 9 T. 9 S. R. 39 E.W.M.
1879	40	Irrigation & Storage 20 ac. ft.	Baker Reservoir & ditch- es	Crews Springs	2 acres in NE 1/4 SW 1/4 19 acres in NW 1/4 SW 1/4 3.5 acres in SW 1/4 SW 1/4 Section 14 8 acres in NE 1/4 SE 1/4 6 acres in NW 1/4 SE 1/4 1.5 acres in SE 1/4 SE 1/4 Section 15 T. 8 S. R. 41 E.W.M.
Nov. 5 1892	25	Irrigation Municipal	East Side	Powder	25 acres in lots and blocks and City Park with- in the city limits of Baker, as the individual interests may appear. For municipal rights, see Findings 15 and 96

*Baisley, J. L.
Baker, Oregon
(Findings #19)*

*Baisley, Hattie
(For Perry Baisley
estate.)
Baker, Oregon
(Findings #19, 29, 83,
& 102)*

*Baisley, S. B.
Baker, Oregon
(Findings #19, 83
& 102)*

*Baker, Wm
Keating, Oregon.*

*Baker, City of
by Chas. L. Palmer,
Mayor,
Baker, Oregon.*

*Findings #16, 15, 19,
93, 84, 96)*

Claim #535

*Ch. Pt. of Div. of 11.25 of
Quarich Ch. Sp. Dr. Vol. 11 p. 76*

*Div. of 5.0 - Hon. Mar. 12 Dec.
of 1900 Vol 42 p. 17*

358

WATER RESOURCES DEPARTMENT

INTEROFFICE MEMO

To: JAMES W. CARVER, JR.

Date: AUGUST 26, 1985

From: KEUT SEARLES

Subject: FILE G8188 & T-5665

I WILL NOT BE AVAILABLE TO ATTEND A HEARING PERTAINING TO THE ABOVE MENTIONED FILES BETWEEN SEPTEMBER 27TH THROUGH OCTOBER 20TH DUE TO VACATION.



RECEIVED

AUG 28 1985

WATER RESOURCES DEPT
SALEM, OREGON



RECEIVED

STATE OF OREGON

JUL 24 1985

INTEROFFICE MEMO

WATER RESOURCES DEPT
SALEM, OREGON

TO: TRANSFER SECTION, WATER RIGHTS DIVISION

DATE: 7/22/85

FROM: WATERMASTER, DISTRICT NO. 8

(signature) [Handwritten Signature]

SUBJECT: Water Right Transfer Application 5665 for change in POU POD Use of water

In the name(s) of CITY OF BAKER

In my opinion (assuming the water right is valid), the proposed change
MAY BE MADE WITHOUT INJURY WOULD RESULT IN INJURY* to an existing water right.

*The approval of this transfer application would result in injury to other water rights because SHOULD HAVE HEARING TO SETTLE DISPUTE BETWEEN POLAMONTAS FARMERS RITCH CO & CITY OVER CITY'S CURRENT USE OF MARBLE SPR.

The existing right may not be valid because _____

Headgate notices HAVE HAVE NOT been issued for diversion from the source(s) which serve(s) this right.

If for change in point of diversion, is there any intervening point(s) of diversion between the authorized and proposed points of diversion? No
(yes or no)

In my opinion, the order approving the subject transfer application should include the following in regard to the appropriator installing suitable measuring devices in the diversion works:

- _____ (1) PRIOR to the diverting of water at the new point of diversion
- ✓ (2) WHEN IN the judgment of the watermaster it becomes necessary

The enclosed copy of the transfer application and map(s) is for your records.



Contains Recycled Materials



TO: TRANSFERS, WATER RIGHTS DIVISION

DATE: JULY 11, 1985.

FROM: ** KENT SEARLES DIST #8

RECEIVED

JUL 15 1985

WATER RESOURCES DEPT
SALEM, OREGON

SUBJECT: WATER RIGHT TRANSFER APPLICATION NO. T-5665

IN THE NAME OF CITY OF BAKER

In my opinion the proposed change in POINT OF DIVERSION
MAY BE MADE WITHOUT INJURY WOULD RESULT IN INJURY* to an existing water right.

Headgate notices HAVE HAVE NOT been issued for diversion from the sources which serves this right.

If for change in point of diversion, is there any intervening point of diversion between the authorized and the proposed points of diversion? No
(yes or no)

In my opinion, the order approving the subject transfer application should include the following in regard to the appropriator installing suitable measuring devices in the diversion works:

- (1) SYSTEM O.K. PRIOR to the diverting of water at the new point of diversion . . .
- (2) When in the judgment of the watermaster it becomes necessary . . .

* The approval of this transfer application would result in injury to other water rights because APPEARS HEARING SHOULD BE HELD.
SPRING NOW PRODUCES ABOUT 2,000 gpm - OLD SPRING LOCATION PRIOR TO LIMESTONE MINING PRODUCED ABOUT 560 gpm (ACCORDING TO CITY ENGINEER) POLAHOOTAS FARMERS DITCH CO. HAS FILED ON MARBLE SPRING AND CITY WILL PROTEST THEIR APPLICATION. THE DITCH CO. WILL MOST LIKELY PROTEST THIS TRANS. OF MARBLE CR TO MARBLE SPRING. PLACE OF USE INDICATES LAND OUTSIDE OF CITY NOW?, BUT FOR SURE OUTSIDE OF CITY AT TIME OF DECREE.

** [Signature]
Watermaster's signature or initials

NOT SURE ABOUT PRIORITY DATE. SHOULD BE 1862 NOT 1868

July 9, 1985

Richard M. Glick
Ragen, Roberts, O'Scannlain
Robertson and Neill
1600 Orbanco Building
1001 SW 5th
Portland, OR 97204

Dear Mr. Glick:

REFERENCE: File T-5665

The City of Baker Water Right Transfer Application for approval of a change in point of diversion of water from Marble Creek, together with supporting data and fees in the amount of \$85, was received on July 3, 1985. Our Receipt 46776 is enclosed.

By copy of this letter, we are asking the Watermaster for his usual report regarding the proposed change.

When examination of the application and supporting data has been completed, you will be advised of any matters requiring your further attention prior to consideration of the application for approval.

Please refer any correspondence to File T-5665.

Sincerely,

SAMUEL R. ALLISON
Supervisor
Transfer Section

SRA:wpc

cc: V. Kent Searles, Watermaster
City of Baker

enclosure

0056/E
9399C

RECEIVED

JUL 3 1985

**WATER RESOURCES DEPT
SALEM, OREGON**

Item 14:
Application for Transfer
of Water Right of
City of Baker

T-5665

STATEMENT OF NEED FOR CHANGE

IN POINT OF DIVERSION

The City of Baker operates a municipal water supply system serving approximately 10,000 residents. The City has two primary sources of water. The first is the Baker City Watershed located on the east side of the Elkhorn Ridge. The watershed includes approximately 10,000 acres owned by the City and the U.S. Forest Service. The watershed is supplemented by a deep well located at the City's reservoir. Together, these water sources provide a maximum capacity of approximately 9,000,000 gallons per day. Figure 1 is a map showing the location of the Baker City watershed in relation to the City of Baker, and the location of the various points of diversion.

A critical water source within the watershed is the Marble Spring diversion. The City acquired rights to the use of Marble Creek circa 1900. The right to Marble Creek is for five cubic feet per second (cfs), and has a priority date of 1868. The right was confirmed in the Powder River Decree of 1918, and reaffirmed in the City's Certificate of Water Right, issued by the State Engineer on April 22, 1932 (see enclosed Exhibit 1).

In 1916, the City developed facilities to capture Marble Creek waters at their source, Marble Spring. As a result of limestone quarry operations in the late 1950's to early 1960's which disrupted the flow of Marble Creek and Marble Spring, the City relocated its spring diversion. The area in which the original and new spring diversion are located is quite steep. The location of the new spring diversion was determined by digging up the ground in order to follow the source of water up the hill several hundred feet until the water was found to issue from a solid rock wall. The City installed a perforated pipe at this rock wall which collects the water and carries it directly into a City pipeline which continues on to the City's aquifer. This arrangement has continued without interruption since 1971. Figure 2 is a detail map showing the locations of the original and relocated spring diversions.

There can be no doubt that Marble Spring - either at the old or new diversion point - is tributary to Marble Creek. A visit to the site reveals that there is but one source of water at that location, the spring, and the water issuing from the spring has no alternative drainage than the Marble Creek channel.

The City's diversion from Marble Spring has never exceeded the 5 cfs authorized in its Water Rights Certificate for Marble Creek. The City's technical services personnel believe that 5 cfs is the maximum output from the spring.

Marble Spring is an extremely important resource to the City of Baker. Since water from the City watershed is brought to town by a gravity system, the water has a low production cost. The quality of the water is excellent, and chlorination is presently the only treatment used. During the spring thaw and after heavy storms, water from other sources within the watershed has high levels of turbidity, which sometimes renders this water unfit for domestic purposes. The use of water from Marble Spring is critical since many times it is the only source of useable surface water during the periods of high turbidity.

The City well, constructed in 1977, represents a supplemental source of water for the City. The well has a capacity of 2400 gallons per minute (gpm) or 3.5 million gallons per day (mgd). While the water quality from the well is good, it is inferior to Marble Spring water. The temperature of the well water is 68 degrees Fahrenheit. Manganese concentrations exceed State minimum standards and the total dissolved solids are slightly high. By itself, the well water is relatively undesirable for domestic use. Currently, the City blends the well water with watershed water when system demands exceed watershed supply or when watershed water quality is poor.

