

# Application for a Permit to Use Surface Water



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

## SECTION 1: APPLICANT INFORMATION AND SIGNATURE

### Applicant Information

NAME HERBERT LUMBER COMPANY (LYNN HERBERT)		PHONE (HM)	
PHONE (WK) 541-874-2236	CELL	FAX	
ADDRESS P.O. BOX 7			
CITY RIDDLE	STATE OR	ZIP 97469	E-MAIL *

### Organization Information

NAME		PHONE	FAX
ADDRESS			CELL
CITY	STATE	ZIP	E-MAIL *

### Agent Information – The agent is authorized to represent the applicant in all matters relating to this application.

AGENT / BUSINESS NAME		PHONE	FAX
ADDRESS			CELL
CITY	STATE	ZIP	E-MAIL *

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Note: Attach multiple copies as needed

\* By providing an e-mail address, consent is given to receive all correspondence from the department electronically. (paper copies of the final order documents will also be mailed.)

### By my signature below I confirm that I understand:

- I am asking to use water specifically as described in this application.
- Evaluation of this application will be based on information provided in the application packet.
- I cannot legally use water until the Water Resources Department issues a permit to me.
- The Department encourages all applicants to wait for a permit to be issued before beginning construction of any proposed diversion. Acceptance of this application does not guarantee a permit will be issued.
- If I begin construction prior to the issuance of a permit, I assume all risks associated with my actions.
- If I get a permit, I must not waste water.
- If development of the water use is not according to the terms of the permit, the permit can be cancelled.
- The water use must be compatible with local comprehensive land use plans.
- Even if the Department issues a permit, I may have to stop using water to allow senior water right holders to get water to which they are entitled.

I (we) affirm that the information contained in this application is true and accurate.

  
Applicant Signature

LYNN HERBERT  
Print Name and title if applicable

4/14/16  
Date

Applicant Signature

Print Name and title if applicable

Date

Revise

App. No. <u>S-8826</u>	For Department Use	Date _____
Permit No. _____		

**SECTION 2: PROPERTY OWNERSHIP**

Please indicate if you own all the lands associated with the project from which the water is to be diverted, conveyed, and used.

Yes

- There are no encumbrances.
- This land is encumbered by easements, rights of way, roads or other encumbrances.

No

- I have a recorded easement or written authorization permitting access.
- I do not currently have written authorization or easement permitting access.
- Written authorization or an easement is not necessary, because the only affected lands I do not own are state-owned submersible lands, and this application is for irrigation and/or domestic use only (ORS 274.040).
- Water is to be diverted, conveyed, and/or used only on federal lands.

List the names and mailing addresses of all affected landowners (*attach additional sheets if necessary*).

C & D Lumber  
PO Box 27  
Riddle, OR 97469

*You must provide the legal description of: 1. The property from which the water is to be diverted, 2. Any property crossed by the proposed ditch, canal or other work, and 3. Any property on which the water is to be used as depicted on the map.*

**SECTION 3: SOURCE OF WATER**

**A. Proposed Source of Water**

Provide the commonly used name of the water body from which water will be diverted, and the name of the stream or lake it flows into. If unnamed, say so:

Source 1: <u>Galesville Reservoir</u>	Tributary to: <u>Cow Creek&gt;South Umpqua River</u>
Source 2: _____	Tributary to: _____
Source 3: _____	Tributary to: _____
Source 4: _____	Tributary to: _____

If any source listed above is stored water that is authorized under a water right permit, certificate, or decree, attach a copy of the document or list the document number (for decrees, list the volume, page and/or decree name).

**B. Applications to Use Stored Water**

Do you, or will you, own the reservoir(s) described in item 3A above?

Yes.

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- No. (Please enclose a copy of your written notification to the operator of the reservoir of your intent to file this application, which you should have already mailed or delivered to the operator.)

If *all* sources listed in item 3A are stored water, the Department will review your application using the expedited process provided in ORS 537.147, unless you check the box below. Please see the instruction booklet for more information.

- By checking this box, you are requesting that the Department process your application under the standard process outlined in ORS 537.150 and 537.153, rather than the expedited process provided by ORS 537.147. To file an application under the standard process, you must enclose the following:
- A copy of a signed non-expired contract or other agreement with the owner of the reservoir (if not you) to impound the volume of water you propose to use in this application.
  - A copy of your written agreement with the party (if any) delivering the water from the reservoir to you.

**SECTION 4: WATER USE**

Provide the amount of water you propose to use from each source, for each use, in cubic feet-per-second (cfs) or gallons-per-minute (gpm). If the proposed use is from storage, provide the amount in acre-feet (af):  
*(1 cfs equals 448.8 gpm. 1 acre-foot equals 325,851 gallons or 43,560 cubic feet)*

SOURCE	USE	PERIOD OF USE	AMOUNT
Galesville Reservoir	General Industrial	Year Round	20 <input type="checkbox"/> cfs <input type="checkbox"/> gpm <input checked="" type="checkbox"/> af
			<input type="checkbox"/> cfs <input type="checkbox"/> gpm <input type="checkbox"/> af
			<input type="checkbox"/> cfs <input type="checkbox"/> gpm <input type="checkbox"/> af
			<input type="checkbox"/> cfs <input type="checkbox"/> gpm <input type="checkbox"/> af

<p><b>For irrigation use only:</b>          Please indicate the number of primary and supplemental acres to be irrigated.          Primary: _____ Acres      Supplemental: _____ Acres          List the Permit or Certificate number of the underlying primary water right(s): _____          Indicate the maximum total number of acre-feet you expect to use in an irrigation season: _____</p>	<p>RECEIVED BY BOARD          APR 18 2016          SALEM, OR</p>
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- If the use is **municipal or quasi-municipal**, attach **Form M**
- If the use is **domestic**, indicate the number of households: \_\_\_\_\_
- If the use is **mining**, describe what is being mined and the method(s) of extraction:  
 \_\_\_\_\_

**SECTION 5: WATER MANAGEMENT**

**A. Diversion and Conveyance**

What equipment will you use to pump water from your source?

Pump (give horsepower and type): 20 Horsepower

Other means (describe): \_\_\_\_\_

Provide a description of the proposed means of diversion, construction, and operation of the diversion works and conveyance of water.

Water will be diverted from the South Umpqua River and conveyed to a holding pond using 2.5" delivery pipe. Water is pumped from holding pond and used for log pond maintenance, log deck sprinkling and emergency fire suppression.

**B. Application Method**

What equipment and method of application will be used? (e.g., drip, wheel line, high-pressure sprinkler)

Fire suppression system and high pressure sprinklers for log decks.

**C. Conservation**

Please describe why the amount of water requested is needed and measures you propose to: prevent waste; measure the amount of water diverted; prevent damage to public uses of affected surface waters.

Will use best industrial management practices to conserve water and install a totalizing meter.

**SECTION 6: RESOURCE PROTECTION**

In granting permission to use water from a stream or lake, the state encourages, and in some instances requires, careful control of activities that may affect the waterway or streamside area. See instruction guide for a list of possible permit requirements from other agencies. Please indicate any of the practices you plan to undertake to protect water resources.

