

JAMES R. DOLE  
DEBORAH L. SORENSON  
WILLARD L. RANSOM  
KENDELL H. FERGUSON

DOLE, SORENSON, RANSOM & FERGUSON, LLP  
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www.roguevalleylaw.com

OF COUNSEL:  
RYAN KIRCHOFF

E-MAIL  
wransom@roguevalleylaw.com

October 19, 2012

Hon. Dove L. Gutman  
Senior Administrative Law Judge  
Office of Administrative Hearings  
2510 Oakmont Way  
Eugene, OR 97401

Ms. Juno Pandian  
Well Construction & Compliance Enforcement Manager  
Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem, OR 97301

RE: OAH Reference No.: WR-12-003  
OWRD Case No.: PC-08-11

Dear Judge Gutman and Ms. Pandian:

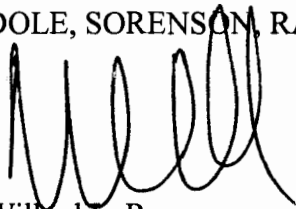
Please accept this letter as notice that the above-referenced matter has been settled between the parties. Proponents Barbara A. Nelson and Judith H. Zulliger are withdrawing their Affidavits of Non-Use challenging the Elting's water rights. Therefore, the Administrative Hearing currently set for November 7, 8 and 9, 2012, will no longer be necessary.

Please don't hesitate to contact me should you have any questions, concerns or require anything further.

Thank you.

Very truly yours,

DOLE, SORENSON, RANSOM & FERGUSON, LLP



Willard L. Ransom  
Attorney at Law

WLR:dsd

cc: Clients  
Robert A. Graham, Jr., Esq.

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OCT 22 2012  
Office of Admin. Hearings

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SALEM, OR



# Oregon

John A. Kitzhaber, MD, Governor

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**OCT 16 2012**

**BEFORE THE OREGON WATER RESOURCES DEPARTMENT**

**Office of Admin. Hearings**

**Water Resources Department**

North Mall Office Building

725 Summer St. NE, Suite A

Salem, OR 97301

Phone: 503-986-0900

FAX: 503-986-0904

www.oregon.gov/owrd

IN THE MATTER OF THE PROPOSED )  
CANCELLATION OF THE WATER RIGHT )  
EVIDENCED BY WATER RIGHT )  
CERTIFICATE 27072 FOR USE OF WATER )  
FROM WEST FORK ILLINOIS RIVER FOR )  
IRRIGATION OF 0.9 ACRE, JOSEPHINE )  
COUNTY, OREGON )

**NOTICE OF HEARING**

**OAH Case No.: WR 12-003**

**Agency Case No. PC 08-11**

*Proponents* – Judith H. Zulliger and Barbara A. Nelson

*Protestant* – Robert M. Elting and Anna C. Cornelison

You are hereby notified, pursuant to the provisions of ORS 183.415 and 540.641(2), that a contested case hearing in this matter will be held. The hearing will be before Dove Gutman, Administrative Law Judge, assigned to this matter from the Office of Administrative Hearings. The hearing will be conducted pursuant to the applicable provisions of the Oregon Administrative Procedures Act, ORS 183.310 *et seq*, and the procedural rules found at OAR 137-003-0501 to 137-003-0700. Jurisdiction is conferred by ORS 540.631 and Chapter 849, 1999 Oregon Laws. Applicable substantive law is found at ORS 540.631 *et seq* and OAR Chapter 690 Division 17 and Division 300.

Hearing date, time and location: **November 7 through November 9, 2012**, at 9:00 a.m., at the Office of Administrative Hearings Offices, 4600 25<sup>th</sup> Street NE, Suite 140, in Salem, Oregon.

The Water Resources Department is currently represented in this matter by Juno Pandian, Agency Representative. Parties have the right to be represented by counsel.

A copy of Parties Rights in Contested Case Hearing was also previously provided to the parties.

Dated this 16<sup>th</sup> Day of October, 2012

Barry Norris, Administrator

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**NOV 13 2012**

**SALEM, OR**



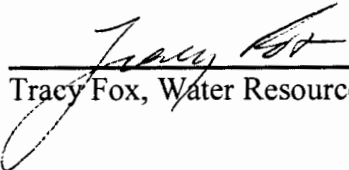
## CERTIFICATE OF SERVICE

I certify that on October 16, 2012 a copy of this Notice of Hearing was served by certified mail, return receipt requested, and first class mail, postage prepaid upon the person(s) listed below:

Dove Gutman  
Administrative Law Judge  
Office of Administrative Hearings  
P.O. Box 14020  
Salem, OR 97309-4020

Willard L. Ransom, Esq.,  
Attorney Representing Barbara Nelson and Judith H. Zulliger  
Dole, Sorenson, Ransom & Ferguson, LLP  
1867 Williams Highway Ste. 109  
Grants Pass, OR 97526

Robert Graham, Jr.  
Attorney Representing Anna Cornelison and Robert Elting  
236 NW "E" Street  
Grants Pass, OR 97526

  
\_\_\_\_\_  
Tracy Fox, Water Resources Department

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SALEM, OR



# Oregon

John A. Kitzhaber, MD, Governor

October 16, 2012

Dove Gutman  
Administrative Law Judge  
Office of Administrative Hearings  
P.O. Box 14020  
Salem, OR 97309-4020

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OCT 16 2012

Office of Admin. Hearings

## Water Resources Department

North Mall Office Building  
725 Summer St. NE, Suite A  
Salem, OR 97301  
Phone: 503-986-0900  
FAX: 503-986-0904  
www.oregon.gov/owrd

Dear Judge Gutman:

To ensure the record in this matter is clear and complete, the Department provides the attached proposed exhibits numbered A1 through A15. The Department plans to introduce these exhibits into the record at the hearing scheduled for November 7 through November 9, 2012, in Salem, Oregon. The proposed exhibits are largely records of the Department. Copies are being provided to the Proponent's Attorney, Willard L. Ransom and Protestant's Attorney, Robert Graham, Jr. The proposed exhibits include the following:

- A1 Letter of Representation from Willard L. Ransom
- A2 Judge Gutman's Prehearing Order dated July 25, 2012
- A3 Judge Gutman's Notice of Prehearing Conference dated June 19, 2012
- A4 Department's Notice of Prehearing Conference dated June 7, 2012
- A5 Department's Hearing Referral dated May 30, 2012
- A6 Department's Notice of Withdrawal and Proposed Cancellation of Water Right dated April 26, 2012
- A7 Department's Order on Withdrawal of Water Right Certificate 27072 dated April 20, 2012
- A8 Letter of Representation from Robert A. Graham, Jr.
- A9 Motion for Reconsideration of Final Order entered February 23, 2012 and Notice of Protest and Request for Hearing dated March 15, 2012
- A10 Department's Final Order dated February 23, 2012
- A11 Department's Proposed Order dated December 15, 2011
- A12 Zulliger's Affidavit - Certificate 27072
- A13 Nelson's Affidavit - Certificate 27072
- A14 Water Right Certificate 27072 and Final Proof Map
- A15 Proof of Appropriation of Water and Map - Permit 23452
- A16 Tax Lot Map

Respectfully Submitted,

Ms. JUNO PANDIAN  
Agency Representative

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# Oregon

John A. Kitzhaber, MD, Governor

**Water Resources Department**  
North Mall Office Building  
725 Summer St. NE, Suite A  
Salem, OR 97301  
Phone: 503-986-0900  
FAX: 503-986-0904  
www.oregon.gov/owrd

## BEFORE THE OREGON WATER RESOURCES DEPARTMENT

IN THE MATTER OF THE PROPOSED )  
CANCELLATION OF THE WATER RIGHT )  
EVIDENCED BY WATER RIGHT )  
CERTIFICATE 27072 FOR USE OF WATER )  
FROM WEST FORK ILLINOIS RIVER FOR )  
IRRIGATION OF 0.9 ACRE, JOSEPHINE )  
COUNTY, OREGON )

### DISCLOSURE OF WITNESSES

**OAH Case No.:** WR 12-003  
**Agency Case Nos.** PC 08-11

Hearing date, time and location: The hearing is scheduled for 9:00 a.m., November 7 through November 9, 2012, at the Office of Administrative Hearing, Conference Room, 4600 25<sup>th</sup> Street NE, Suite 140, Salem, Oregon 97301.

TO: Dove Gutman  
Administrative Law Judge  
Office of Administrative Hearings  
P.O. Box 14020  
Salem, OR 97309-4020

The Department does not intend to call any witnesses, however, the District 14 Watermaster, Kathy Smith; Deputy Region Manager, Larry Mentee, will be available to answer any questions regarding the water rights of record. The Department also reserves the right to cross examine any witnesses that testify at the hearing on this matter.

Dated October 16, 2012

Juno Pandian, Agency Representative

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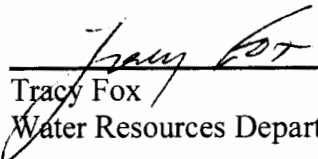


## CERTIFICATE OF SERVICE

I certify that on October 16, 2012, a copy of this Disclosure of Witnesses and Exhibits Lists was served by certified mail, return receipt requested, and first class mail, postage prepaid upon the persons listed below:

Willard L. Ransom, Esq.,  
Attorney Representing Barbara Nelson and Judith H. Zulliger  
Dole, Sorenson, Ransom & Ferguson, LLP  
1867 Williams Highway Ste. 109  
Grants Pass, OR 97526

Robert Graham, Jr.  
Attorney Representing Anna Cornelison and Robert Elting  
236 NW "E" Street  
Grants Pass, OR 97526

  
\_\_\_\_\_  
Tracy Fox  
Water Resources Department

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SALEM, OR

JAMES R. DOLE  
DEBORAH L. SORENSON  
WILLARD L. RANSOM  
KENDELL H. FERGUSON

**DOLE, SORENSON, RANSOM & FERGUSON, LLP**  
ATTORNEYS AT LAW  
1867 WILLIAMS HIGHWAY  
SUITE 109  
GRANTS PASS, OREGON 97527

TELEPHONE (541) 476-3883  
FACSIMILE (541) 474-4495  
www.roguevalleylaw.com

OF COUNSEL:  
RYAN KIRCHOFF

E-MAIL  
wransom@roguevalleylaw.com

August 3, 2012

**RECEIVED**

**AUG 06 2012**

Office of Admin. Hearings

Hon. Dove L. Gutman  
Senior Administrative Law Judge  
Office of Administrative Hearings  
2510 Oakmont Way  
Eugene, OR 97401

Juno Pandian  
Well Construction & Compliance Enforcement Manager  
Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem, OR 97301

RE: OAH Reference No.: WR-12-003  
OWRD Case No.: PC-08-11

Dear Judge Gutman and Ms. Pandian:

Please accept this letter as notice that I represent Barbara A. Nelson and Judith H. Zulliger with regard to the above-referenced matter. I apologize that I did not provide this notice to you prior to the Pre-Hearing Conference held on July 25, 2012.

My contact information, which is also above, is:

Willard L. Ransom, Esq.  
Dole, Sorenson, Ransom & Ferguson, LLP  
1867 Williams Highway, Ste. 109  
Grants Pass, OR, 97527

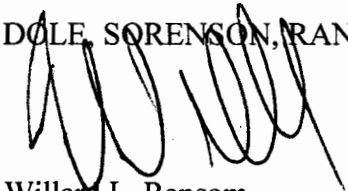
OSB No. 031372

(541) 476-3883 Telephone  
(541) 474-4495 Fax  
[wransom@roguevalleylaw.com](mailto:wransom@roguevalleylaw.com)

Thank you.

Very truly yours,

DOLE, SORENSON, RANSOM & FERGUSON, LLP



Willard L. Ransom  
Attorney at Law

WLR:dsd  
cc: Clients & Robert A. Graham, Jr., Esq.