At the time of the limestone quarry development, the mining operations took place in the gulley formed by Marble Creek, and the mining company rerouted Marble Creek from its original channel into an adjoining gulley called Marble Gulch. The diversion away from the old channel was located approximately a quarter mile above the City pipeline and the length of the diversion, between the original channel in Marble Creek to the new channel in Marble Gulch, is some 200 yards. The City currently uses Marble Gulch as a conduit for spring water. The City intends either to install measuring devices to confirm that it does not take Marble Gulch waters that the City has no entitlement to under its Marble Creek right, or to file a new water right application for the use of Marble Gulch waters.

The purpose of the current Application for a Transfer of Water Right is to conform the City's recorded water rights to the actual use of the water that has occurred with only slight modification since 1916. The City does not with this filing request increased diversions or any changes in use.

Section Corner
T. 9 S. R. 38 E. W.M.

11.12

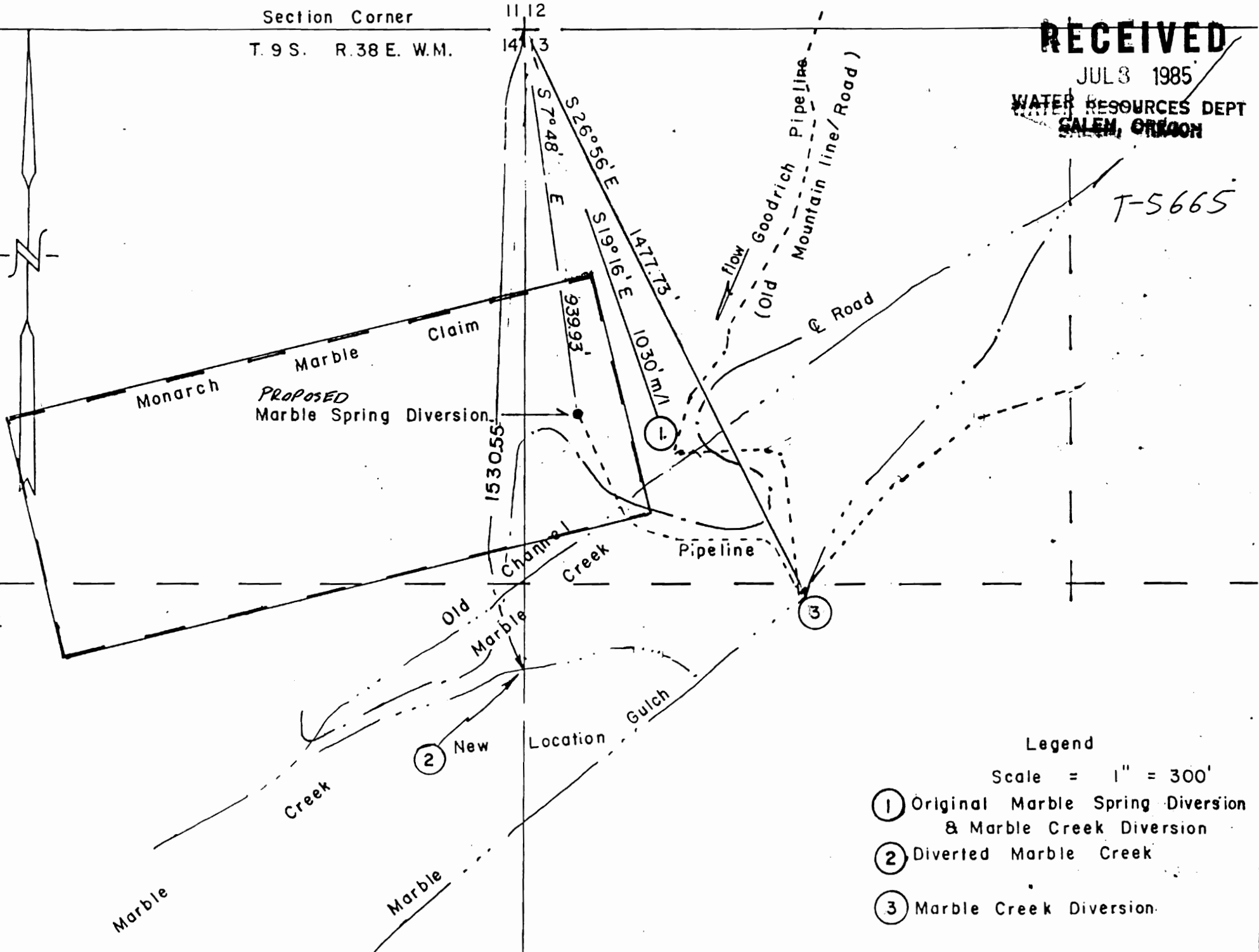
141.3

RECEIVED

JUL 3 1985

WATER RESOURCES DEPT
SALEM, OREGON

T-5665



- Legend
- Scale = 1" = 300'
- ① Original Marble Spring Diversion & Marble Creek Diversion
 - ② Diverted Marble Creek
 - ③ Marble Creek Diversion

RAGEN, ROBERTS, O'SCANNLAIN, ROBERTSON & NEILL

LAWYERS

RONALD K. RAGEN
RICHARD D. ROBERTS
DIARUID F. O'SCANNLAIN
WATSON D. ROBERTSON
JAMES K. NEILL, JR.
DOUGLAS R. COURSON
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MARK F. LEROUX
PAMELA S. STEBBEDS
HUNTER B. EMERICK

July 3, 1985

T-5665

WILLIAM A. MARTIN
OF COUNSEL

WASHINGTON, D. C. OFFICE
SUITE 800
REGENT OFFICE BUILDING
2300 M STREET, N.W.
WASHINGTON, D. C. 20037
(202) 333-6400

WALTER H. EVANS, III
OF COUNSEL

Mr. Larry Jebousek
Water Resources Department
Mill Creek Office Park
555 - 13th Street, N.E.
Salem, Oregon 97310

RECEIVED
JUL 3 1985
WATER RESOURCES DEPT
SALEM, OREGON

Re: City of Baker

Dear Mr. Jebousek:

Enclosed please find an Application for Transfer of Water Right, together with our check in the amount of \$85.00 for the appropriate filing fee. The City seeks to change its point of diversion with regard to Marble Creek and Marble Spring, and encloses with its application (a) a map showing the existing City water system, (b) a detail map showing locations of the original Marble Spring and Marble Creek diversions, the relocation of Marble Creek and the Marble Creek diversion, and (c) a photocopy of the City's Certificate of Water Right.

Enclosed also is a copy of the Application which we would appreciate your stamping "received" and returning to us in the self-addressed envelope provided. We would further appreciate your attaching to the returned copy of the Application your receipt for the filing fee.

Please send copies of any official correspondence or notices to the undersigned and to Mr. Timothy M. Collins, City Attorney, P.O. Box 650, Baker, Oregon 97814. If there is any further information you require, please do not hesitate to ask. Thank you for your assistance.

Very truly yours,

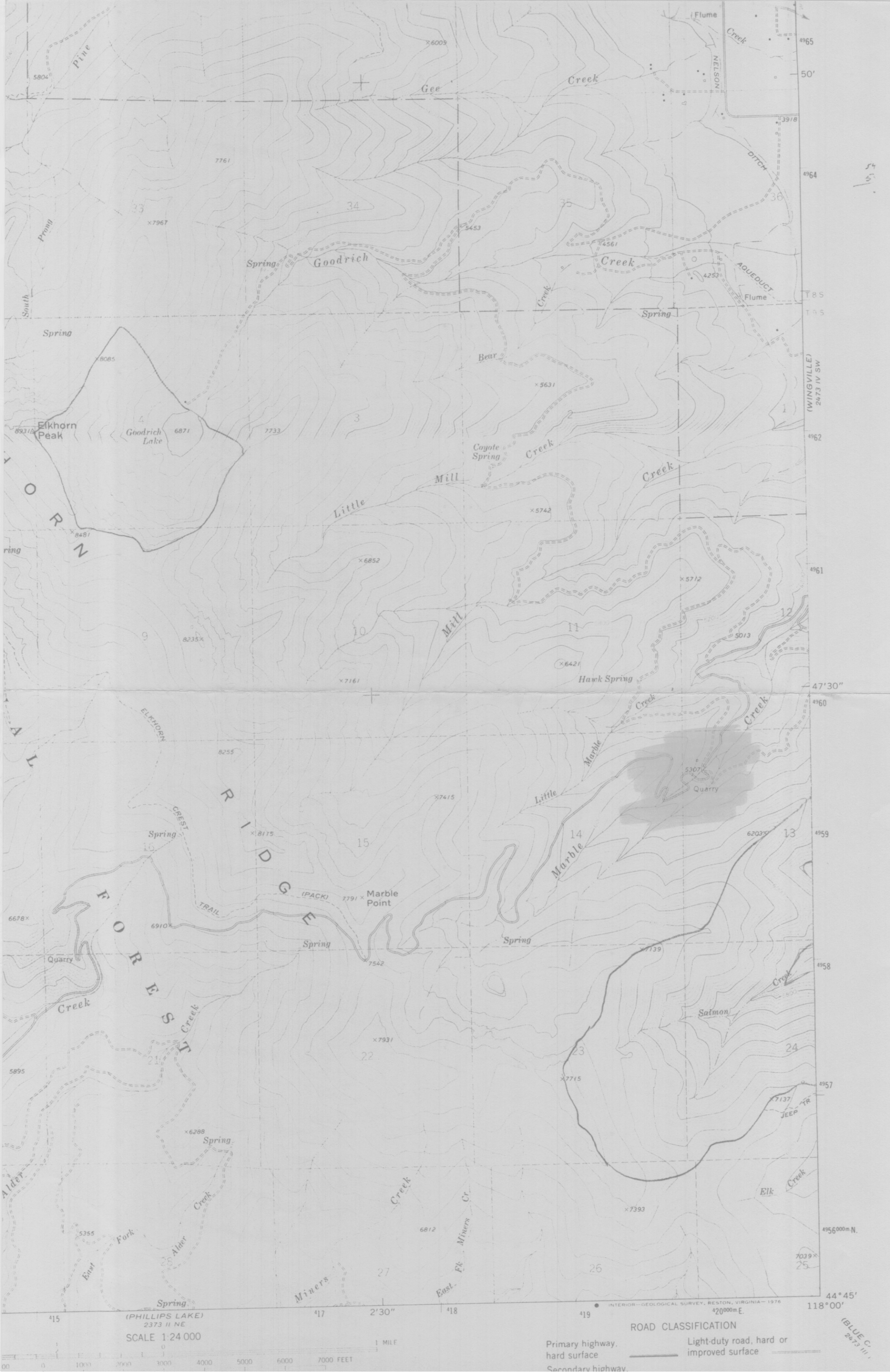
RAGEN, ROBERTS, O'SCANNLAIN,
ROBERTSON & NEILL


Richard M. Glick

RMG:dw

Enclosures

cc: James L. Adamson
Timothy M. Collins
V. Kent Searles, Watermaster



(PHILLIPS LAKE)
2373 II NE

SCALE 1:24 000

1 MILE



INTERIOR-GEOLOGICAL SURVEY, RESTON, VIRGINIA - 1976
420000m E.