- Diversion will be screened to prevent uptake of fish and other aquatic life.  
Describe planned actions: ODFW approved fish screen is in place.
- Excavation or clearing of banks will be kept to a minimum to protect riparian or streamside areas.  
Describe planned actions: None planned.
- Operating equipment in a water body will be managed and timed to prevent damage to aquatic life.  
Describe: None planned.
- Water quality will be protected by preventing erosion and run-off of waste or chemical products.  
Describe: Will use best industrial use practices to present erosion and run-off.

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**SECTION 7: PROJECT SCHEDULE**

Date construction will begin: System in place

Date construction will be completed: System in place

Date beneficial water use will begin: May 1, 2016

**SECTION 8: WITHIN A DISTRICT**

Check here if the point of diversion or place of use are located within or served by an irrigation or other water district.

Irrigation District Name	Address	
City	State	Zip

**SECTION 9: REMARKS**

Use this space to clarify any information you have provided in the application.

\_\_\_\_\_

REG. AGENCY CWRO

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# Land Use Information Form



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

## NOTE TO APPLICANTS

In order for your application to be processed by the Water Resources Department (WRD), this Land Use Information Form must be completed by a local government planning official in the jurisdiction(s) where your water right will be used and developed. The planning official may choose to complete the form while you wait, or return the receipt stub to you. Applications received by WRD without the Land Use Form or the receipt stub will be returned to you. Please be aware that your application will not be approved without land use approval.

**This form is NOT required if:**

- 1) Water is to be diverted, conveyed, and/or used only on federal lands; **OR**
- 2) The application is for a water right transfer, allocation of conserved water, exchange, permit amendment, or ground water registration modification, and all of the following apply:
  - a) The existing and proposed water use is located entirely within lands zoned for exclusive farm-use or within an irrigation district;
  - b) The application involves a change in place of use only;
  - c) The change does not involve the placement or modification of structures, including but not limited to water diversion, impoundment, distribution facilities, water wells and well houses; and
  - d) The application involves irrigation water uses only.

## NOTE TO LOCAL GOVERNMENTS

The person presenting the attached Land Use Information Form is applying for or modifying a water right. The Water Resources Department (WRD) requires its applicants to obtain land-use information to be sure the water rights do not result in land uses that are incompatible with your comprehensive plan. Please complete the form or detach the receipt stub and return it to the applicant for inclusion in their water right application. You will receive notice once the applicant formally submits his or her request to the WRD. The notice will give more information about WRD's water rights process and provide additional comment opportunities. You will have 30 days from the date of the notice to complete the land-use form and return it to the WRD. If no land-use information is received from you within that 30-day period, the WRD may presume the land use associated with the proposed water right is compatible with your comprehensive plan. Your attention to this request for information is greatly appreciated by the Water Resources Department. If you have any questions concerning this form, please contact the WRD's Customer Service Group at 503-986-0801.

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JUL 27 2015

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LL-1602

S-88246

# Land Use Information Form



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

Applicant: Herbert Lumber Company  
First Last

Mailing Address: P.O. Box 7

Riddle OR 97489 Daytime Phone: 541-874-2236  
City State Zip

## A. Land and Location

Please include the following information for all tax lots where water will be diverted (taken from its source), conveyed (transported), and/or used or developed. Applicants for municipal use, or irrigation uses within irrigation districts may substitute existing and proposed service-area boundaries for the tax-lot information requested below.

Township	Range	Section	¼ ¼	Tax Lot #	Plan Designation (e.g., Rural Residential/RR-5)	Water to be:	Proposed Land Use:
30S	6W	12	SESE	1201		<input checked="" type="checkbox"/> Diverted <input checked="" type="checkbox"/> Conveyed <input type="checkbox"/> Used	
30S	6W	12	SWSE, SESW	700,800		<input type="checkbox"/> Diverted <input checked="" type="checkbox"/> Conveyed <input checked="" type="checkbox"/> Used	
						<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	

List all counties and cities where water is proposed to be diverted, conveyed, and/or used or developed:

Douglas County

## B. Description of Proposed Use

Type of application to be filed with the Water Resources Department:

- Permit to Use or Store Water   
  Water Right Transfer   
  Permit Amendment or Ground Water Registration Modification  
 Limited Water Use License   
  Allocation of Conserved Water   
  Exchange of Water

Source of water:  Reservoir/Pond   
 Ground Water   
 Surface Water (name) \_\_\_\_\_

Estimated quantity of water needed: 20   
 cubic feet per second   
 gallons per minute   
 acre-feet

Intended use of water:  Irrigation   
 Commercial   
 Industrial   
 Domestic for \_\_\_\_\_ household(s)  
 Municipal   
 Quasi-Municipal   
 Instream   
 Other \_\_\_\_\_

Briefly describe:

General industrial use at Riddle mill using 20 acre-feet of Galesville Reservoir stored water.

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Note to applicant: If the Land Use Information Form cannot be completed while you wait, please have a local government representative sign the receipt at the bottom of the next page and include it with the application filed with the Water Resources Department.

See bottom of Page 3. →

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LL-1602  
 S-08216

SALEM, OR

## For Local Government Use Only

The following section must be completed by a planning official from each county and city listed unless the project will be located entirely within the city limits. In that case, only the city planning agency must complete this form. This deals only with the local land-use plan. Do not include approval for activities such as building or grading permits.

**Please check the appropriate box below and provide the requested information**

Land uses to be served by the proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s): 3.3.050

Land uses to be served by the proposed water uses (including proposed construction) involve discretionary land-use approvals as listed in the table below. (Please attach documentation of applicable land-use approvals which have already been obtained. Record of Action/land-use decision and accompanying findings are sufficient.) If approvals have been obtained but all appeal periods have not ended, check "Being pursued."

Type of Land-Use Approval Needed (e.g., plan amendments, rezones, conditional-use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	Land-Use Approval:	
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued

Local governments are invited to express special land-use concerns or make recommendations to the Water Resources Department regarding this proposed use of water below, or on a separate sheet.

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R 133325  
Zone: FG  
WS15-0026  
RCPT: P21085

JUL 27 2015

SALEM, OR

**DOUGLAS COUNTY PLANNING DEPARTMENT**  
ROOM 106, JUSTICE BUILDING  
DOUGLAS COUNTY COURTHOUSE  
ROSEBURG, OR 97470

Name: Jennifer Arnold Title: Planner  
 Signature: Jennifer Arnold Phone: 541-440-4287 Date: 7/23/15  
 Government Entity: Douglas County Planning Dept.

**Note to local government representative:** Please complete this form or sign the receipt below and return it to the applicant. If you sign the receipt, you will have 30 days from the Water Resources Department's notice date to return the completed Land Use Information Form or WRD may presume the land use associated with the proposed use of water is compatible with local comprehensive plans.

**Receipt for Request for Land Use Information**

Applicant name: \_\_\_\_\_  
 City or County: \_\_\_\_\_ Staff contact: \_\_\_\_\_  
 Signature: \_\_\_\_\_ Phone: \_\_\_\_\_ Date: \_\_\_\_\_

8-0026  
8-0641602

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WR/FS



Douglas County Official Records  
Patricia K. Hitt, County Clerk

2013-001880



\$51.00

00337555201300018800050051

01/17/2013 10:40:34 AM

DEED-CORR Cnt=1 Stn=13 CAROL  
\$25.00 \$11.00 \$15.00

**CORRECTION COVER SHEET**

Rerecorded at the request of Jane M. Yates to correct the consideration recited. Previously recorded as instrument no. 2012-020436.