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NOV 13 2012

SALEM, OR

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
FOR THE  
OREGON WATER RESOURCES DEPARTMENT**

<b>IN THE MATTER OF THE PROPOSED</b>	)	<b>PRE-HEARING ORDER</b>
<b>CANCELLATION OF THE WATER RIGHT</b>	)	
<b>EVIDENCED BY WATER RIGHT</b>	)	OAH Reference No: WR-12-003
<b>CERTIFICATE 27072 FOR USE OF WATER</b>	)	WRD Case No: PC-08-11
<b>FROM WEST FORK ILLINOIS RIVER FOR</b>	)	
<b>IRRIGATION OF 0.9 ACRE, JOSEPHINE</b>	)	
<b>COUNTY, OREGON</b>	)	

On July 25, 2012, a pre-hearing telephone conference was conducted by Senior Administrative Law Judge Dove L. Gutman of the Office of Administrative Hearings (OAH). Willard Ransom, Attorney at Law, appeared and represented Barbara Nelson and Judith Zulliger (Proponents). Robert Graham, Attorney at Law, appeared and represented Robert Elting and Anna Cornelison (Protestants). Juno Pandian, hearing representative, appeared and represented the Oregon Water Resources Department (OWRD). This order memorializes the agreements made by the parties that appeared.

**ISSUE**

Whether the water right evidenced by Certificate 27072 has been forfeited due to non-use for irrigation for five years (April 1994 through April 1999) on the subject lands.

**BURDEN OF PROOF**

Proponents have the burden of proof. ORS 183.450(2).

**SCHEDULE**

- 1. October 17, 2012** – The parties shall exchange witness lists, as well as the proposed exhibits they intend to offer at the hearing.
- 2. November 7 through November 9, 2012** – A hearing will be held, beginning at 9:00 a.m., at the Office of Administrative Hearings, located at 4600 25<sup>th</sup> Street NE, Suite 140, in Salem, Oregon.

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*Pre-hearing Order*, OAH Reference No. WR-12-003

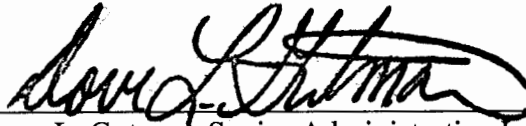
SALEM, OR



**EXHIBITS**

1. OWRD shall mark its exhibits consecutively, using A1, A2, A3, etc.
2. Proponents shall mark their exhibits consecutively, using P1, P2, P3, etc.
3. Protestants shall mark their exhibits consecutively, using R1, R2, R3, etc.

**IT IS SO ORDERED**



\_\_\_\_\_  
Dove L. Gutman, Senior Administrative Law Judge  
Office of Administrative Hearings

Dated: July 25, 2012

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NOV 13 2012

SALEM, OR

**CERTIFICATE OF MAILING**

On 25th day of July 2012, I mailed the foregoing **PRE-HEARING CONFERENCE ORDER** in Reference No. WR-12-003 by depositing a copy of said document in the United States Mail at Salem, Oregon 97309, with first class postage prepaid thereon, and addressed to:

Anna Cornelison  
Robert Elting  
1595 Lone Mtn Road  
O'Brien, OR 97534

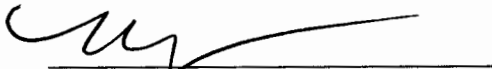
Robert Graham, Jr.  
Attorney at Law  
36 NW "E" St  
Grants Pass, OR 97526

Barbara Nelson  
P.O. Box 304  
O'Brien, OR 97534-0304

Judith Zulliger  
P.O. Box 632  
O'Brien, OR 97534 0632

Willard L. Ransom  
Dole, Sorenson, Ransom, et al  
1867 Williams Hwy, Ste. 109  
Grants Pass, OR 97527

Juno Pandian  
OWRD  
725 NE Summer Street, Suite A  
Salem, OR 97301

  
\_\_\_\_\_  
Misty Fragua  
Hearings Coordinator

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SALEM, OR

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
FOR THE  
OREGON WATER RESOURCES DEPARTMENT

IN THE MATTER OF THE PROPOSED ) CANCELLATION OF THE WATER RIGHT ) EVIDENCED BY WATER RIGHT ) CERTIFICATE 27072 FOR USE OF WATER ) FROM WEST FORK ILLINOIS RIVER FOR ) IRRIGATION OF 0.9 ACRE, JOSEPHINE ) COUNTY, OREGON )	NOTICE OF PRE-HEARING TELEPHONE CONFERENCE  OAH Reference No: WR-12-003 WRD Case No. PC-08-11
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A telephone pre-hearing conference will be held on **July 25, 2012 at 10:00 a.m.**

The pre-hearing conference will be conducted by **Senior Administrative Law Judge Dove L. Gutman** of the Office of Administrative Hearings.

The purpose of the pre-hearing conference is to discuss the issue(s) for hearing, determine a schedule for pre-hearing filings and discovery, and set a date and time for the contested case hearing.

To access the telephone conference, please dial **(877) 622-4041**, and, when prompted, dial **8512003** as the access code. **Please do not call before the time set for the conference, as your call may be misdirected by the system. If you experience any difficulty making the connection, please hang up and call Rebecca Osborne at (503) 947-1957 or Misty Fragua at (503) 947-1510.**

Issue

Whether the water right evidenced by Certificate 27072 has been forfeited due to non-use for irrigation for five years (April 1994 through April 1999) on the subject lands.

Representation

The Department is represented in this matter by Juno Pandian.  
The Protestants are represented by Robert Graham, Attorney at Law.

/s/ Dove L. Gutman  
Senior Administrative Law Judge  
Office of Administrative Hearings

**RECEIVED**

**JUN 28 2012**

Office of Admin. Hearings  
RECEIVED BY OWRD

NOV 13 2012

SALEM, OR

**CERTIFICATE OF MAILING**

On 19th day of June 2012, I mailed the foregoing **NOTICE OF PRE-HEARING TELEPHONE CONFERENCE** in Reference No. WR-12-003 by depositing a copy of said document in the United States Mail at Salem, Oregon 97309, with first class postage prepaid thereon, and addressed to:


Anna Cornelison  
Robert Elting  
1595 Lone Mtn Road  
O'Brien, OR 97534

Robert Graham, Jr.  
36 NW "E" St  
Grants Pass, OR 97526

Barbara Nelson  
P.O. Box 304  
O'Brien, OR 97534-0304

Judith Zulliger  
P.O. Box 632  
O'Brien, OR 97534 0632

Juno Pandian  
OWRD  
725 NE Summer Street, Suite A  
Salem, OR 97301

  
Misty Fragua  
Hearings Coordinator

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SALEM, OR



# Oregon

John A. Kitzhaber, MD, Governor

**Water Resources Department**  
North Mall Office Building  
725 Summer St. NE, Suite A  
Salem, OR 97301  
Phone 503-986-0900  
FAX 503-986-0904  
www.wrd.state.or.us