ROAD CLASSIFICATION

- Primary highway, hard surface
- Secondary highway
- Light-duty road, hard or improved surface

44° 45'

118° 00'

(BLUE C.)
2473 III

F-5665

1030-84 City of Baker

2:47 PM

Jim Adamson 523-6541

Richard Glick, Atty., Portland

Intend to file for changes in POD from Marble Creek & Marble Springs.

Quarry operator has physically changed the location of Marble Springs. He has also diverted Marble Creek into Marble Gulch. City wants to change the POD's (1) to the actual spring location, (2) to the existing diversion from Marble Creek as made by the quarry operator.

Adamson asked if a map made by City with accuracy within 2 feet or so was good enough.

I said it would. The actual location(s) will be determined upon proof survey.

Glick will submit the actual application.

SBB

City of Baker's right for municipal uses
allowed by decree of the Circuit Court

Cert # 9608

See findings #16, 15, 19, 83, 84, 96

Auburn Canal

- 5.0 cfs from ^{* chg. pt. of Div. Vol 11, P 376} Goodrich Creek
- 0.5 cfs from Coyote Creek
- 5.0 cfs from Little Mill Creek
- 5.0 cfs from Big Mill Creek
- 0.5 cfs from Hawk Springs
- 1.25 cfs from Little Marble Creek
- 5.0 cfs from Big Marble Creek
- 0.625 cfs from Campers Springs
- 0.5 cfs from Herman Springs
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- 0.625 cfs from Henry Springs
- 0.625 cfs from Finley Springs
- 0.5 cfs from Little Salmon Springs
- 1.25 cfs from Little Salmon Creek
- 0.625 cfs from Slum Town Springs
- 0.5 cfs from Rock Springs
- 0.5 cfs from North Prong of Washington Gulch
- 0.5 cfs from Middle Prong of Washington Gulch
- 0.5 cfs from South Prong of Washington Gulch
- 0.625 cfs from Con Springs
- 0.25 cfs from Byam Springs
- 3.75 cfs from Elk Creek (see P 83) all with a priority of 1863

~~3.75~~ 38.625

Kelly Ditch

- 1.25 cfs from Gee Creek
- 6.25 cfs from ^{* chg pt of Div Vol 11 P 376} Goodrich Creek
- 6.25 cfs from Mill Creek
- 5.0 cfs from Marble Creek these 3 with priority of 1868

~~18.75~~ 18.75 cts

City of Baker's rights for municipal uses
 perfected under permits T-5665
 (except permit G-7830
 & Appl-67966)

Applicant	Flow	Source	Priority
Appl- U-639 Cert 23384	2.25 cfs	California-Pacific Steam Plant Well	priority Nov. 16, 1953
Appl. R-34873 Cert. 39253	233.2 additional acre feet	Goodrich Creek	May 4, 1961
Appl. 34874 Cert. 39254	233.2 acre feet stored water only	Goodrich Reservoir	May 4, 1961
Appl- 55451 Cert 51234	1.34 cfs	Sum-O-Spring (municipal uses except potable water)	March 9, 1977
Appl- G-8381 Cert 51748	5.3 cfs	a well	August 16, 1977
Appl G-8510 Permit G-7830	0.71	a well for irrigation of 1.62 ac & supplemental irrigation 59.38 acres	October 31, 1977
Appl- 67966	8.9 cfs	Marble, Little Marble, Mill, and Little Mill Creeks for developing 675 H.P.	Filed Oct 27, 1983

COUNTY OF BAKER

CERTIFICATE OF WATER RIGHT.

THIS IS TO CERTIFY, That THE CITY OF BAKER
of Baker, State of OREGON, ⁹⁷⁸¹⁴ has a right to the use of

5.0 sec. ft. of the waters of Goodrich Creek, 0.5 sec. ft. from Coyote Springs,
5.0 sec. ft. from Little Mill Creek, 5.0 sec. ft. from Big Mill Creek, 0.5 sec.
ft. from Hawk Springs, 1.25 sec. ft. from Little Marble Creek, 5.0 sec. ft. from
Big Marble Creek, 0.625 sec. ft. from Campers Springs, 0.5 sec. ft. from Herman
Springs, 5.0 sec. ft. from Big Salmon Creek, 0.625 sec. ft. from Henry Springs,
0.625 sec. ft. from Finley Springs, 0.5 sec. ft. from Little Salmon Springs,
1.25 sec. ft. from Little Salmon Creek, 0.625 sec. ft. from Slum Town Springs,
0.5 sec. ft. from Rock Springs, 0.5 sec. ft. from North Prong of Washington Gulch,
0.5 sec. ft. from Middle Prong of Washington Gulch, 0.5 sec. ft. from South Prong
of Washington Gulch, 0.625 sec. ft. from Con Springs, 0.25 sec. ft. from Byam Springs
and 3.75 sec. ft. from Elk Creek with a date of priority of 1962; 1.25 sec. ft. of ¹⁸⁶²
the waters of Ges Creek, 6.25 sec. ft. from Goodrich Creek, 6.25 sec. ft. from Mill
Creek and 5.00 sec. ft. from Marble Creek with a date of priority of 1868; and
storage in Goodrich Creek Reservoir, from Goodrich Creek with a date of priority of
1901; for municipal purposes within the City of Baker, Baker County, Oregon,

(57.375 c.f.s.)

and that said right has been confirmed by decree of the Circuit Court of the State
of Oregon for Baker County, and the said decree entered of record at Salem, in the
Order Record of the STATE ENGINEER, in Volume 6, at page 291.

Ch. Pt. of Div. of 11.25 cfs from
Goodrich Ck - Sp. Or. Vol. 11, p 376
B-125

Ch. Pt. of Div. of 5.0 cfs from
Marble Creek - Sp. Or. Vol 42, p. 19

see Findings #15

And said right shall be subject to all other conditions and limitations contained
in said decree.

WITNESS the signature of the State Engineer,

affixed this 22nd day

of April, 1932.

CHAS. E. STRICKLIN
State Engineer.

Recorded in State Record of Water Right Certificates, Volume 9, Page 9608.

T-5665 POB MARBLE CR

Auburn Canal 1862

Goodrich Cr	5.0 cfs
Coyote Springs	0.5
Little Mill Cr	5.0
Big Mill Cr.	5.0
Hawk Springs	0.5
Little Marble Cr	1.25
Big Marble Cr.	5.0
Campers Springs	0.625
Herman Springs	0.5
Big Salmon Creek	5.0
Henry Springs	0.625
Finley Springs	0.625
Little Salmon Springs	0.5
Little Salmon Creek	1.25
Slow Town Springs	0.625
Rock Springs	0.5
North Prong of Washington Gulch	0.5
Middle Prong of Washington Gulch	0.5
Southern Prong of Washington Gulch	0.5
Coan Springs	0.625
Byam Springs	0.25
Elk Creek	3.75

Stipulation - \$83 says
Auburn Canal is 1863

39.25

Kelly Ditch - 1862

Mill Creek	6.25
Marble Creek	6.25

1868 -

Nelson or Newton Ditch
B Furgill

~~1868~~ cfs

Lee Creek	1.25
Goodrich Creek	6.25
Mill Creek	6.25
Marble Creek	5.0

Logan example - Municipal use.
541-732-1382

Auburn Canal 1862

Goodrich Cr	5.0 cfs
Coyote Springs	0.5
Little Mill Cr	5.0
Big mill Cr.	5.0
Hawk Springs	0.5
Little Marble Cr	1.25
Big Marble Cr.	5.0
Campers Springs	0.625
Herman Springs	0.5
Big Salmon Creek	5.0
Henry Springs	0.625
Finley Springs	0.625
Little Salmon Springs	0.5
Little Salmon Creek	1.25
Slow Town Springs	0.625
Rock Springs	0.5
North Prong of Washington Gulch	0.5
Middle Prong of Washington Gulch	0.5
Southern Prong of Washington Gulch	0.5
Conn Springs	0.625
Byam Springs	0.25
Elk Creek	3.75