RECORDED BY CWARD

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After Recording Return to:  
Barry Rubenstein  
101 East Broadway, Suite 200  
Eugene, OR 97401

Until a change is requested all tax statements shall be sent to the following address:  
Lynn Herbert Sawmills, LLC  
P.O. Box 7  
Riddle, OR 97469

Grantor Name and Address:  
Milton Herbert, Trustee under  
Trust Agreement dated December 16, 2004  
150 Stengar Lane  
Roseburg, OR 97471-8505

Grantee Name and Address:  
Lynn Herbert Sawmills, LLC  
P.O. Box 7  
Riddle, OR 97469

Consideration: \$930,000

Douglas County Official Records  
Patricia K. Hitt, County Clerk

2012-020436



\$56.00

00335458201200204360040046

DEED-WD Cnt=1 Stn=1 RECEIPTCOUNTER 12/31/2012 1:55:46 PM  
\$20.00 \$11.00 \$15.00 \$10.00

**WARRANTY DEED - STATUTORY FORM**

Milton Herbert, Trustee under Trust Agreement dated December 16, 2004, Grantor, conveys and warrants to Lynn Herbert Sawmills, LLC, Grantee, all of his interest in the following described real property, free of encumbrances except as specifically set forth herein:

Legal description on attached Exhibit A.

Subject to: Easements, conditions, and restrictions, of record.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

S-88216

The liability and obligations of Grantors to Grantee and Grantee's heirs and assigns under the warranties and covenants contained herein or provided by law shall be limited to the amount, nature and terms of any right of indemnification available to Grantors under any title insurance policy, and or obligation is available to Grantors under any such title insurance policy. The limitations contained Grantors shall have no liability or obligation except to the extent that reimbursement for such liability herein expressly do not relieve Grantors of any liability or obligations under this instrument, but merely define the scope, nature, and amount of such liability or obligations.

Dated this 20 day of December, 2012.

*Milton Herbert*

Milton Herbert, Trustee under Trust  
Agreement dated December 16, 2004

STATE OF OREGON,        )  
  ) ss.  
County of Douglas        )

This instrument was acknowledged before me on December 20, 2012, by Milton Herbert, Trustee under Trust Agreement dated December 16, 2004.



*Sarah C. Subias*  
Notary Public for Oregon

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APR 18 2016

**EXHIBIT A**

SALEM, OR

**Parcel 1:**

Beginning at a 3/4 inch rod in the Westerly right of way line of the Southern Pacific Railroad at the Northeast corner of that parcel of land conveyed to Judd Creek Lumber Company and described in Volume 140, page 639, Deed Records of Douglas County, Oregon, from which the Southeast corner of the Wm. W. Judd Donation Land Claim No. 51, Township 30 South, Range 6 West, Willamette Meridian, bears South 4° 28' 30" West 668.2 feet and South 88° 03' East 598.8 feet; thence North 74° 58' West 674.4 feet along the north boundary of said Judd Creek Lumber Company parcel to a 1 inch iron bar at the Northwest corner thereof; thence North 11° 29' 30" East 32.2 feet to a 1 inch iron pipe; thence North 75° 04' West 113.3 feet and continuing North 75° 04' West 30.0 feet to a 1 inch iron pipe, said iron pipe being in the East boundary of that parcel of land conveyed to R.F. and Lois Howes as described in Volume 189, Page 620, of said records; thence North 8° 17' East 151.9 feet along said east boundary to a 1 inch iron pipe on the bank of Judd Creek, and continuing North 8° 17' East 33.0 feet to the center of said Judd Creek; thence upstream along the center line of said Creek and along the Northerly boundary of said Howes parcel South 81° 48' West 98.7 feet and North 32° 09' West 10.0 feet to the Northwest corner thereof, and continuing along the center line of said Creek North 32° 09' West 80.5 feet, North 79° 14' West 90.4 feet, North 44° 13' West 147.4 feet, South 82° 24' West 97.7 feet, and North 69° 23' West 124.4 feet to the east boundary of that parcel of land conveyed to George and Mary Gibson as described in Volume 123, page 264, of said records; thence North 6° 15' East 34.6 feet along said east boundary to a 1 inch pipe at the Northeast corner thereof; thence North 70° 15' West 790.7 feet along the North boundary of said parcel; thence North 26° 00' West 955.0 feet along an easterly boundary of a parcel of land conveyed to Paul and Lois Barber and John and Hazel Hewitt as described in Volume 190, page 292, of said records, to an angle thereof; thence East 3274.9 feet along the north line of the South half of the South half of Section 12, Township 30 South, Range 6 West; thence South 1° 45' East 409.2 feet to the northerly right of way line of the Southern Pacific Railroad; thence following said right of way line South 45° 30' West 526.0 feet, South 37° 45' West 396.0 feet, South 23° 00' West 330.0 feet, South 15° 15' West 99.0 feet, South 11° 45' West 132.0 feet and South 4° 28' 30" West (equals South 5° 00' West per Volume 142, page 153, Deed Records) 170.0 feet to the place of beginning, in Sections 12 and 13, Township 30 South, Range 6 West, Willamette Meridian, Douglas County, Oregon.

**ALSO EXCEPTING THEREFROM:**

Beginning at a 3/4 inch rod in the Westerly right of way line of the Southern Pacific Railroad at the Northeast corner of that parcel of land conveyed to Judd Creek Lumber Company and described in Volume 140, page 639, Deed Records of Douglas County, Oregon, from which the Southeast corner of the Wm. W. Judd Donation Land Claim No. 51, Township 30 South, Range 6 West, Willamette Meridian, bears South 4° 28' 30" West 668.2 feet and South 88° 03' East 598.8 feet; thence North 74° 58' West 674.4 feet along the north boundary of said Judd Creek Lumber Company parcel to a 1 inch iron bar at the Northwest corner thereof; thence North 11° 29' 30" East 32.2 feet to a 1 inch iron pipe; thence North 75° 04' West 113.3 feet and continuing North 75° 04' West 30.0 feet to a 1 inch iron pipe, said iron pipe being in the East boundary of that parcel of land conveyed to R.F. and Lois Howes as described in Volume 189, Page 620, of

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said records; thence North 8° 17' East 151.9 feet along said east boundary to a 1 inch iron pipe on the bank of Judd Creek; thence southeasterly along Judd Creek to West right of way line Southern Pacific Railroad; thence southwesterly along said West right of way line Southern Pacific Railroad to point of beginning.