## BEFORE THE OREGON WATER RESOURCES DEPARTMENT

IN THE MATTER OF THE PROPOSED )  
CANCELLATION OF THE WATER RIGHT )  
EVIDENCED BY WATER RIGHT )  
CERTIFICATE 27072 FOR USE OF WATER )  
FROM WEST FORK ILLINOIS RIVER FOR )  
IRRIGATION OF 0.9 ACRE, JOSEPHINE )  
COUNTY, OREGON )

NOTICE OF WITHDRAWAL  
AND PROPOSED  
CANCELLATION OF  
WATER RIGHT

RECEIVED BY OWRD

NOV 13 2012

TO: Record Owners: Section 26, T40S R9W, W.M. (Tax Lot 900):  
Robert M. Elting & Anna C. Cornelison  
1595 Lone Mountain Road  
O'Brien, OR 97534

SALEM, OR

### Background

On February 23, 2012, the Oregon Water Resources Department issued a Final Order in the matter of cancellation of the Water Right Evidenced by Certificate 27072 for use of water from West Fork Illinois River, a tributary of the Illinois River, for irrigation of 0.9 acre in the SE1/4 NW1/4, Section 26, Township 40 South, Range 9 West, W.M., in Josephine County, Oregon. A request for reconsideration was received on March 19, 2012. The Department herein withdraws the Final Order dated February 23, 2012, and issues this Notice of Proposed Cancellation of Water Right.

### Notice

Pursuant to the provisions of Oregon Revised Statutes (ORS) 183.415 and ORS 540.631, you are hereby notified as the owners of record of certain real property in Section 26, Township 40 South, Range 9 West, Willamette Meridian (W.M.), Josephine County, Oregon of the proposed cancellation of irrigation water rights evidenced by Certificate 27072 in the name of Mrs. Helen A. Bottel.

### Basis for Initiation of Proposed Cancellation Action

It is asserted in affidavits filed with the Water Resources Department (Department) by Barbara A. Nelson and Judith H. Zulliger that the water right evidenced by Certificate 27072 has been forfeited due to non-use for irrigation for five years (April 1994, through April 1999), on the subject lands.



**Water right proposed to be canceled for non-use**

The water right for which cancellation is proposed is:

Water Right Certificate 27072 in the name of Mrs. Helen A. Bottel, authorizes the use of 0.02 cubic foot per second (cfs) from West Fork Illinois River, tributary of the Illinois River for irrigation of 0.9 acre in the SE1/4 NW1/4, Section 26, Township 40 South, Range 9 West, W.M. The priority date is March 14, 1955.

The entirety of Water Right Certificate 27072 is proposed to be canceled for non-use of water from West Fork Illinois River, tributary of the Illinois River for irrigation of 0.9 acre in the SE1/4 NW1/4, Section 26, Township 40 South, Range 9 West, W.M. The priority date is March 14, 1955. A copy of said water right certificate, final proof map and tax lot map are attached.

**Applicable law**

Oregon water law provides that if any portion of a water right undergoes five or more successive years of non-use, that non-use creates a rebuttable presumption of forfeiture. Use made after a period of five successive years of non-use will not make the forfeited right valid again. ORS 540.610; ORS 540.631.

A presumption of forfeiture may be rebutted by evidence that you submit in a protest and request for hearing and by evidence you may submit in a contested case hearing. ORS 540.610; Oregon Administrative Rule (OAR) 690-017-0800.

Other applicable law includes ORS 540.610 through ORS 540.650, OAR Chapter 690 Division 17 (governing water right cancellation) ORS Chapter 183 and OAR 137-003-0501 through 0700.

**Notice of right to request a contested case hearing if you don't agree with the proposed cancellation asserted in this Notice**

The information before the Department, if not countered by other evidence, establishes at least five years of non-use of your water right. Five years of non-use creates a rebuttable presumption of forfeiture. This means that you have an opportunity to show either that water use has occurred during the subject five-year period or that one or more statutorily established reasons excusing non-use as stated in ORS 540.610 and OAR 690-017-0800 apply to you.

You have the right to a contested case hearing on the matters asserted in this Notice of Proposed Cancellation. If you do not agree with the matters asserted in this Notice you may file a protest and request for hearing setting forth the reasons why the water rights specified in this Notice should not be cancelled.

To request a contested case hearing, the legal owner or occupant must file a written request for hearing with the Oregon Water Resources Department within 60 days from the date of the mailing of this Notice. Any protest and request for hearing must be in writing and received with a \$600.00 protest filing fee in the office of the Water Resources Department, Attention Ms. Juno

Pandian, 725 NE Summer Street, Suite A, Salem, Oregon 97301-1266, by 5:00 p.m. on June 25, 2012. See ORS 536.050(1)(j)(authority for fee).

If you request a hearing, you will be notified of the time and place of the hearing. You will also be given information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing. You have the right to be represented by an attorney and to respond and present evidence and argument on all issues properly before the Administrative Law Judge.

**If you do not request a hearing**

If you do not request a hearing within 60 days of the date of the mailing of this Notice, or if you withdraw a hearing request, notify the Department or the Administrative Law Judge that you will not appear, or fail to appear at a scheduled hearing, the Department may issue a final order by default canceling your water right. ORS 540.641(1); OAR 137-003-0670. If the Department issues a final order by default, it designates its file on this matter as the record.

**Voluntary cancellation**

Holders of a water right **may also voluntarily relinquish** their water right by filing a notarized authorization to cancel with the Water Resources Department, Water Rights Section. ORS 540.621. If you decide to authorize voluntary cancellation of the water right or portion thereof appurtenant to your land, you do not need to file a protest. You should contact the Department or your local watermaster for the proper Cancel Authorization form.

Dated this 26<sup>th</sup> day of April, 2012.