Stipulation #83 says
Auburn Canal is 1863

39.25

Kelly Ditch - 1862

Mill Creek	6.25
Marble Creek	6.25

1868 -

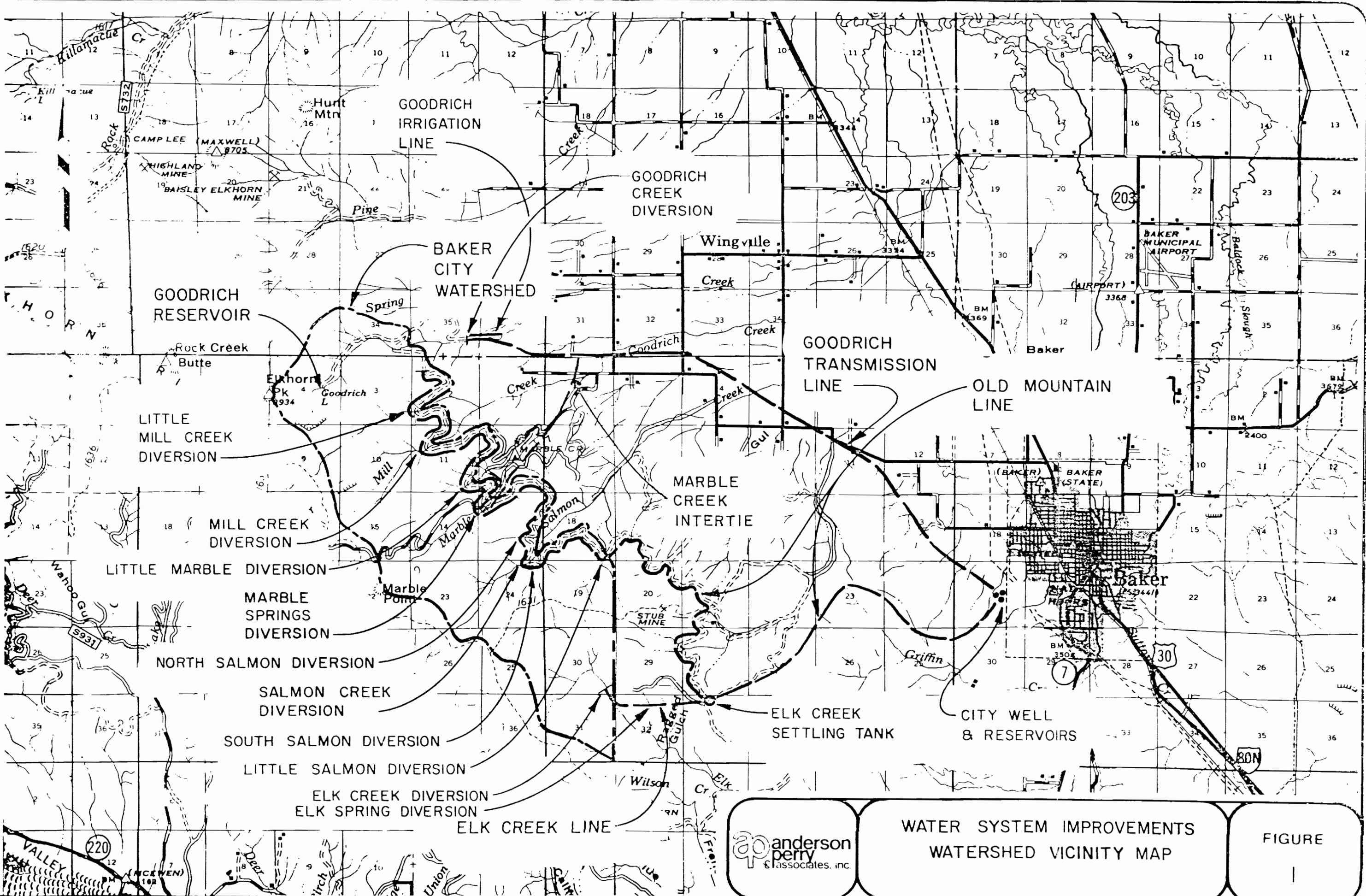
Nelson or Newton Ditch
Sturgill

Sturgill	
GrEE Creek	1.25
Goodrich Creek	6.25
Mill Creek	6.25
Marble Creek	5.0

Logan example - Municipal use.
541-732-1382

REC
1985 JUL
WATER RES
SALEM

T-56
T-5665



WATER SYSTEM IMPROVEMENTS
WATERSHED VICINITY MAP

FIGURE
1

F-5665

1030-84 City of Baker
Jim Adamson 523-6541
Richard Glick, Atty, Portland

2:47 PM

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SJB

T-5665

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5.0 sec. ft. of the waters of Goodrich Creek, 0.5 sec. ft. from Coyote Springs, 5.0 sec. ft. from Little Mill Creek, 5.0 sec. ft. from Big Mill Creek, 0.5 sec. ft. from Hawk Springs, 1.25 sec. ft. from Little Marble Creek, 5.0 sec. ft. from Big Marble Creek, 0.625 sec. ft. from Campers Springs, 0.5 sec. ft. from Herman Springs, 5.0 sec. ft. from Big Salmon Creek, 0.625 sec. ft. from Henry Springs, 0.625 sec. ft. from Finley Springs, 0.5 sec. ft. from Little Salmon Springs, 1.25 sec. ft. from Little Salmon Creek, 0.625 sec. ft. from Blum Town Springs, 0.5 sec. ft. from Rock Springs, 0.5 sec. ft. from North Prong of Washington Gulch, 0.5 sec. ft. from Middle Prong of Washington Gulch, 0.5 sec. ft. from South Prong of Washington Gulch, 0.625 sec. ft. from Con Springs, 0.25 sec. ft. from Byas Springs and 5.75 sec. ft. from Elk Creek with a date of priority of 1862; 1.25 sec. ft. of the waters of Geo Creek, 0.25 sec. ft. from Goodrich Creek, 6.25 sec. ft. from Mill Creek and 5.00 sec. ft. from Marble Creek with a date of priority of 1868; and storage in Goodrich Creek Reservoir, from Goodrich Creek with a date of priority of 1901; for municipal purposes within the City of Baker, Baker County, Oregon,

and that said right has been confirmed by decree of the Circuit Court of the State of Oregon for Baker County, and the said decree entered of record at Salem, in the Order Record of the STATE ENGINEER, in Volume 6, at page 291.

And said right shall be subject to all other conditions and limitations contained in said decree.

WITNESS the signature of the State Engineer,

affixed this 12th day

of April, 1932.

CHAS. E. STRICKLIN
State Engineer.

City of Baker's right for municipal uses
allowed by decree of the Circuit Court

Cert # 9608

See findings #16, 15, 19, 83, 84, 96

Auburn Canal

- 5.0 cfs from ^{* chg. pt. of Div. Vol 11, P 376} Goodrich Creek
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- 0.625 cfs from Slum Town Springs
- 0.5 cfs from Rock Springs
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- 0.5 cfs from Middle Prong of Washington Gulch
- 0.5 cfs from South Prong of Washington Gulch
- 0.625 cfs from Con Springs
- 0.25 cfs from Byam Springs
- 3.75 cfs from Elk Creek (see P 83)

~~38.625~~

My Ditch

- 1.25 cfs from Gee Creek
- 6.25 cfs from ^{* chg pt of Div Vol 11 P 376} Goodrich Creek
- 6.25 cfs from Mill Creek
- 5.0 cfs from Marble Creek These 3 with priority of 1868

18.75 cfs

City of Baker's rights for municipal uses
 perfected under permits T-5665
 (except permit G-7830 & Appl-67966)

- | | | | |
|-------------------------|--------------------------------------|---|---------------------------|
| apt- U-639
A 23384 | 2.25 cfs from | California-Pacific
Steam Plant Well | priority
Nov. 16, 1953 |
| sl. R-34873
A. 39253 | 233.2 additional
acre feet from | Goodrich Creek | May 4, 1961 |
| sl. 34874
A. 39254 | 233.2 acre feet
stored water only | Goodrich Reservoir | May 4, 1961 |
| sl- 55451
A 51234 | 1.34 cfs | Sam-O-Spring
(municipal uses except potable water) | March 9, 1977 |
| sl- G-8381
+ 51748 | 5.3 cfs | a well | August 16, 1977 |
| sl G-8510
mit G-7830 | 0.71 | a well
for irrigation of 1.62 ac &
supplemental irrigation 59.38 acres | October 31, 1977 |
| sl- 67966 | 8.9 cfs | Murble, Little Murble,
Mill, and Little Mill Creeks
for developing 675 H.P. | Filed
Oct 27, 1983 |