ALSO EXCEPTING THEREFROM:

A parcel of land lying in Section 12, Township 30 South, Range 6 West, Willamette Meridian, Douglas County, Oregon, and being described as follows:

Beginning at the northeast corner of the Herbert Lumber Co., property as described in Instrument No. 291576, Deed Records of Douglas County, Oregon; from which the south quarter corner of said Section 12 bears North 88° 30' 10" West 789.52 feet and South 0° 49' 20" West 1296.11 feet; thence North 88° 30' 10" West, along the north line of the above said Herbert Lumber Co., property, 190.00 feet; thence South 0° 35' 50" East, parallel with the east line of said property, 110 feet, more or less, to the northerly right of way line of County Road No. 263; thence Easterly along said Northerly right of way line 190 feet, more or less, to a point on the above said east line of the Herbert Lumber Co., property; thence North 0° 35' 50" West, along said east line, 100 feet, more or less, to the point of beginning.

ALSO EXCEPTING THEREFROM:

County Road No. 263.

Parcel 2:

A parcel of land lying in Section 12, Township 30 South, Range 6 West, Willamette Meridian, Douglas County, Oregon, and being described as follows:

Beginning at the northeast corner of the Herbert Lumber Co. property as described in Recorder's No. 291576, Deed Records of Douglas County, Oregon, from which the south quarter corner bears North 88° 30' 10" West 789.52 feet and South 0° 49' 20" West 1296.11 feet; thence North 88° 30' 10" West, along the north line of the said Herbert Lumber Co. property, 190.00 feet to the true point of beginning; thence South 1° 29' 50" West to the northerly right of way line of County Road No. 263; thence Westerly, along said northerly right of way line to a point which is South 1° 29' 50" West of a point which is North 88° 30' 10" West 200.00 feet from the true point of beginning; thence North 1° 29' 50" East to a point which is North 1° 29' 50" East 100.00 feet from the north line of the Herbert Lumber Co. tract described in Recorder's No. 291576, Deed Records of Douglas County, Oregon; thence South 88° 30' 10" East and parallel to said north line of the Herbert Lumber Co. tract described in Recorder's No. 291576, Deed Records of Douglas County, Oregon, as aforesaid 200.00 feet; thence South 1° 29' 50" West 100.00 feet to the true point of beginning, all in Douglas County, Oregon.

DOUGLAS COUNTY OFFICIAL RECORDS  
BARBARA E. NIELSEN, COUNTY CLERK

2005-012327



\$31.00

05/18/2005 03:15:21 PM

DEED-WD Cnt=1 Stn=1 RECEIPTCOUNTER  
\$15.00 \$11.00 \$5.00

After Recording Return to:

Barry Rubenstein  
P.O. Box 10567  
Eugene, OR 97440

Until a change is requested all tax statements  
shall be sent to the following address:

No change

WARRANTY DEED - STATUTORY FORM

Milton Herbert, Grantor, conveys and warrants to Milton Herbert, Trustee under Trust Agreement dated December 16, 2004, Grantee, the following described real property free of encumbrances except as specifically set forth herein:

Legal description on attached Exhibit A.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

The true consideration for this conveyance is none.

The liability and obligations of Grantor to Grantee and Grantee's heirs and assigns under the warranties and covenants contained herein or provided by law shall be limited to the amount, nature and terms of any right of indemnification available to Grantor under any title insurance policy, and Grantor shall have no liability or obligation except to the extent that reimbursement for such liability or obligation is available to Grantor under any such title insurance policy. The limitations contained herein expressly do not relieve Grantor of any liability or obligations under this instrument, but merely define the scope, nature, and amount of such liability or obligations.

Dated this 16 day of December, 2004.

*Milton Herbert*

Milton Herbert

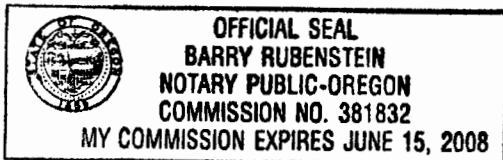
FILED IN 2005-012327

STATE OF OREGON )  
 ) ss.  
County of Douglas )

APR 18 2006

SALES, OR

This instrument was acknowledged before me on 12-16, 2004, by Milton Herbert.



*Barry Rubenstein*

Notary Public for Oregon

S-98216

Exhibit "A"

PARCEL 1

Lots 4, 5 and 8 of Section 8, Township 29 South, Range 4 West, Willamette Meridian, Douglas County, Oregon.

PARCEL 2

A parcel of land lying in Section 12, Township 30 South, Range 6 West, Willamette Meridian, Douglas County, Oregon, and being described as follows:

Beginning at the northeast corner of the Herbert Lumber Co. property as described in Recorder's No. 291576, Deed Records of Douglas County, Oregon, from which the south quarter corner bears North 88° 30' 10" West 789.52 feet and South 0° 49' 20" West 1296.11 feet; thence North 88° 30' 10" West, along the north line of the said Herbert Lumber Co. property, 190.00 feet to the true point of beginning; thence South 1° 29' 50" West to the northerly right of way line of County Road No. 263; thence Westerly, along said northerly right of way line to a point which is South 1° 29' 50" West of a point which is North 88° 30' 10" West 200.00 feet from the true point of beginning; thence North 1° 29' 50" East to a point which is North 1° 29' 50" East 100.00 feet from the north line of the Herbert Lumber Co. tract described in Recorder's No. 291576, Deed Records of Douglas County, Oregon; thence South 88° 30' 10" East and parallel to said north line of the Herbert Lumber Co. tract described in Recorder's No. 291576, Deed Records of Douglas County, Oregon, as aforesaid 200.00 feet; thence South 1° 29' 50" West 100.00 feet to the true point of beginning, all in Douglas County, Oregon.

PARCEL 3

The East half of the Southwest quarter of Section 22, Township 29 South, Range 6 West, Willamette Meridian, Douglas County, Oregon.

ALSO that portion of the Southeast quarter of the Northwest quarter of Section 22, Township 29 South, Range 6 West, Willamette Meridian, Douglas County, Oregon, lying Southerly of the property described in Recorder's No. 80-16190, Records of Douglas County, Oregon.

PARCEL 4

Beginning at a 3/4 inch rod in the westerly right of way line of the Southern Pacific Railroad at the northeast corner of that parcel of land conveyed to Judd Creek Lumber Company and described in Volume 140, Page 639, Deed Records of Douglas County, Oregon, from which the southeast corner of the Wm. W. Judd Donation Land Claim No. 51, Township 30 South, Range 6 West, Willamette Meridian, Douglas County, Oregon, bears South 4° 28' 30" West 668.2 feet and South 88° 03' East 598.8 feet; thence North 74° 58' West 674.4 feet along the north boundary of said Judd Creek Lumber Company parcel to a 1 inch iron bar at the northwest corner thereof; thence North 11° 29' 30" East 32.2 feet to a 1 inch iron pipe; thence North 75° 04' West 113.3 feet and continuing North 75° 04' West 30.0 feet to a 1 inch iron pipe, said iron pipe being in the east boundary of that parcel of land conveyed to R. F. and Lois Howes as described in Volume 189, Page 620, Deed Records of Douglas County, Oregon; thence North 8° 17' East 151.9 feet along said east boundary to a 1 inch iron pipe on the bank of Judd Creek, and continuing North 8° 17' East 33.0 feet to the center of said Judd Creek; thence upstream along the centerline of said Creek and along the northerly boundary of said Howes parcel South 81° 48' West 98.7 feet and North 32° 09' West 10.0 feet to the northwest corner thereof, and continuing along the centerline of said Creek North 32° 09' West 80.5 feet, North 79° 14' West 90.4 feet, North 44° 13' West 147.4 feet, South 82° 24' West 97.7 feet, and North 69° 23' West 124.4 feet to the east boundary of that parcel of land conveyed to George and Mary Gibson as described in Volume 123, Page 264, Deed Records of Douglas County, Oregon; thence North 6° 15' East 34.6 feet along said east boundary to a 1 inch pipe at the northeast corner thereof; thence North 70° 15' West 790.7 feet along the north boundary of said parcel; thence North 26° 00' West 955.0 feet along an easterly boundary of a parcel of land conveyed to Paul and Lois Barber and