Barry F. Norris, Administrator  
Technical Services Division

## CERTIFICATE OF SERVICE

I certify that on April 26, 2012, a copy of this Notice of Withdrawal and Proposed Cancellation was served by certified mail, return receipt requested, and first class mail, postage prepaid upon the persons listed below:

Barbara A. Nelson  
PO Box 304  
O'Brien, OR 97534-0304

Judith H. Zulliger  
PO Box 632  
O'Brien, OR 97534-0632

Robert Graham, Jr.  
Attorney Representing Anna Cornelison and Robert Elting  
236 NW "E" Street  
Grants Pass, OR 97526

  
\_\_\_\_\_  
Tracy Fox  
Water Resources Department

NOV 13 2012

SALEM, OR



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Robert Graham, Jr.  
 Attorney Representing Anna  
 Cornelison and Robert Elting  
 236 NW "E" Street  
 Grants Pass, OR 97526

2. Article Number  
(Transfer from service label)

7010 27800000 0244 3415

PS Form 3811, February 2004

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

*J. Jensen*  
JENSEN

Agent

Addressee

B. Received by (Printed Name)

C. Date of Delivery

11/30/12

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

3. Service Type

Certified Mail

Express Mail

Registered

Return Receipt for Merchandise

Insured Mail

C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

Domestic Return Receipt

DEC 1 2012  
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ART 27072

102595-02-M-1540

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• Sender: Please print your name, address, and ZIP+4 in this box •

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MAY 02 2012  
WATER RESOURCES DEPT  
SALEM, OREGON

Oregon Water Resources  
725 Summer St. NE, Suite A  
Salem, OR 97301



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NOV 13 2012  
SALEM, OR

**SENDER: COMPLETE THIS SECTION**

- Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

Barbara A. Nelson  
 PO Box 304  
 O'Brien, OR 97534-0304

**2. Article Number**  
 (Transfer from service label)

7010 2780 0000 0244 3408

PS Form 3811, February 2004

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 X *Barbara Nelson*  Addressee

B. Received by (Printed Name)  Date of Delivery  
*Barbara Nelson* *11/13/12*

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below.  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

Domestic Return Receipt *WCC/PAOC & withdraw* 102595-02-M-1540  
*cert 27072*

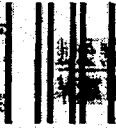
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UNITED STATES POSTAL SERVICE

01 MAY 2012 PM 1



First Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

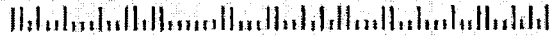
• Sender: Please print your name, address, and ZIP+4 in this box •

Oregon Water Resources  
725 Summer St. NE, Suite A  
Salem, OR 97301

**RECEIVED**

MAY 03 2012

WATER RESOURCES DEPT  
SALEM, OREGON



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**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Judith H. Zulliger  
 PO Box 632  
 O'Brien, OR 97534-0632

2. Article Number  
 (Transfer from service label)

7010 8780 0000 0844 3392

PS Form 3811, February 2004

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
 Addressee  Agent

B. Received by (Printed Name) C. Date of Delivery

Thomas P Zulliger 5/2/12

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

Domestic Return Receipt <sup>CC</sup>/PNOCC <sup>CC</sup> 87072 <sup>CC</sup> 102595-02-M-1540

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STATE OF OREGON  
COUNTY OF JOSEPHINE  
**CERTIFICATE OF WATER RIGHT**

**This Is to Certify, That** MRS. HELEN A. BOTTEL

of Box 22, O'Brien, State of Oregon, has made proof to the satisfaction of the STATE ENGINEER of Oregon, of a right to the use of the waters of West Fork Illinois River, a tributary of Illinois River, for the purpose of irrigation of 0.9 acres,

under Permit No. 23452 of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Oregon; that the priority of the right hereby confirmed dates from March 14, 1955,

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.02 cubic foot per second,

or its equivalent in case of rotation, measured at the point of diversion from the stream. The point of diversion is located in the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 26, Township 40 South, Range 9 West, W.M.,

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to one-fiftieth of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed  $3\frac{1}{2}$  acre feet per acre for each acre irrigated during the irrigation season of each year,

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

0.9 acres SE $\frac{1}{4}$  NW $\frac{1}{4}$   
Section 26  
Township 40 South, Range 9 West, W.M.

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

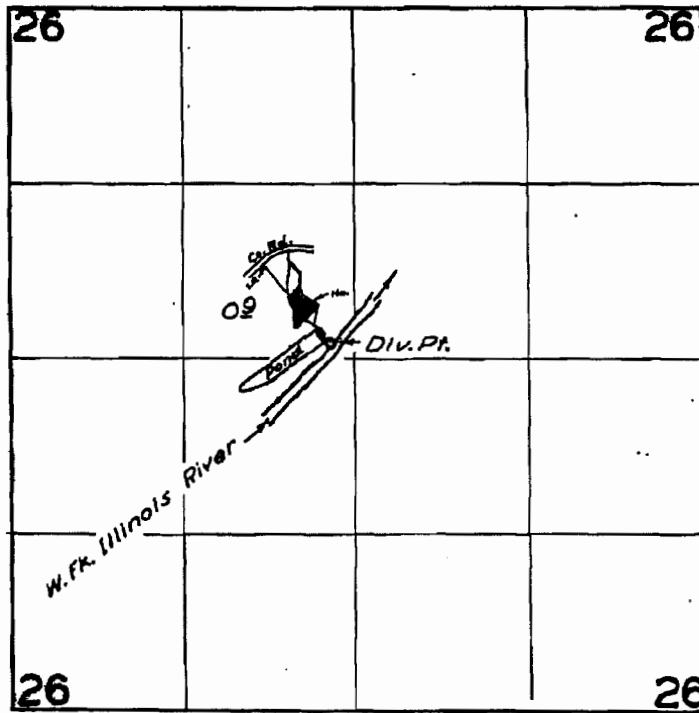
WITNESS the signature of the State Engineer, affixed

this date. MAY 27 1960

LEWIS A. STANLEY  
State Engineer

Recorded in State Record of Water Right Certificates, Volume 19, page 27072

T.40 S.R.9 W.W.M.



**FINAL PROOF SURVEY**  
UNDER

Application No. 22792 Permit No. 23452  
IN NAME OF

.....*MRS. HELEN A. BOTTEL*.....

Surveyed *14 July* 1959, by *M. Rich*.....