Contest #5. The City of Baker, a municipal corporation, contestant, vs. Gardner & Stuchell, Mountain Seacat and Arthur Swift, contestees was called for hearing on the 12th day of May, 1915, and contestees each appeared before the Superintendent of Water Division No. 2, acknowledged the priority right of contestant and refused to appear further in this contest. It further appeared that contestees were each served with notice of the hearing of such contest on the 25th day of March, 1914, and that the City of Baker has the following rights to the use of water. That in the year 1862, water rights for mining purposes were initiated and thereafter the Auburn Canal was constructed for the purpose of utilizing such water rights. That the Auburn Canal diverts the waters of a number of streams beginning in the SW¹/₄ of the SW¹/₄ of Sec. 34 T. 8 S. R. 38 E. W. M., at Goodrich Creek, diverting five second feet; thence said canal runs in a southeasterly direction and takes water from the following springs and streams and in the following amounts: Coyote Springs, 0.5 sec. ft.; Little Mill Creek 5 sec. ft.; Big Mill Creek 5 sec. ft.; Hawk Springs 0.5 sec. ft.; Little Marble Creek 1.25 sec. ft.; Big Marble Creek 5 sec. ft.; Campers Springs 0.625 sec. ft.; Herman Springs 0.5 sec. ft.; Big Salmon Creek 5 sec. ft.; Henry Springs 0.625 sec. ft.; Finley Springs 0.625 sec. ft.; Little Salmon Springs 0.5 sec. ft.; Little Salmon Creek 1.25 sec. ft.; Slum Town Springs 0.625 sec. ft.; Rock Springs 0.5 sec. ft.; North Prong of Washington Gulch 0.5 sec. ft.; Middle Prong of Washington Gulch 0.5 sec. ft.; South Prong of Washington Gulch 0.5 sec. ft.; Con Springs 0.625 sec. ft.; Byam Springs 0.25 sec. ft.; Elk Creek 3.75 sec. ft.; being a total of 39.25 sec. ft. That in the year 1862 and after the appropriation for the Auburn Canal, a water right was initiated through the Kelly Ditch for 6.25 sec. ft. from Mill Creek and 6.25 sec. ft. from Marble Creek, That in 1868 a water right was initiated through the Nelson or Newton & Sturgill Ditch for 1.25 sec. ft. from Gee Creek, 6.25 sec. ft. from Goodrich Creek; 6.25 sec. ft. from Mill Creek and 5 sec. ft. from Marble Creek; that each of said water rights were perfected and the water applied to a beneficial use in placer mining and such use continued until the years 1899 to 1901, during which years the Auburn Canal and the Nelson Ditch together with the water rights connected therewith were transferred to the City of Baker who is the present owner thereof and the Kelly Ditch and the water rights connected therewith were transferred to The Pocahontas Mining & Irrigation Company, who is the present owner thereof. That the City of Baker proceeded to change the use and the place of use of the waters under such water rights to municipal purposes. That in making such change it was necessary to expend large amounts of money and time and during such time said city leased some of the ditches and rights for irrigation purposes. That said Pocahontas Mining & Irrigation Company changed the use and place of use of the water through said Kelly ditch to irrigation. That such changes did not infringe upon any other rights and the transferees of said rights secured by such transfers said water rights with their respective dates of priority.

303

That since the purchase of the ditches and water rights by the City of Baker as aforesaid and until the decision of the Supreme Court of the State of Oregon in the case of Sherred vs. City of Baker, 63 Ore. 28, said City leased a part of the waters claimed under said water rights to the Pocahontas Farmers Ditch Company; that since said decision of the Supreme Court the City of Baker has not made any use of that part of the waters heretofore leased to said ditch company. That said City of Baker has, since the purchase of said water rights always used a part of said water; that all of the parties using water from said streams have at all times recognized the rights of the City of Baker as being prior to any of said water users and all of the improvements upon all of their farms have been made under conditions created by such recognition in such rights. That the decision of the Supreme Court of the State of Oregon in the case of Bowen et al. vs. Spaulding et al., 65 Ore. 392 and in the case of Sherred, vs. Baker City, each recognized the right of the City of Baker as being absolute and prior to all others using water from said streams;

during such time said city leased some of the ditches and rights for irrigation purposes. That said Pocahontas Mining & Irrigation Company changed the use and place of use of the water through said Kelly ditch to irrigation. That such changes did not infringe upon any other rights and the transferees of said rights secured by such transfers said water rights with their respective dates of priority.

That since the purchase of the ditches and water rights by the City of Baker as aforesaid and until the decision of the Supreme Court of the State of Oregon in the case of Sherrred vs. City of Baker, 63 Ore. 28, said City leased a part of the waters claimed under said water rights to the Pocahontas Farmers Ditch Company; that since said decision of the Supreme Court the City of Baker has not made any use of that part of the waters heretofore leased to said ditch company. That said City of Baker has, since the purchase of said water rights always used a part of said water; that all of the parties using water from said streams have at all times recognized the rights of the City of Baker as being prior to any of said water users and all of the improvements upon all of their farms have been made under conditions created by such recognition in such rights. That the decision of the Supreme Court of the State of Oregon in the case of Bowen et al. vs. Spaulding et al., 63 Ore. 392 and in the case of Sherrred, vs. Baker City, each recognized the right of the City of Baker as being absolute and prior to all others using water from said streams.

The amount of water as herein set forth as having been appropriated from several streams for the water rights now owned by said City of Baker is hereby reserved and expressly confirmed unto said City of Baker forever as of the dates of priority as herein set forth.

That heretofore said Pocahontas Mining & Irrigation Company and said City of Baker made and entered into an agreement, in writing, respecting the water rights of Marble and Mill Creeks, wherein and whereby it was agreed that when water was used through said Auburn Canal that all the water rights above the intake of said canal should belong exclusively to said City of Baker. (That when the water is not used through said Auburn Canal that all the water rights above the intake of said canal should belong exclusively to said City of Baker.) That when the water is not used through said canal when the flow of water in said Marble Creek is under 500 miners inches said water in Marble Creek shall be divided equally and when the flow in Mill Creek is under 500 inches miners measurements said water in Mill Creek shall be divided equally so long as the flow in Marble Creek is over 500 inches, said Pocahontas Mining & Irrigation Company shall be entitled to the first 250 inches and said City of Baker to the balance of the flow of said stream, and when the waters of said creeks are used by the city of Baker through said Auburn Canal the said Pocahontas Mining & Irrigation Company shall have the first right to the use of 250 inches of the waters flowing in each of said Marble and Mill Creeks below said Auburn Canal after the same flow past said canal and the rights to the use of all above said quantity so flowing shall belong to the City of Baker.

That said stipulation as to the rights of said City of Baker shall be given full force in the distribution of water, provided that in no case shall the amount of water taken from said creeks exceed the amount of the appropriation from said Mill and Marble Creeks as hereinbefore set forth.

16.

Contest #6. The City of Baker, a municipal corporation, contestant v. Fred Cole and R. W. Littlefield, contestees, was stipulated to the effect that the contestant has the first and prior rights, as against the contestees to the full flow of the waters of Elk Creek, and it appearing that the Cole & Littlefield appropriation was made as of date 1865 from Elk Creek, such appropriation was after the appropriation to which the City of Baker, the contestant, has succeeded in its rights as is more fully set out in Finding #15. It further appears that R. W. Littlefield has succeeded to the rights of D. S. Littlefield, as administrator.

17.

18.

Contest #8. Henry H. Moody, Geo. M. Moody, Bertha Morrison, Dan W. Jones, Mrs. C. S. McCarty, Henry L. Zeigler, Carl C. Mason and G. S. Summers, successors to heirs of Charles and Zarissia Zeigler, deceased, contestants, v. Catherine D. Vernon, now Catherine D. Owens, contestee, was stipulated to the effect that contestants and each of them have rights to the use of the water of Little Eagle Creek, a tributary of Powder River, prior in time and superior in right to that of the contestee. That by said stipulation the dates of priority of said contestee has been waived, and the water shall be distributed by the water master in accordance with said stipulation, and this decree.

305

19.

Contest #9. City of Baker, a municipal corporation, contestant, v. John Steiger, Estate of Perry Baisley, Hattie Baisley, executrix, J. H. Baisley and S. B. Baisley, contestees, was stipulated to the effect that the contestant is the owner of the Auburn Canal and water rights appertaining thereto, and the contestees are the owners of the Upper Never Sweat Ditch and Lower Never Sweat Ditch, and the water rights used through said ditches. That their predecessors in interest of said ditches and water rights settled their rights in a case in the Circuit Court of the United States for the District of Oregon, entitled David McClure, Jr., complainant, vs. Moses Carpenter, defendant, and that the relative rights to the use of water through said ditches was thereby settled, and that said decree so settling said rights should determine the rights of said contestant and contestee. That the rights of said contestant as heretofore found in Finding #15, as to the use of water from Salmon Creek through said Auburn Canal, is prior in time and superior in right to the rights of the contestants herein, and the water shall be distributed in accordance therewith. It further appearing that contestee, John Steiger, was not served in said Proceedings, contestant in open court dismissed said contest as to said John Steiger.

20.

Contest #10. Amos Gard, contestant vs. Ross Wilson and H. Van Nordheim, contestees, was stipulated to the effect that the contestant have a date of priority for the waters claimant may divert from Beaver Creek or Willow Creek, prior in time to that of the contestees, and the tabulation hereinafter set forth shall so state this in accordance with said stipulation, and it further appearing that the contestant has heretofore used the water in the irrigation of his premises in a manner that such water finds its way into the channel of said creek, and said contestant has so agreed to use such water in the future in consideration of this stipulation, the water master shall distribute the water to said contestant under such date of priority so long as the use of such water

That the decree of the Circuit Court of the United States for the District of Oregon, in the case wherein David McClure, Jr., was complainant, and Moses Carpenter was defendant, was filed with the claims of the Perry Baisley Estate and those of the Baisley owners who use the Upper Never Sweat and Lower Never Sweat Ditches, wherein the owners of the Auburn Canal were decreed a prior right for 350 miners inches of water, or 8.75 second feet. That the City of Baker has succeeded to the rights of plaintiff, David McClure, Jr., and the said Perry Baisley Estate, J. H. Baisley, Mattie Baisley, and S. B. Baisley have succeeded to the interests of Moses Carpenter, defendant, and it appearing by said decree that the said Auburn Canal was constructed in the year 1863, the rights to the use of water through the Auburn Canal by said City of Baker shall be of the date of priority of 1863. And it appearing by said decree that the date of priority of said Baisleys is later than said date, said Baisleys shall have a date of priority of not earlier than 1864, but in all cases shall be governed as to the date by the diligence of putting the water to a beneficial use.

84.

That the decree of the Circuit Court of the State of Oregon for the County of Baker on the mandate of the Supreme Court of the State of Oregon, in the suit of J. C. Bowen and E. C. Bowen, respondents and cross appellants, vs. Bird Spaulding and W. B. Vaughan, respondents and cross appellants, Mary E. Smith and W. L. Smith, appellants, Baker City, a municipal corporation, F. Franklin and M. O. Haskell, respondents, was filed herein with the Statement and Proof of claim of the City of Baker. It appears from said decree that said City of Baker has established a prior right to all the parties to said suit for the use of the waters of Elk Creek, and it further appearing that the claims of all of said other parties in said suit, set dates of priority subsequent to the dates of priority claimed by said City of Baker, such dates of priority established in the tabulation hereinafter set forth, so establishes the priority dates in accordance with said decree. 333

96.