continued

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John and Hazel Hewitt as described in Volume 190, Page 292, Deed Records of Douglas County, Oregon, to an angle thereof; thence East 3274.9 feet along the north line of the South half of the South half of Section 12, Township 30 South, Range 6 West, Willamette Meridian, Douglas County, Oregon; thence South 1° 45' East 409.2 feet to the northerly right of way line of the Southern Pacific Railroad; thence following said right of way line South 45° 30' West 526.0 feet, South 37° 45' West 396.0 feet, South 23° 00' West 330.0 feet, South 15° 15' West 99.0 feet, South 11° 45' West 132.0 feet and South 4° 28' 30" West (equals South 5° 00' West per Volume 142, Page 153, Deed Records of Douglas County, Oregon) 170.0 feet to the place of beginning, in Sections 12, and 13, Township 30 South, Range 6 West, Willamette Meridian, Douglas County, Oregon.

EXCEPTING THEREFROM property conveyed in Recorder's Nos. 65-12034, 71-17533 and 79-8789, Records of Douglas County, Oregon.

PARCEL 5

That portion of the following described property lying Southerly of Judd Creek and Easterly of the County Road:

Beginning at a 3/4 inch rod in the westerly right of way line of the Southern Pacific Railroad at the northeast corner of that parcel of land conveyed to Judd Creek Lumber Company and described in Volume 140, Page 639, Deed Records of Douglas County, Oregon, from which the southeast corner of the Wm. W. Judd Donation Land Claim No. 51, Township 30 South, Range 6 West, Willamette Meridian, Douglas County, Oregon, bears South 4° 28' 30" West 668.2 feet and South 88° 03' East 598.8 feet; thence North 74° 58' West 674.4 feet along the north boundary of said Judd Creek Lumber Company parcel to a 1 inch iron bar at the northwest corner thereof; thence North 11° 29' 30" East 32.2 feet to a 1 inch iron pipe; thence North 75° 04' West 113.3 feet and continuing North 75° 04' West 30.0 feet to a 1 inch iron pipe, said iron pipe being in the east boundary of that parcel of land conveyed to R. F. and Lois Howes as described in Volume 189, Page 620, Deed Records of Douglas County, Oregon; thence North 8° 17' East 151.9 feet along said east boundary to a 1 inch iron pipe on the bank of Judd Creek, and continuing North 8° 17' East 33.0 feet to the center of said Judd Creek; thence upstream along the centerline of said Creek and along the northerly boundary of said Howes parcel South 81° 48' West 98.7 feet and North 32° 09' West 10.0 feet to the northwest corner thereof, and continuing along the centerline of said Creek North 32° 09' West 80.5 feet, North 79° 14' West 90.4 feet, North 44° 13' West 147.4 feet, South 82° 24' West 97.7 feet, and North 69° 23' West 124.4 feet to the east boundary of that parcel of land conveyed to George and Mary Gibson as described in Volume 123, Page 264, Deed Records of Douglas County, Oregon; thence North 6° 15' East 34.6 feet along said east boundary to a 1 inch pipe at the northeast corner thereof; thence North 70° 15' West 790.7 feet along the north boundary of said parcel; thence North 26° 00' West 955.0 feet along an easterly boundary of a parcel of land conveyed to Paul and Lois Barber and John and Hazel Hewitt as described in Volume 190, Page 292, Deed Records of Douglas County, Oregon, to an angle thereof; thence East 3274.9 feet along the north line of the South half of the South half of Section 12, Township 30 South, Range 6 West, Willamette Meridian, Douglas County, Oregon; thence South 1° 45' East 409.2 feet to the northerly right of way line of the Southern Pacific Railroad; thence following said right of way line South 45° 30' West 526.0 feet, South 37° 45' West 396.0 feet, South 23° 00' West 330.0 feet, South 15° 15' West 99.0 feet, South 11° 45' West 132.0 feet and South 4° 28' 30" West (equals South 5° 00' West per Volume 142, Page 153, Deed Records of Douglas County, Oregon) 170.0 feet to the place of beginning, in Sections 12, and 13, Township 30 South, Range 6 West, Willamette Meridian, Douglas County, Oregon.

RECORDED BY CLERK

APR 18 2016

SALES OFF

END OF DOCUMENT



4/8/2016

Herbert Lumber Co. and C&D Lumber Co. share the water going into the Fire Pond.

C&D Lumber Co. has an easement right to Umpqua River, and owns the water intake system and the pipe that transports the water through a meter that measures the water to the Fire Pond, which was inspected by Nathan R. Reed, P.E., CWRE in November, 2015.

Herbert Lumber Co. has the right to utilize water out of the Fire Pond.

*Mary B. Schneider*  
Timber Manager  
C&D Lumber Co.

NOT RECORDED

APR 14 2016

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**EASEMENT AGREEMENT**

**PARTIES:** RICKY D. GIBBONS and KAREN L. GIBBONS (Gibbons)  
and  
C & D LUMBER CO. (C & D)

**RECITALS:**

Gibbons owns the real property described in Exhibit A. C & D has a pumping station located on the Gibbons property to provide fire protection and to serve operations at the C & D manufacturing plant. C & D desires to make certain improvements to pumping station, and the parties desire to state their rights and responsibilities by this agreement.

**IT IS AGREED:**

**1. Easement Grant.** Gibbons grants to C & D an easement on the real property described in Exhibit B on the terms and conditions of this agreement.

**2. Nature of Easement.** This is a perpetual nonexclusive easement for the construction, maintenance, repair, upgrade, and removal of a water pump, water line, electrical lines, and accessory equipment which are owned and operated by C & D upon the Gibbons property for the benefit of the present C & D manufacturing plan in Riddle, Oregon, and any future C & D operations. Gibbons shall retain all rights to use their property which are not inconsistent with the terms of this easement.

**3. Entry and Installation.** C & D may enter upon the easement at all reasonable times in a reasonable manner for the purposes of the easement. After any entry, including the initial installation, C & D shall return the Gibbons property to substantially the same state as before entry. C & D shall ensure that all equipment and its installation conform to the rules and regulations of all applicable government agencies at the time of installation. Lines shall be buried at least 30 inches deep. Energized components of electrical equipment shall be suitably protected at all times from casual contact by third parties (e.g., young children playing) and from livestock.

**4. Consideration.** In consideration of this agreement, C & D shall provide Gibbons with the following as described in Exhibit A:

(a) Electric power from the 220-volt electrical service at the C & D pump, so as to allow Gibbons to operate one 5-horsepower water pump. The power shall be provided at no cost to Gibbons, but Gibbons shall be entitled to such power only when the electrical service is energized, and C & D shall have no obligation to energize the service outside usual operating times.