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1959-0

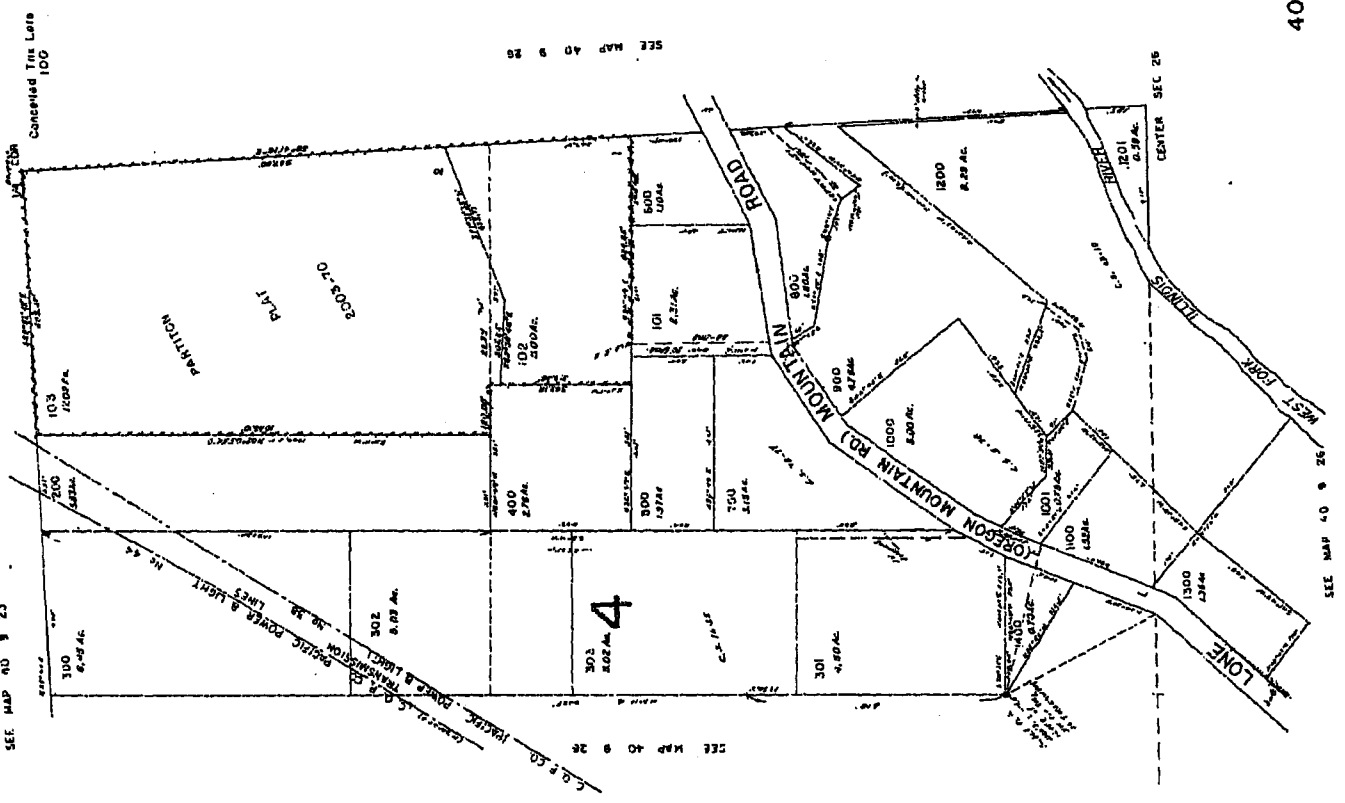
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NW 1/4 SEC 26 T.40S. R.9W. W. M.  
JOSEPHINE COUNTY

BOOK 22

22	23
27	26

This map was prepared for settlement purposes only.



40 9 26 B



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# Oregon

John A. Kitzhaber, MD, Governor

## STATE OF OREGON WATER RESOURCES DEPARTMENT

**Water Resources Department**  
North Mall Office Building  
725 Summer St. NE, Suite A  
Salem, OR 97301  
Phone 503-986-0900  
FAX 503-986-0904  
www.wrd.state.or.us

In the Matter of the Proposed	)	
Cancellation of the Water Right	)	NOTICE OF CONTESTED CASE
Evidenced by Water Right Certificate	)	RIGHTS AND PROCEDURES
27072 for Use of Water from West Fork	)	
Illinois River, a Tributary of Illinois River,	)	
for Irrigation of 0.9 Acre, Josephine	)	WRD Case No.: PC 08-11/04-12
County, Oregon	)	

Pursuant to ORS 183.413, you are entitled to be informed of the following:

- 1. Alternative Dispute Resolution.** A collaborative dispute resolution process is available as an alternative to a contested case hearing, if requested within the time period stated in the notice. Choosing a collaborative dispute resolution process will not affect the right to a contested case hearing if a hearing request is received by the agency within the time period stated in the notice and the matter is not resolved through the collaborative process.
- 2. Time and place of hearing.** The hearing is not yet scheduled. You will receive notice from the Water Resources Department of the time, date and place of the hearing once the hearing is scheduled.
- 3. Issues to be considered at hearing.** The issue to be considered at hearing is if the irrigation rights of water right certificate 27072 have been forfeited due to non-use.
- 4. Law that applies.** The matter set for hearing is a contested case. The hearing will be conducted as provided in Oregon Revised Statutes (ORS) Chapters 183, 540, 536, and 537; the Attorney General's Office of Administrative Hearing Rules, OAR 137-003-0501 to 137-003-0700, and Oregon Administrative Rules (OAR) Chapter 690 Division 2. Other laws involved include: OAR Chapter 690 Divisions 17 and 300.
- 5. Right to attorney.** You may be represented by an attorney at the hearing. You are not required to be represented by counsel, unless you are an agency, corporation, trust, or association. If you are not represented at the hearing and during the hearing you determine that representation by an attorney is necessary, you may request a recess to allow you an opportunity to secure the services of an attorney. The ALJ will decide whether to grant such a request. **Note: Legal aid organizations may be able to assist a party with limited financial resources.**