That the rights for the appropriation of water for the City of Baker are partially set forth in Finding #15, herein. That said City of Baker is not at the present time using all of said water as was appropriated to make said rights; that said City of Baker in the year 1901 located a reservoir site upon Goodrich Creek and to store the waters under said rights in said reservoir. That such reservoir is owned by the City of Baker for such storage and the utilization of said water rights. 342

That a decree of the Circuit Court of the State of Oregon for Baker County, wherein Florence L. Sherred was plaintiff, and the City of Baker was defendant, wherein and whereby said water rights were confirmed in the City of Baker and the title to said water rights was duly quieted in said city. That by said decree, said City of Baker was declared to have no power to lease the water under said water right, but must let the same go to the rightful water user thereof. That said City of Baker shall therefore be restrained from leasing the use of said water outside of the City limits of the City of Baker, but shall use the same for municipal purposes and the use of its inhabitants within said city limits. That all of said water so appropriated and as described in said Finding #15, is hereby reserved for the City of Baker forever.

97.

water from Rock Creek to irrigate 13 acres under priority date of 1901 and for mining purposes under priority date of 1900, and that any rights claimed by contestees for sale or power, said contestee shall secure additional permits as may be required by law at time such permits are secured, and such development undertaken. That in accordance with said stipulation, said dates are established in the tabulation herein. That the amount of water to be used for irrigation shall be governed by the general findings as to the duty of water. That the amount of water to be used for mining shall not exceed five second feet, which is the present maximum capacity of contestee's ditch. That the amount of water to be stored in any one year for irrigation shall not exceed thirty acre feet, and for mining shall not exceed seventy acre feet.

15.

Contest # 5. The City of Baker, a municipal corporation, contestant, vs. Gardner & Stuchell, Fountain Seacat and Arthur Swift, contestees was called for hearing on the 12th day of May, 1915, and contestees each appeared before the Superintendent of Water Division No. 2, acknowledged the priority right of contestant and refused to appear further in this contest. It further appeared that contestees were each served with notice of the hearing of such contest on the 25th day of March, 1914, and that the City of Baker has the following rights to the use of water. That in the year 1862, water rights for mining purposes were initiated and thereafter the Auburn Canal was constructed for the purpose of utilizing such water rights. That the Auburn Canal diverts the waters of a number of streams beginning in the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 34 T. 8 S. R. 38 E. W. M., at Goodrich Creek, diverting five second feet; thence said canal runs in a southeasterly direction and takes water from the following springs and streams and in the following amounts: Coyote Springs, 0.5 sec. ft; Little Mill Creek 5 sec. ft; Big Mill Creek 5 sec. ft.; Hawk Springs 0.5 sec. ft; Little Marble Creek 1.25 sec. ft; Big Marble Creek 5 sec. ft.; Campers Springs 0.625 sec. ft.; Herman Springs 0.5 sec. ft.; Big Salmon Creek 5 sec. ft.; Henry Springs 0.625 sec. ft.; Finley Springs 0.625 sec. ft.; Little Salmon Springs 0.5 sec. ft.; Little Salmon Creek 1.25 sec. ft.; Slum Town Springs 0.625 sec. ft.; Rock Springs 0.5 sec. ft.; North Prong of Washington Gulch 0.5 sec. ft.; Middle Prong of Washington Gulch 0.5 sec. ft.; South Prong of Washington Gulch 0.5 sec. ft.; Con Springs 0.625 sec. ft.; Byam Springs 0.25 sec. ft.; Elk Creek 3.75 sec. ft.; being a total of 39.25 sec. ft. That in the year 1862 and after the appropriation for the Auburn Canal, a water right was initiated through the Kelly Ditch of 6.25 sec. ft. from Mill Creek and 6.25 sec. ft. from Marble Creek. That in 1868 a water right was initiated through the Nelson or Newton & Sturgill Ditch for 1.25 sec. ft. from Gee Creek, 6.25 sec. ft. from Goodrich Creek, 6.25 sec. ft. from Mill Creek and 5 sec. ft. from Marble Creek; that each of said water rights were perfected and the water applied to a beneficial use in placer mining and such use continued until the years 1899 to 1901, during which years the Auburn Canal and the Nelson Ditch together with the water rights connected therewith were transferred to the City of Baker

who is the present owner thereof and the Kelly Ditch and the water rights connected therewith were transferred to the Pocahontas Mining & Irrigation Company, who is the present owner thereof. That the City of Baker proceeded to change the use and the place of use of the waters under such water rights to municipal purposes. That in making such change it was necessary to expend large amounts of money and time and during such time said city leased some of the ditches and rights for irrigation purposes. That said Pocahontas Mining & Irrigation Company changed the use and place of use of the water through said Kelly ditch to irrigation. That such changes did not infringe upon any other rights and the transferres of said rights secured by such transfers said water rights with the respective dates of priority.

Handwritten: →
That since the purchase of the ditches and water rights by the City of Baker as aforesaid and until the decision of the Supreme Court of the State of Oregon in the case of Sherred vs. City of Baker, 63 Ore. 28, said City leased a part of the waters claimed under said water rights to the Pocahontas Farmers Ditch Company; that since said decision of the Supreme Court the City of Baker has not made any use of that part of the waters heretofore leased to said ditch company. That said City of Baker has, since the purchase of said water rights always used a part of said water; that all of the parties using water from said streams have at all times recognized the rights of the City of Baker as being prior to any of said water users and all of the improvements upon all of their farms have been made under conditions created by such recognition in such rights. That the decision of the Supreme Court of the State of Oregon in the case of Bowen et al. vs. Spaulding et al., 63 Ore. 392 and in the case of Sherred, vs. Baker City, each recognized the right of the City of Baker as being absolute and prior to all others using water from said streams.

The amount of water as herein set forth as having been appropriated from several streams for the water rights now owned by said City of Baker is hereby reserved and expressly confirmed unto said City of Baker forever as of the dates of priority as herein set forth.

That heretofore said Pocahontas Mining & Irrigation Company and said City of Baker made and entered into an agreement, in writing, respecting the water rights of Marble and Mill Creeks, wherein and whereby it was agreed that when water was used through said Auburn Canal that all the water rights above the intake of said canal should belong exclusively to said City of Baker. That when the water is not used through said canal when the flow of water in said Marble Creek is under 500 miners inches said water in Marble Creek shall be divided equally and when the flow in Mill Creek is under 500 inches miners measurement said water in Mill Creek shall be divided equally and so long as the flow in Marble Creek is over 500 inches, said Pocahontas Mining and Irrigation Company shall be entitled to the first 250 inches and said City of Baker to the balance of the flow of said stream, and when the waters of said creeks are used by the City of Baker through said Auburn Canal the said Pocahontas Mining &

Irrigation Company shall have the first right to the use of 250 inches of the waters flowing in each of said Marble and Mill Creeks below said Auburn Canal after the same flow past said canal and the right to the use of all above said quantity so flowing shall belong to the City of Baker.

That said stipulation as to the rights of said City of Baker shall be given full force in the distribution of water, provided that in no case shall the amount of water taken from said creeks exceed the amount of the appropriation from said Mill and Marble Creeks as hereinbefore set forth.

16.

Contest # 6. The City of Baker, a municipal corporation, contestant v. Fred Cole and R. W. Littlefield, contestees, was stipulated to the effect that the contestant has the first and prior rights, as against the contestees to the full flow of the waters of Elk Creek, and it appearing that the Cole & Littlefield appropriation was made as of date 1865 from Elk Creek, such appropriation was after the appropriation to which the City of Baker, the contestant, has succeeded in its rights as is more fully set out in Finding #15. It further appears that R. W. Littlefield has succeeded to the rights of D. S. Littlefield, as administrator.

17.

Contest # 7. Fred Cole and Rufus W. Littlefield, as administrator of the Estate of David Littlefield, deceased, contestants, v. Bert Spalding and W. B. Vaughn, contestees, was called for hearing, and at said time M. G. Haskell and O. M. Haskell petitioned to intervene in said hearing; that insfar as said petition of intervention was attempted to contest the claims of the contestees herein, Bert Spalding and W. B. Vaughn, such intervention is disallowed as the time for filing had expired. That as between the contestants and the contestees, and as between said contestants and said intervenors, a stipulation was entered into which said stipulation is to the effect that the contestants had a right to the use of the waters of Elk Creek to the extent of 150 inches of water, miners measurement under a six inch pressure, with a priority of 1865, and that said right to the use of such water was prior in time and superior in right to that of the contestees, the intervenors, and it was further stipulated that said contestants should have and recover of the contestees herein, their costs and disbursements in this suit in the sum of \$69.50, and that said contestants have judgment against said contestees for said sum.

18.

Contest # 8. Henry H. Moody, Geo. M. Moody, Bertha Morrison, Dan W. Jones, Mrs. C. S. McCarty, Henry L. Zeigler, Carl C. Mason and C. S. Summers, successors to heirs of Charles and Zarissia Zeigler, deceased, contestants, v. Catherine

Section 34, one SE $\frac{1}{4}$ NW $\frac{1}{4}$, and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, T 7 S. R. 38 E. W. M. That in the distribution of water the water master shall use said ditch for conveying water to the lands as thus described, and shall only distribute water to the S $\frac{1}{2}$ of NW $\frac{1}{4}$ of Section 34 being the lands owned by said defendant at the time of said suit, upon consent of the other water users in said ditch.

95.