(b) Water service for irrigation with untreated river water from a 3/4" hose bib from the C & D water system, so as to allow Gibbons to irrigate a garden. Water pressure shall be at least 50 psi, but no guaranty or representation is made as to the quality of the water. The water is not provided nor intended for human consumption. The water shall be provided at no cost to Gibbons, but Gibbons shall be entitled to such water only when the water line is pressurized, and C & D shall

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EASEMENT, OR

1 have no obligation to pressurize the line outside usual operating times.

2 **5. Relocation and Termination.** Gibbons may relocate the location of the easement for  
3 good reason (such as building a structure at that spot), upon giving notice to C & D at least 90 days  
4 prior to the date for relocation. Upon request of either party, a memorandum of the relocated  
5 description shall be made for recording in the deed records. C & D shall bear the cost of relocation.  
6 If C & D fails to use the easement for five continuous years, all of C & D's rights under the easement  
7 shall terminate, and C & D shall remove all its improvements from the Gibbons property within 90  
8 days or such improvements shall be deemed abandoned to Gibbons at their option.

9 **6. Hazardous Substances.**

10 (a) 'Hazardous substance' means any hazardous, toxic, infectious, or radioactive  
11 substance, waste, and material as defined or listed by any environmental law, and petroleum  
12 products. 'Environmental law' means any federal, state, or local statute, regulation, or ordinance or  
13 any judicial or other governmental order pertaining to the protection of health, safety, or the  
14 environment.

15 (b) C & D shall not cause or permit any hazardous substance to be released on or under  
16 the Gibbons property. C & D may use or handle on the Gibbons property only those hazardous  
17 substances typically used in the prudent and safe operation of the use permitted by this agreement. C  
18 & D shall comply with all environmental laws to exercise the highest degree of care in the use and  
19 handling of hazardous substances and shall take all practicable measures to minimize the quantity  
20 and toxicity of hazardous substances used or handled on the Gibbons property. C & D shall remove  
21 any hazardous substances it has released on the Gibbons property, and indemnify Gibbons for any  
22 response costs.

23 **7. Insurance.** C & D shall carry at its own expense comprehensive general liability  
24 insurance in a responsible company with limits of not less than \$300,000 for injury to one person,  
25 \$1,000,000 for injury to two or more persons in one occurrence, and \$300,000 for damage to  
26 property. Such insurance shall cover all risks arising directly or indirectly out of C & D's activities  
27 on or any condition of the Gibbons property whether or not related to an occurrence caused or  
28 contributed to by Gibbons' negligence. Insurance procured by C & D shall name Gibbons as an  
29 additional insured.

30 **8. Eminent Domain.** If all or a portion of the Gibbons property is condemned, or  
31 conveyed to a government agency under threat of condemnation, Gibbons shall be entitled to all  
32 proceeds of such condemnation, and C & D shall have no claim against Gibbons as a result of such  
33 condemnation, provided that C & D shall have a right to relocate the easement and improvements to  
34 another suitable portion of the Gibbons property, if such a location exists.

35 **9. Liability and Indemnity.** C & D shall pay as due all claims for work done on and  
36 for services rendered or material furnished to the Gibbons property at C & D's request or sufferance,  
37 and shall keep the Gibbons property free from any liens. C & D shall indemnify and defend Gibbons  
38 from, and reimburse Gibbons for, any cost, claim, loss, or liability suffered directly or from a third-  
39 party claim arising out of or related to any activity of C & D on the Gibbons property. Gibbons shall

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1 have no liability to C & D for any injury, loss, or damage caused by third parties, or by any condition  
2 of the Gibbons property. Gibbons makes no warranties or representations, express or implied,  
3 regarding the Gibbons property or its condition or state of repair.

4 **10. Miscellaneous Provisions.**

5 (a) Nonwaiver. — Waiver by either party of strict performance of any provision of this  
6 agreement shall not be a waiver of or prejudice the party's right to require strict performance of the  
7 same provision in the future or of any other provision.

8 (b) Binding Effect. — This agreement shall be binding on and inure to the benefit of the  
9 parties, their successors and assigns, including the tenants of Gibbons.

10 (c) Interpretation. — The captions of this agreement are solely for the convenience of  
11 reference and in no way limit or expand its provisions. Any term of this agreement that is  
12 determined to be invalid will be severed from the remaining terms which shall continue in full force  
13 and effect.

14 (d) Modification of Agreement. — Any modification of this agreement or additional  
15 obligation assumed by either party shall be binding only if made in writing and signed by each party  
16 or their authorized representative.

17 (e) Excavation of pipe. — In the event that C & D Lumber Co. must excavate the pipe for  
18 any reason C & D Lumber Co. shall have the pipe toned to determine location prior to excavation.

19 Ricky D. Gibbons  
20 RICKY D. GIBBONS

C & D LUMBER CO.

21 Karen L. Gibbons  
22 KAREN L. GIBBONS

Brad Hatley  
By: Brad Hatley, General Manager

23 **ACKNOWLEDGMENTS**

24 State of Oregon )  
25 ) ss.  
26 County of Douglas )

27 This instrument was acknowledged before me by RICKY D. GIBBONS and KAREN L.  
28 GIBBONS on 3-19, 2015.



29 Brigid A. Kennaday  
30 Notary Public for Oregon

APR 14 2016

SALEM, OR

1 State of Oregon )  
2 ) ss.  
3 County of Douglas )

4 This instrument was acknowledged before me by Brad Hatley as General Manager of C & D  
5 LUMBER CO. on 3-19, 2015.



*Brigid A. Kennaday*  
\_\_\_\_\_  
Notary Public for Oregon

8 **EXHIBIT A**  
9 (Gibbons Property)

10 All that part of the following described premises lying West of the South Umpqua River in  
11 Douglas County, Oregon.

12 Beginning at a point which is located 17.05 chains North of the Southeast corner of the  
13 Remick A. Cowles Donation Land Claim (>DLC=) No. 41 in Township 30 South, Range 5 West of  
14 the Willamette Meridian and which lies on the East line of said DLC; thence North 18.45 chains  
15 along the East line of said DLC to the Northeast corner of said DLC; thence West 60.27 chains along  
16 the North line of said DLC and its continuation as the Remick A. Cowles DLC No. 37 in Township  
17 30 South, Range 6 West of the Willamette Meridian; thence South 55 chains to the southernmost  
18 South line of said DLC No. 37 along a line which is parallel to the East line of said DLC No. 41  
19 located in Range 5 West; thence East along said South line 13.37 chains to the East line of DLC No.  
20 37 located in Range 6 West; thence North 37.55 chains along said East line located in Range 6 West  
21 and the northerly extension of said East line; thence East 46.90 chains to the point of beginning.

22 Excepting therefrom those portions situated: (1) South of the Northerly line of County Road  
23 No. 263; (2) West or South of County Road No. 41; or (3) within the Southern Pacific Railroad right  
24 of way.