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6. **Administrative Law Judge.** The person presiding at the hearing is known as the administrative law judge (ALJ). The ALJ will rule on all matters that arise at the hearing, subject to agency consideration of matters transmitted for agency decision under OAR 137-003-0635 or matters subject to agency review under OAR 137-003-0640 or OAR 137-003-0570 and OAR 137-003-0572. The ALJ will be assigned by the Chief ALJ from the Office of Administrative Hearings (OAH). The OAH consists of employees of, and independent contractors with, the Chief ALJ. The ALJ does not have the authority to make the final decision in the case. The final determination will be made by Phillip C. Ward, Director, Oregon Water Resources Department or the Oregon Water Resources Commission.
7. **Discovery.** Discovery is permitted in this proceeding. Discovery is permitted as provided in OAR 137-003-0570, OAR 137-003-0572 and OAR 137-003-0573. You must first ask the agency and the other parties to provide you with copies of documents or other information relevant to this proceeding. If you are not satisfied with the response of the agency or the other parties, you may ask the ALJ to order production of the information you seek.
8. **Witnesses.** A witness must testify under oath or affirmation to tell the truth. The Oregon Water Resources Department or ALJ will issue subpoenas for witnesses on your behalf upon a showing that their testimony is relevant to the case and is reasonably needed by you to establish your position. If you are represented by an attorney, your attorney may issue subpoenas for attendance of witnesses at hearing. Payment of witness fees and mileage to the person subpoenaed is your responsibility.
9. **Order of evidence.** A hearing is similar to a court proceeding but is less formal. Its general purpose is to determine the facts and whether the Oregon Water Resources Department's proposed action is appropriate. The order of presentation of evidence is normally as follows:
  - a. Testimony of witnesses and other evidence of the Oregon Water Resources Department in support of its proposed action.
  - b. Testimony of your witnesses and your other evidence.
  - c. Rebuttal evidence by the Oregon Water Resources Department and by you.
10. **Burden of presenting evidence.** The burden of presenting evidence to support an allegation or position rests upon the proponent of the allegation or position. If you have the burden of proof on an issue, or if you intend to present evidence on an issue in which the agency has the burden of proof, you should approach the hearing prepared to present the testimony of witnesses, including yourself, and other evidence that will support your position. All witnesses are subject to cross-examination and also to questioning by the Oregon Water Resources Department and the ALJ.
11. **Admissible evidence.** Relevant evidence of a type commonly relied upon by **RECEIVED BY OWRD** reasonably prudent persons in the conduct of their serious affairs is admissible and

NOV 13 2012

will be received. Hearsay evidence is not automatically excluded. Rather, the fact that it is hearsay generally affects how much reliance ALJ will place on it in reaching a decision.

There are four kinds of evidence:

- a. Knowledge of the agency or ALJ. The agency or ALJ may take "official notice" of facts based on the agency's or ALJ's knowledge in a specialized field. This includes notice of general, technical or scientific facts. The agency or ALJ may also take "judicial notice" of a fact that is not subject to reasonable dispute in that it is generally known or is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. You will be informed if the agency or ALJ takes "official notice" or "judicial notice" of any fact and you will be given an opportunity to contest any facts so noticed.
- b. Testimony of witnesses. Testimony of witnesses, including you, who have knowledge of the facts may be received in evidence.
- c. Writings. Written documents including letters, maps, diagrams and other written material may be received in evidence.
- d. Experiments, demonstrations and similar means used to prove a fact. The results of experiments and demonstrations may be received in evidence.

12. **Objections to evidence.** Objections to the admissibility of evidence must be made at the time the evidence is offered. Objections are generally made on one of the following grounds:

- a. The evidence is unreliable;
- b. The evidence is irrelevant or immaterial and has no tendency to prove or disprove any issue involved in the case;
- c. The evidence is unduly repetitious and duplicates evidence already received.

13. **Continuances.** There are normally no continuances granted at the end of the hearing for you to present additional testimony or other evidence. However, if you can show that the record should remain open for additional evidence, the ALJ may grant you additional time to submit such evidence.

14. **Record.** A record will be made of the entire proceeding to preserve the testimony and other evidence for appeal. This may be done by use of a tape or digital recorder or court reporter. The record is generally not transcribed, unless there is an appeal to the Court of Appeals. However, you may obtain a copy of the tape recording upon payment of the costs of making a copy of the tape. If a court reporter is used, you may obtain a transcript or a copy of the court reporter's transcript upon payment of a transcription fee or other fee that the parties may agree upon.

15. **Proposed Order and Exceptions.** The ALJ will issue a proposed order in the form of findings of fact, conclusions of law and recommended agency action. You will be provided with a copy and you will be given an opportunity to make written

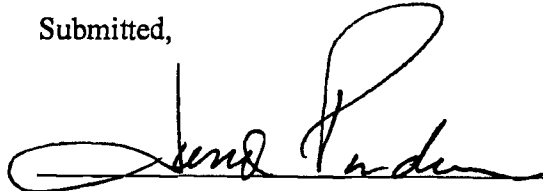
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objections, called "exceptions," to the ALJ's recommendations. You will be notified when exceptions to the proposed order must be filed. You will be notified when you may appear and make oral argument to the Oregon Water Resources Commission.

16. **Final Order.** The Oregon Water Resources Department or the Oregon Water Resources Commission will render the final order in this case. The Oregon Water Resources Department or the Oregon Water Resources Commission may modify the proposed order issued by the ALJ. If the agency modifies the proposed order in any substantial manner, the agency in its order will identify the modifications and will provide an explanation as to why the agency made the modifications. The agency may modify a proposed finding of "historical" fact only if the proposed finding is not supported by a preponderance of the evidence in the record.
17. **Appeal.** If you wish to appeal the final order, you must file a petition for judicial review with the Oregon Court of Appeals within 60 days after the final order is served upon you. *See Oregon Revised Statutes 183.482 and ORS 536.075.*

DATED this 26 day of April 2012.

Submitted,



Juno Pandian, Agency Representative  
Oregon Water Resources Department

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SALEM, OR

STATE OF OREGON  
COUNTY OF JOSEPHINE  
**CERTIFICATE OF WATER RIGHT**

**This Is to Certify, That** MRS. HELEN A. BOTTEL

of Box 22, O'Brien, State of Oregon, has made proof to the satisfaction of the STATE ENGINEER of Oregon, of a right to the use of the waters of West Fork Illinois River, a tributary of Illinois River, for the purpose of irrigation of 0.9 acres.

under Permit No. 23452 of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Oregon; that the priority of the right hereby confirmed dates from March 14, 1955.

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.02 cubic foot per second.

or its equivalent in case of rotation, measured at the point of diversion from the stream. The point of diversion is located in the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 26, Township 40 South, Range 9 West, W.M.,

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to one-fiftieth of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed  $3\frac{1}{2}$  acre feet per acre for each acre irrigated during the irrigation season of each year,

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

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

0.9 acres SE $\frac{1}{4}$  NW $\frac{1}{4}$   
Section 26  
Township 40 South, Range 9 West, W.M.

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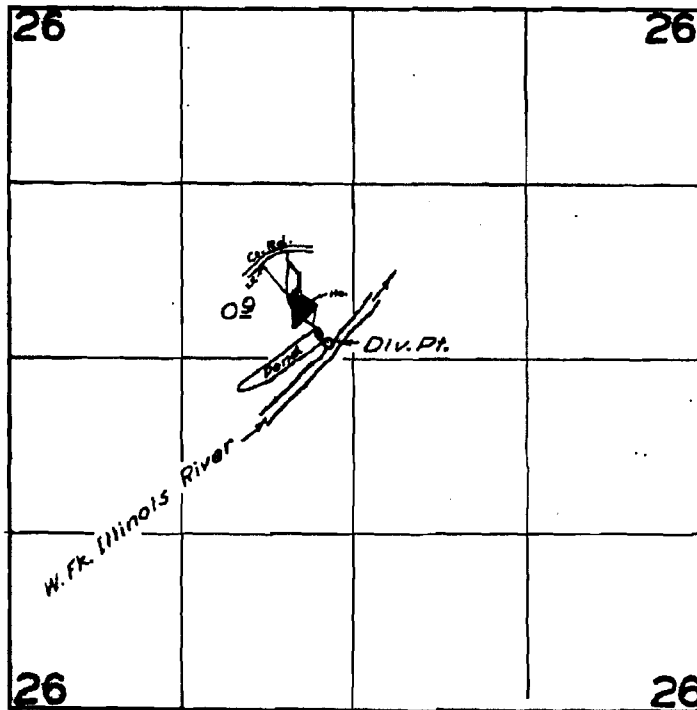
The right to the use of the water for the purposes aforesaid is restricted to the lands or place of use herein described.

WITNESS the signature of the State Engineer, affixed

this date. MAY 27 1960

LEWIS A. STANLEY  
State Engineer

T.40S.R.9W.W.M.



**FINAL PROOF SURVEY**  
UNDER

Application No. 29799 Permit No. 23452  
IN NAME OF

.....*MRS. HELEN A. BOTTEL*.....

Surveyed *12 July* 1959, by *M. Rich*.....

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NW1/4 SEC 26 T.40S. R.9W. W. M.  
JOSEPHINE COUNTY

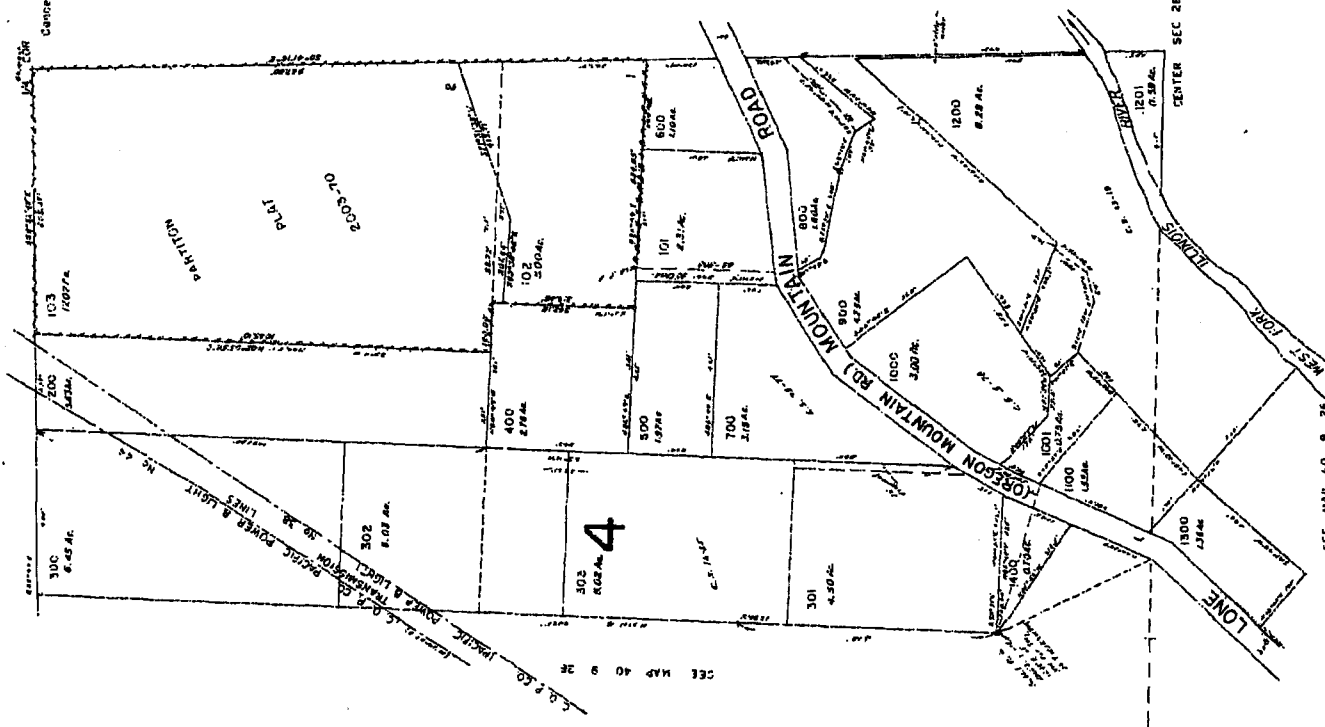
BOOK 22

2E 23  
27 26

This map was prepared for  
assessment purposes only.

SEE MAP 03 9 23

Cancelled Tax Lots  
100



SEE MAP 40 9 26

SEE MAP 40 9 26

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SEE MAP 40 9 26



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