That the decree of the Circuit Court of the State of Oregon for the County of Baker, wherein Eliza Ellen Kelley was plaintiff and E. E. Chambers was defendant, involving the waters of Spring Creek and springs arising on the lands and above the land of the defendant, sometimes called "Cavin and Crabill Springs," was filed in these proceedings, and it appears from the proceedings that James A. Kelley and Charles W. Kelley have succeeded to the interests of the plaintiff, and P. Crabill has succeeded to the interests of the defendant. That the defendant by said decree should have the exclusive use of the springs arising upon his land, but that for the springs arising off the defendant's land, and the water flowing onto his land, the defendant should have the use of the water from sundown of each day until eight o'clock A. M. of the following day, and that from eight o'clock A. M. on each day to sundown on the same day, the plaintiff's and their successors in interest should have the use of the water, but that in case the plaintiffs did not use said water during the day time, then said defendants should have the use of the water both day and night.

The water master of the district shall distribute the water in accordance with said decree.

That the lands owned by the plaintiff were the S $\frac{1}{2}$ of NE $\frac{1}{4}$; SE $\frac{1}{4}$ NW $\frac{1}{4}$; NE $\frac{1}{4}$ SW $\frac{1}{4}$; and the N $\frac{1}{2}$ of SE $\frac{1}{4}$ Section 5. That the lands owned by the defendant were the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 5, and the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 6, all in T 9 S. R. 39 E. W. M., and the water shall be distributed according to said decree for said lands, but the water master may distribute said water in any other manner that the parties owning said lands may, by writing agree upon, when such writing is filed with said water master.

96.

That the rights for the appropriation of water for the City of Baker are partially set forth in Finding #15 herein. That said City of Baker is not at the present time using all of said water as was appropriated to make said rights; that said City of Baker in the year 1901 located a reservoir site upon Goodrich Creek and to store the waters under said rights in said reservoir. That such reservoir is owned by the City of Baker for such storage and the utilization of said water rights.

That a decree of the Circuit Court of the State of Oregon for Baker County, wherein Florence L. Sherrred was plaintiff, and the City of Baker was defendant, wherein and whereby said water rights were confirmed in the City of Baker and the title to said water rights was duly quieted in said city. That by said decree, said City of Baker was declared to have no power to lease the water under said water right, but must let the same go to the rightful water user thereof. That said City of Baker shall therefore be restrained from leasing the use of said water outside of the City limits of the City of Baker, but shall use the same for municipal purposes and the use of its inhabitants within said city limits. That all of said water so appropriated and as described in said Finding #15, is hereby reserved for the City of Baker forever.

97.

some reserved to stock ditch

That the Baker City Mutual Irrigation Company filed its claim in these proceedings, wherein it appears that said company furnishes water to its stockholders to the extent of sixty acres within the City of Baker. That from the time it began to furnish water for the irrigation of city lots within the City of Baker, its stockholders have changed and continue to change, and the land irrigated has changed and will continue to change with the change of stockholders. That said company owns said water right for the purpose of sale of water from its ditches to its stockholders, and it is impossible to get the acreage in each forty acre tract that is irrigated by the water from said ditch. That the place of use, as heretofore, has always been within the City of Baker, and the tabulation hereinafter contained will so limit the place of use of such water to within said city. That in the event a water master is called upon at any time to take charge of said ditch and distribute the water therein, said water master shall only distribute water to such water users as have written contracts with said company, and then shall distribute such water in accordance with such written contracts.

98.

MS

That in all cases wherein appropriations of water are claimed from springs, the owners of the land upon which said springs arise shall have the first and prior right to the use of the waters from said springs, and any and all appropriations by any person of water from a spring arising on other land than that owned by said person shall be subject to the first and prior use of the waters from said spring by the owner of said land upon which said spring arises, except as herein otherwise expressly provided.

99.

That in all cases herein where a water right for storage is found to exist, the waters stored under such right shall be used upon the land for which the same was

18.

Contest #8. Henry H. Moody, Geo. M. Moody, Bertha Morrison, Dan W. Jones, Mrs. C. S. McCarty, Henry L. Zeigler, Carl C. Mason and C. S. Summers, successors to heirs of Charles and Zarissia Zeigler, deceased, contestants, v. Catherine D. Vernon, now Catherine D. Owens, contestee, was stipulated to the effect that contestants and each of them have rights to the use of the water of Little Eagle Creek, a tributary of Powder River, prior in time and superior in right to that of the contestee. That by said stipulation the dates of priority of said contestee has been waived, and the water shall be distributed by the water master in accordance with said stipulation, and this decree.

305

19.

Contest #9. City of Baker, a municipal corporation, contestant, v. John Steiger, Estate of Perry Baisley, Hattie Baisley, executrix, J. H. Baisley and S. B. Baisley, contestees, was stipulated to the effect that the contestant is the owner of the Auburn Canal and water rights appertaining thereto, and the contestees are the owners of the Upper Never Sweat Ditch and Lower Never Sweat Ditch, and the water rights used through said ditches. That their predecessors in interest of said ditches and water rights settled their rights in a case in the Circuit Court of the United States for the District of Oregon, entitled David McClure, Jr., complainant, vs. Moses Carpenter, defendant, and that the relative rights to the use of water through said ditches was thereby settled, and that said decree so settling said rights should determine the rights of said contestant and contestee. That the rights of said contestant as heretofore found in Finding #15, as to the use of water from Salmon Creek through said Auburn Canal, is prior in time and superior in right to the rights of the contestants herein, and the water shall be distributed in accordance therewith. It further appearing that contestee, John Steiger, was not served in said Proceedings, contestant in open court dismissed said contest as to said John Steiger.

20.

Contest #10. Amos Gard, contestant vs. Ross Wilson and H. Van Nordheim, contestees, was stipulated to the effect that the contestant have a date of priority for the waters claimant may divert from Beaver Creek or Willow Creek, prior in time to that of the contestees, and the tabulation hereinafter set forth shall so state this in accordance with said stipulation, and it further appearing that the contestant has heretofore used the water in the irrigation of his premises in a manner that such water finds its way into the channel of said creek, and said contestant has so agreed to use such water in the future in consideration of this stipulation, the water master shall distribute the water to said contestant under such date of priority so long as the use of such water

That the decree of the Circuit Court of the United States for the District of Oregon, in the case wherein David McClure, Jr., was complainant, and Moses Carpenter was defendant, was filed with the claims of the Perry Baisley Estate and those of the Baisley owners who use the Upper Never Sweat and Lower Never Sweat Ditches, wherein the owners of the Auburn Canal were decreed a prior right for 350 miners inches of water, or 8.75 second feet. That the City of Baker has succeeded to the rights of plaintiff, David McClure, Jr., and the said Perry Baisley Estate, J. H. Baisley, Mattie Baisley, and S. B. Baisley have succeeded to the interests of Moses Carpenter, defendant, and it appearing by said decree that the said Auburn Canal was constructed in the year 1863, the rights to the use of water through the Auburn Canal by said City of Baker shall be of the date of priority of 1863. And it appearing by said decree that the date of priority of said Baisleys is later than said date, said Baisleys shall have a date of priority of not earlier than 1864, but in all cases shall be governed as to the date by the diligence of putting the water to a beneficial use.

84.

That the decree of the Circuit Court of the State of Oregon for the County of Baker on the mandate of the Supreme Court of the State of Oregon, in the suit of J. C. Bowen and E. C. Bowen, respondents and cross appellants, vs. Bird Spaulding and W. B. Vaughan, respondents and cross appellants, Mary E. Smith and W. L. Smith, appellants, Baker City, a municipal corporation, F. Franklin and M. O. Haskell, respondents, was filed herein with the Statement and Proof of claim of the City of Baker. It appears from said decree that said City of Baker has established a prior right to all the parties to said suit for the use of the waters of Elk Creek, and it further appearing that the claims of all of said other parties in said suit, set dates of priority subsequent to the dates of priority claimed by said City of Baker, such dates of priority established in the tabulation hereinafter set forth, so establishes the priority dates in accordance with said decrees. 333

96.

That the rights for the appropriation of water for the City of Baker are partially set forth in Finding #15, herein. That said City of Baker is not at the present time using all of said water as was appropriated to make said rights; that said City of Baker in the year 1901 located a reservoir site upon Goodrich Creek and to store the waters under said rights in said reservoir. That such reservoir is owned by the City of Baker for such storage and the utilization of said water rights. 342

That a decree of the Circuit Court of the State of Oregon for Baker County, wherein Florence L. Sherred was plaintiff, and the City of Baker was defendant, wherein and whereby said water rights were confirmed in the City of Baker and the title to said water rights was duly quieted in said city. That by said decree, said City of Baker was declared to have no power to lease the water under said water right, but must let the same go to the rightful water user thereof. That said City of Baker shall therefore be restrained from leasing the use of said water outside of the City limits of the City of Baker, but shall use the same for municipal purposes and the use of its inhabitants within said city limits. That all of said water so appropriated and as described in said Finding #15, is hereby reserved for the City of Baker forever.

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE
COUNTY OF BAKER.

*For deity of water,
see p. 357*

IN THE MATTER OF THE DETERMINATION OF)
THE RELATIVE RIGHTS OF THE VARIOUS CLAIM-)
ANTS TO THE WATERS OF POWDER RIVER, A)
TRIBUTARY OF SNAKE RIVER, AND ITS TRIBU-)
TARIES, IN BAKER AND UNION COUNTIES,)
OREGON.)
-----)
D E C R E E.

Now on this 18th day of March 1918, this matter came on to be heard on motion of the State Water Board of the State of Oregon for final adjudication and determination and for the correction of certain errors existing in former decrees entered herein, and the Court being now fully advised in the premises, it is now ordered, and adjudged, and decreed that the relative rights of the waters of Powder River and its tributaries, a tributary of Snake River in Baker and Union Counties, Oregon, be and the same are hereby determined and adjudicated as follows:

FINDINGS OF FACT.