25 **EXHIBIT B**  
26 (Easement Location)

27 The following portion of the land described in Exhibit A:

28  
29 Beginning at the intersection of the North right of way line of Pruner Road, County Road  
30 Number 20, and the East right of way line of Weaver Road, County Road Number 41, from  
31 which a 3/4 inch iron pipe with aluminum cap at the Southwest corner of Section 12, Township  
32 30 South, Range 6 West, Willamette Meridian, Douglas County, Oregon, bears South 77° 50'  
33 59" West 4657.19 feet; thence along said North right of way line of said Pruner Road, South  
34 87° 54' 42" East 310.00 Feet to a 5/8 inch iron rod; thence continuing along said North right of  
35 Way line, South 82° 29' 45" East 50.96 feet to a 5/8 inch iron rod; thence continuing along

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1 said North right of way line, South 88° 01' 16" East 200.19 feet to a 5/8 inch iron rod; thence  
2 leaving said North right of way line and continuing South 88° 01' 16" East 25.60 feet to a  
3 point; thence North 04° 44' 25" West 92.51 feet to a point; thence North 48° 24' 07" East  
4 44.19 feet to a point; thence North 41° 35' 53" West 10.00 feet to a point; thence South  
5 48° 24' 07" West 49.19 feet to a point; thence South 04° 44' 25" East 86.27 feet to a point;  
6 thence North 88° 01' 16" West 214.06 feet to a point; thence North 82° 29' 45" West  
7 50.95 feet to a point; thence North 87° 54' 42" West 310.66 feet to a point located on the  
8 said East right of way line of said Weaver Road; thence along said East right of way line South  
9 00° 58' 58" West 10.00 feet to the point of beginning.

RECEIVED BY CLERK

APR 18 2015

SALIDA, OH



**CONTRACT FOR PURCHASE OF INDUSTRIAL-COMMERCIAL OR MULTIPLE PURPOSE WATER FROM GALESVILLE PROJECT**

This contract is made on \_\_\_\_\_, 20\_\_ between Douglas County, a political subdivision of the State of Oregon, ("County"), and Herbert Lumber Company, ("Customer").

RECEIVED BY DWRD

APR 18 2016

**COUNTY AND CUSTOMER AGREE:**

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**1 TERM AND RENEWAL:**

1.1. The initial term of this contract shall begin on March 1, \_\_\_\_\_, 2016 and end on December 31, 2026, unless it is sooner terminated as provided herein.

1.2. As used in this contract, unless the context clearly indicates otherwise, "term" or "term of this contract" shall mean both the initial term and any extension.

1.3. Customer shall have the right to extend the term of this contract for five successive periods of ten years each upon the following conditions:

1.3.1. Approximately ninety days prior to expiration of the contract term, County shall notify Customer in writing that Customer has the right to extend the term at the price set pursuant to section 11.

1.3.2. Customer may elect to extend the contract term by written notice to County within thirty days after County gives notice of the right to extend. Concurrently with written notice of extension Customer may request the Board of Commissioners to review and reduce the price of water in accordance with subsection 11.4.

1.3.3. No other act or agreement shall be required of the parties to effect the extension after Customer gives proper notice of election to extend the contract term.

1.3.4. Each extension shall commence on the day following the termination date of the initial term or the preceding extension.

1.4. The provisions of this contract shall apply to any extension except for changes in the purchase price pursuant to section 11; modifications required to comply with federal or state statutes, regulations, or administrative rules; or modifications required to comply with any contract between County and the United States concerning the Galesville Project.

1.5. Customer shall not be entitled to extend the term of this contract if Customer is in default under this contract at the time extension is requested by Customer.

**2 AUTHORITY OF PUBLIC WORKS DIRECTOR:**

2.1. The Director of the Douglas County Public Works Department (the Director) has authority to administer this contract on behalf of County.

2.2. The Director may delegate authority to administer this contract to the Manager of the County Public Works Department, Natural Resources Division (the

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Division Manager), except for authority to establish the price of water under section 11 of this contract. The Director shall retain the right to supersede any decision of the Division Manager in the administration and interpretation of this contract.

2.3. References to the Director in this contract shall be deemed to include the Division Manager, to the extent the Director has delegated authority to the Division Manager.

**3 WATER ALLOCATION:** Each year during the term of this contract, County shall allocate 20.00 acre feet of storage capacity in the Galesville Reservoir for Customer.

**4 PERMITS AND CERTIFICATES OF WATER RIGHTS:**

4.1. County shall file and maintain any reservoir water right permit and/or certificate to store water in the Galesville reservoir allocated for the Customer's use, as required by the State of Oregon Water Resources Department or its successor ("OWRD").

4.2. Customer, at Customer's expense, shall be responsible for obtaining any permit and/or certificate of water rights for use of the stored water allocated under this contract as required by the OWRD.

4.3. Within 6 months after the effective date of this contract, Customer shall provide County with a copy of the application map provided to the State.

**5 RELEASE OF WATER:**

5.1. Subject to the provisions of this contract, County will release into the natural channel of Cow Creek water comprising the allocation described in section 3. Water released for Customer's allocation shall be measured and delivered to Customer's point of diversion of record by County with equipment installed and maintained by County.

5.2. County shall report to the OWRD all allocated water stored and distributed to Customer's point of diversion of record, including reasonable losses. Customer shall report all water use as described on Customer's water right of record to the County no later than November 30<sup>th</sup> each year and as may be required by the State.

5.3. The obligations of County to allocate capacity may be restricted by any lawful order, regulation, or ruling of any governmental agency or provisions of a contract between County and the United States. Such legal restrictions may impair the County's ability to perform its obligations under this contract. In that event, County shall be relieved of its obligations to the extent necessary to comply with the legal restrictions. Customer's payments under this contract shall be reduced proportionally to any reduction in Customer's allocation resulting from such legal restrictions.

5.4. Notwithstanding any other provision of this contract, County may suspend release and delivery of water to Customer upon written notice to Customer if Customer fails to make any payment for such water when due.

**6 DIVERSION AND USE OF WATER:**

6.1. Customer shall be wholly responsible for taking, diverting, conveying, and utilizing its water and shall bear all losses from Customer's point of diversion.

S-00116

6.2. Customer shall divert the water it is entitled to receive under this contract in accordance with schedules developed by the Customer and County.

6.3. The water diverted by Customer may be measured by County at the point of diversion. The point of diversion shall be accessible for inspection and measurement of water at all reasonable times by County. Any easement necessary for County to gain access to the point of diversion shall be provided by Customer when requested by County.

6.4. The water shall be utilized for industrial-commercial or multiple purpose use. Customer shall utilize the water only for the uses and only on the real property described in Customer's permit and certificate.

6.5. Customer shall be responsible for purchase and installation of a meter or other suitable measuring device if required by the OWRD. Once installed, it shall be the Customer's responsibility to maintain such device in good working order. If requested by the OWRD, Customer shall maintain a record of the amount of water used and report water use on such periodic schedule as may be established by the OWRD.

6.6. If required, Customer shall purchase, install, maintain, and operate fish screening equipment and by-pass devices to prevent fish from entering the diversion. Any required screens and/or by-pass devices shall be in place, functional, and approved prior to the diversion of any water, under this contract.

**7 QUALITY OF WATER:** County shall operate and maintain the Galesville dam, reservoir, and related facilities in a reasonable and prudent manner, and shall endeavor in good faith to take adequate measures to maintain the quality of raw stored water at the facilities. County is under no obligation to construct or furnish water treatment facilities to maintain or improve the quality of water. **COUNTY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE QUALITY OF WATER RELEASED AND DELIVERED FROM GALESVILLE DAM, RESERVOIR, AND RELATED FACILITIES.**

**8 WATER SHORTAGES:** In any year in which a water shortage in the Galesville reservoir occurs, County shall apportion the available water supply among Customer and other users who are entitled to receive water from the reservoir. The quantity of water to be furnished for irrigation shall first be reduced as necessary, but not greater than 15%. Any further reduction in the reservoir water supply shall be shared by Customer and all other users entitled to water from the reservoir in the same proportion that the entitlement of each user, including Customer's entitlement under this contract, bears to the total entitlements of all users.

**9 WATER CONSERVATION:** Customer acknowledges the critical need for water conservation in the Umpqua River basin. Customer shall implement reasonable and prudent water conservation measures for industrial activities.

**10 COMPLIANCE WITH LAW:** This contract shall be governed by and construed in accordance with the laws of the State of Oregon. Each party shall perform its obligations in accordance with all applicable state, federal, and local laws, rules and regulations now or hereafter in effect.

**11 PRICE OF WATER:**

11.1. During the initial term, the price for the allocation stated in section 3 shall be \$1,549.00 per year.

11.2. For each discrete ten year extension of the contract term, Customer shall pay the then current rate as established by County in accordance with this section. Notice of the right to extend under subsection 1.3.1 shall state the price of water during the extension.

11.3. The Director shall periodically review and adjust the price for water taking into account the following factors:

11.3.1. The current cost of operating and maintaining the Galesville dam, reservoir, and related facilities;

11.3.2. The projected costs for operating, maintaining, and replacing Galesville water storage and delivery facilities; and

11.3.3. The price of water sold by similar facilities for similar uses.

11.4. Customer may request the Board of Commissioners to review and reduce the price of water established by the Director. Such request shall be in writing and shall be given with the notice of Customer's election to extend the contract term. After considering the factors listed in subsection 11.3, the Board of Commissioners may reduce or affirm the price established by the Director. If the Board of Commissioners fails to take any action on Customer's request to review and reduce the price of water within 30 days after Customer makes the request, the request shall be deemed denied. If Customer is not satisfied with the action of the Board of Commissioners, Customer may rescind their election to extend the contract term and cancel the contract by written notice to County within sixty days after Customer requests the Board of Commissioners to review and reduce the price.

**12 PAYMENT:**

12.1. Customer shall pay County the annual price established by section 11 for the allocation stated in section 3 regardless of whether Customer uses any or all of the water allocated. Except as provided in subsection 12.2, payment shall be made no later than March 31 of each year.

12.2. If this contract is dated after March 2 in the year for which water is first to be released, then the amount due for the first year only shall be payable within 30 days after the date the contract is signed by County.

12.3. Interest shall accrue on late payments at the rate of eighteen percent per annum commencing the day after the date payment is due. Customer shall pay all interest upon the request of County.

**13 LIMITATIONS ON LIABILITY:**

13.1. County shall not be liable for damages or other expenses sustained by Customer resulting from shortages in the quantity of water available for release, or interruptions in water deliveries to Customer, if such shortages or interruptions in deliveries are caused partially or entirely by hostile diversion, accidental damage to County facilities, operational failure of County facilities, or any cause beyond County's control.

13.2. Notwithstanding any other provision of this contract, County shall not be liable to Customer for damages caused by failure to comply with any obligation of County under this contract, if such failure results from lack of appropriation of funds necessary to perform such obligation pursuant to ORS 294.305 et seq. (Local Budget Law).

13.3. In no event shall County be liable to Customer for any indirect, special, or consequential damages even if Customer previously advised County of the possibility of such damages.

#### 14 DEFAULT:

14.1. There shall be a default under this contract if either party materially fails to comply with any provision of this contract within thirty days after the other party gives written notice specifying the breach. If the breach specified in the notice cannot be completely cured within the thirty day period, no default shall occur if the party receiving the notice begins curative action within the thirty day period and thereafter proceeds with reasonable diligence and in good faith to cure the breach as soon as practicable.

14.2. If a default occurs, the party injured by the default may elect to terminate this contract and pursue any equitable or legal rights and remedies available under Oregon law, except that Customer's remedies shall be subject to the limitations on damages stated in section 13.

14.3. Any litigation arising out of this contract shall be conducted in the Circuit Court of the State of Oregon for Douglas County.

**15 SEVERABILITY:** If any provision of this contract is held to be invalid, it will not affect the validity of any other provision of this contract. This contract shall be construed as if such invalid provision had never been included.

**16 WAIVER:** No provision of this contract shall be waived unless the waiver is written and signed by the party waiving its rights. Any waiver of a breach, whether express or implied, shall not constitute waiver of any other breach.

**17 SUCCESSORS:** The successors, assigns, and legal representatives of Customer and County shall be subject to all provisions of this contract. Customer shall not assign Customer's rights or obligations under this contract without prior written consent of County.

#### 18 NOTICES:

18.1. Notices required by this Contract must be given in writing by personal delivery or mail, unless some other means or method of notice is required by law.

18.2. Notices to County shall be directed to Thomas R. Manton, Division Manager, Douglas County Public Works Department, Natural Resources Division, Room 306, Douglas County Courthouse, 1036 SE Douglas Street, Roseburg, OR 97470.

18.3. Notices to Customer shall be directed to: Herbert Lumber  
PO Box 7, 656 Riddle Bypass Road, Riddle, OR 97469  
541 874 2236

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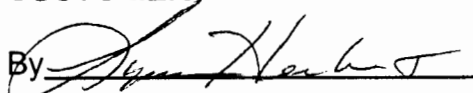
SALEM, OR

**19 ENTIRE AGREEMENT:** This contract is in the final and complete agreement of the parties and supersedes all prior and existing written or oral understandings. No modification of this contract shall be valid unless it is in writing and signed by the parties.

**20 TERMINATION FOR CONVENIENCE:** County may terminate this Contract if the Director determines in good faith that termination is in the best interest of the public. The Director will endeavor to give Contractor notice thirty days prior to the date of termination under this section, but failure to give notice will not invalidate the decision to terminate. Termination under this section will not affect the rights of County and/or Customer existing at the time of termination

**CUSTOMER**

**DOUGLAS COUNTY**

By   
Print Name LYNN HERBERT

By \_\_\_\_\_  
Robert G. Paul, P.E., Director of Public Works Department, Authority to sign contract granted by order of Board of County Commissioners, dated August 14, 2002.

Title OWNER

Date \_\_\_\_\_

Fed ID# 45-2781056

**REVIEWED AS TO CONTENT**

Date 4/14/16

By \_\_\_\_\_  
Division Manager  
Date \_\_\_\_\_  
Coding 215-0000-2810-00-021010

**REVIEWED AS TO FORM**

By \_\_\_\_\_  
County Legal Counsel  
Date \_\_\_\_\_

~~6-18207~~ 5-00216