1.

That on the 27th day of May, 1909, there was filed in the office of the State Water Board of the State of Oregon, a petition signed by H. A. Mitchell, G. H. Perkins, E. A. Chambers and Carl Parker, water users upon said stream, requesting a determination of the relative rights of the various claimants to the waters of said stream, and that said petitioners are actual users of the waters of said Powder River and its tributaries, as appears from the order of determination herein; that thereupon the said State Water Board, after a full investigation and due consideration of said petitions, found the facts and conditions such as to justify the making of a determination of the relative rights of the various claimants of the waters of said stream and its tributaries thereto, and made and entered its order in the records of said office, fixing a time and place for the beginning and making of such an examination of said stream by the State Engineer, as would enable the said Board to determine the rights of the said claimants and also the time and place for the beginning and taking of testimony by the Superintendent of Water Division No. 2; that said time when said State Engineer or his assistants, did begin the examination of said stream was set by said order of said Board for the 6th day of June, 1912, and the time when the Superintendent of Water Division No. 2 did attend and take the testimony of the various claimants

water from Rock Creek to irrigate 15 acres under priority date of 1901 and for mining purposes under priority date of 1900, and that any rights claimed by contestee for sale or power, said contestee shall secure additional permits as may be required by law at time such permits are secured, and such development undertaken. That in accordance with said stipulation, said dates are established in the tabulation herein. That the amount of water to be used for irrigation shall be governed by the general findings as to the duty of water. That the amount of water to be used for mining shall not exceed five second feet, which is the present maximum capacity of contestee's ditch. That the amount of water to be stored in any one year for irrigation shall not exceed thirty acre feet, and for mining shall not exceed seventy acre feet.

15.

Contest #5. The City of Baker, a municipal corporation, contestant, vs. Gardner & Stuchell, Fountain Seacat and Arthur Swift, contestees was called for hearing on the 12th day of May, 1915, and contestees each appeared before the Superintendent of Water Division No. 2, acknowledged the priority right of contestant and refused to appear further in this contest. It further appeared that contestees were each served with notice of the hearing of such contest on the 25th day of March, 1914, and that the City of Baker has the following rights to the use of water. That in the year 1862, water rights for mining purposes were initiated and thereafter the Auburn Canal was constructed for the purpose of utilizing such water rights. That the Auburn Canal diverts the waters of a number of streams beginning in the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 34 T 8 S. R. 38 E. W. M., at Goodrich Creek, diverting five second feet; thence said canal runs in a southeasterly direction and takes water from the following springs and streams and in the following amounts: Coyote Springs, 0.5 sec. ft.; Little Mill Creek 5 sec. ft.; Big Mill Creek 5 sec. ft.; Hawk Springs 0.6 sec. ft.; Little Marble Creek 1.25 sec.ft.; Big Marble Creek 5 sec. ft.; Campers Springs 0.625 sec. ft.; Herman Springs 0.5 sec. ft.; Big Salmon Creek 5 sec. ft.; Henry Springs 0.625 sec. ft.; Finley Springs 0.625 sec.ft.; Little Salmon Springs 0.5 sec. ft.; Little Salmon Creek 1.25 sec.ft.; Slum Town Springs 0.625 sec.ft.; Rock Springs 0.5 sec. ft.; North Prong of Washington Gulch 0.5 sec. ft.; Middle Prong of Washington Gulch 0.5 sec. ft.; South Prong of Washington Gulch 0.5 sec. ft.; Con Springs 0.625 sec. ft.; Eyam Springs 0.25 sec. ft.; Elk Creek 3.75 sec. ft.; being a total of 39.25 sec. ft. That in the year 1862 and after the appropriation for the Auburn Canal, a water right was initiated through the Kelly Ditch for 6.25 sec. ft. from Mill Creek and 6.25 sec. ft. from Marble Creek. That in 1868 a water right was initiated through the Nelson ^{W Newton} & Sturgill Ditch for 1.25 sec. ft. from Gee Creek, 6.25 sec. ft. from Goodrich Creek; 6.25 sec. ft. from Mill Creek and 5 sec. ft. from Marble Creek; that each of said water rights were perfected and the water applied to a beneficial use in placer mining and such use continued until the years 1899 to 1901, during which years the Auburn Canal and the Nelson Ditch together with the water rights connected therewith were transferred to the City of Baker

who is the present owner thereof and the Kelly Ditch and the water rights connected therewith were transferred to The Pocahontas Mining & Irrigation Company, who is the present owner thereof. That the City of Baker proceeded to change the use and the place of use of the waters under such water rights to municipal purposes. That in making such change it was necessary to expend large amounts of money and time and during such time said city leased some of the ditches and rights for irrigation purposes. That said Pocahontas Mining & Irrigation Company changed the use and place of use of the water through said Kelly ditch to irrigation. That such changes did not infringe upon any other rights and the transferees of said rights secured by such transfers said water rights with their respective dates of priority.

That since the purchase of the ditches and water rights by the City of Baker as aforesaid and until the decision of the Supreme Court of the State of Oregon in the case of Sherrred vs. City of Baker, 63 Ore. 28, said City leased a part of the waters claimed under said water rights to the Pocahontas Farmers Ditch Company; that since said decision of the Supreme Court the City of Baker has not made any use of that part of the waters heretofore leased to said ditch company. That said City of Baker has, since the purchase of said water rights always used a part of said water; that all of the parties using water from said streams have at all times recognized the rights of the City of Baker as being prior to any of said water users and all of the improvements upon all of their farms have been made under conditions created by such recognition in such rights. That the decision of the Supreme Court of the State of Oregon in the case of Bowen et al. vs. Spaulding et al., 63 Ore. 392 and in the case of Sherrred, vs. Baker City, each recognized the right of the City of Baker as being absolute and prior to all others using water from said streams.

The amount of water as herein set forth as having been appropriated from several streams for the water rights now owned by said City of Baker is hereby reserved and expressly confirmed unto said City of Baker forever as of the dates of priority as herein set forth.

That heretofore said Pocahontas Mining & Irrigation Company and said City of Baker made and entered into an agreement, in writing, respecting the water rights of Marble and Mill Creeks, wherein and whereby it was agreed that when water was used through said Auburn Canal that all the water rights above the intake of said canal should belong exclusively to said City of Baker. That when the water is not used through said canal when the flow of water in said Marble Creek is under 500 miners inches said water in Marble Creek shall be divided equally and when the flow in Mill Creek is under 500 inches miners measurement said water in Mill Creek shall be divided equally and so long as the flow in Marble Creek is over 500 inches, said Pocahontas Mining & Irrigation Company shall be entitled to the first 250 inches and said City of Baker to the balance of the flow of said stream, and when the waters of said creeks are used by the City of Baker through said Auburn Canal the said Pocahontas Mining &

Irrigation Company shall have the first right to the use of 250 inches of the waters flowing in each of said Marble and Mill Creeks below said Auburn Canal after the same flow past said canal and the right to the use of all above said quantity so flowing shall belong to the City of Baker.

That said stipulation as to the rights of said City of Baker shall be given full force in the distribution of water, provided that in no case shall the amount of water taken from said creeks exceed the amount of the appropriation from said Mill and Marble Creeks as hereinbefore set forth.

16.

Contest #6. The City of Baker, a municipal corporation, contestant, v. Fred Cole and R. W. Littlefield, contestees, was stipulated to the effect that the contestant has the first and prior rights, as against the contestees to the full flow of the waters of Elk Creek, and it appearing that the Cole & Littlefield appropriation was made as of date 1865 from Elk Creek, such appropriation was after the appropriation to which the City of Baker, the contestant, has succeeded in its rights as is more fully set out in Finding #15. It further appears that R. W. Littlefield has succeeded to the rights of D. S. Littlefield, as administrator.

17.

Contest #7. Fred Cole and Rufus W. Littlefield, as administrators of the Estate of David Littlefield, deceased, contestants, v. Bert Spalding and W. E. Vaughn, contestees, was called for hearing, and at said time M. G. Haskall and O. M. Haskall petitioned to intervene in said hearing; that insofar as said petition of intervention was attempted to contest the claims of the contestees herein, Bert Spalding and W. E. Vaughn, such intervention is disallowed as the time for filing had expired. That as between the contestants and the contestees, and as between said contestants and said intervenors, a stipulation was entered into which said stipulation is to the effect that the contestants had a right to the use of the waters of Elk Creek to the extent of 150 inches of water, miners measurement under a six inch pressure, with a priority of 1865, and that said right to the use of such water was prior in time and superior in right to that of the contestees, the intervenors, and it was further stipulated that said contestants should have and recover of the contestees herein, their costs and disbursements in this suit in the sum of \$69.50, and that said contestants have judgment against said contestees for said sum.

18.

Contest #8. Henry H. Moody, Geo. M. Moody, Bertha Morrison, Dan W. Jones, Mrs. C. S. McCarty, Henry L. Zeigler, Carl C. Mason and C. S. Summers, successors to heirs of Charles and Zarissia Zeigler, deceased, contestants, v. Catherine

And the Court being fully advised in the premises,

IT IS HEREBY CONSIDERED, ORDERED, ADJUDGED and DECREED, that the relative rights of the various claimants to the waters of Powder River and its tributaries, be and the same are hereby adjudicated and determined as set forth in the foregoing findings of fact and,

IT IS FURTHER ORDERED that the Clerk of this court enter the same in the Journal of this Court.

Gustav Anderson

Circuit Judge.

Transfer No. T-5665

County Baker

Name City of Baker

Date for Completion Completed

Extended to _____

Completion Report Received _____

To Survey _____

Comments: