



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

Certificate of Water Right Ownership Update

NOTICE TO SELLERS & BUYERS:

By law, all water belongs to the public (ORS 537.110). In almost every instance, a permit or water right certificate from the Water Resources Department is needed before using, diverting or storing water (ORS 537.130). However, most domestic wells do not require water rights. A certificate of water right stays with the land. In order to keep track of water right ownership, the Department requests that this form be submitted to the Department. *If for multiple rights, a separate form for each right will be required.*

Water that has been used for a long time in one place or that involves a water structure (like a dam) that already exists is no guarantee that there is a water right which would allow the water use to continue.

If you have any questions about this form or water right requirements, please contact your local watermaster or call the Water Resources Department at 503-986-0900.

Note: Please type or print legibly when filling in the following information. Use additional paper if necessary.

PROPERTY SELLER INFORMATION

Applicant(s): Ruby E. Staples - Deceased Shirley C. Shaft
First Last
 Mailing Address: P.O. Box 272 -Ruby's old address from closing docs
Jordan Valley Oregon 97910
City State Zip
 Phone: _____
Home Work Other

PROPERTY BUYER INFORMATION

Applicant(s): Tal R. & Jennifer D. Trautman
First Last
 Mailing Address: 2170 Old Hwy 95
Jordan Valley Oregon 97910
City State Zip
 Phone: 541-586-2584 208-867-7299 208-867-5995
Home Work Other

PROPERTY DESCRIPTION (attach additional pages if necessary):

County: Malheur Township: 28 S Range: 46 E Section: 24 **RECEIVED BY OWR**
 Tax Lot Number(s): 11230

Street address of water right property: 2170 Old Hwy 95 Jordan Valley, OR 97910

Water Right Information (attach copy of water right permit or certificate & final proof map): 2

SALEM, OR

Application #: 5159 Permit #: 5159 Certificate or Page #: 4999

Will all the lands associated with this water right be owned by the buyer? ☒ Yes ☐ No

Name of individual completing this form: Jennifer Trautman Phone: 541-586-2484

Signature: Jennifer D. Trautman Date: 4-11-17

Please be sure to attach a copy of your property deed or legal description of the property.

Jamara,
Ruby is deceased.
I couldn't find
any address or
phone # for Shirley
in the closing
docs.

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Jan

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SALEM, OR

WARRANTY DEED

FOR VALUE RECEIVED RUBY E. STAPLES and SHIRLEY C. SHAFT, BOTH UNMARRIED PERSONS, EACH AS TO AN UNDIVIDED 1/2 INTEREST AS JOINT TENANTS WITH THE RIGHT OF SURVIVORSHIP

the GrantorS, do hereby grant, bargain, sell and convey unto TAL R. TRAUTMAN and JENNIFER D. TRAUTMAN, HUSBAND AND WIFE

the GranteeS, whose address is 1425 CHICAGO STREET, NAMPA, ID 83686

the following described premises, to-wit:

LAND IN MALHEUR COUNTY, OREGON AS FOLLOWS:
IN TWP. 28 S., R. 46 E., W.M.;
SEC. 24: NE 1/4 SW 1/4 AND SE 1/4 NW 1/4,
EXCEPTING THEREFROM THE NORTH 36 FEET OF THE SE 1/4 NW 1/4 LYING
EAST OF ION HIGHWAY RIGHT OF WAY.
AND ALL THAT PORTION OF THE SW 1/4 NW 1/4 AND NW 1/4 SW 1/4 LYING
AND BEING EAST OF THE COUNTY ROAD RIGHT OF WAY (FORMERLY THE ION
HIGHWAY) AS IT NOW EXISTS.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said GranteeS, THEIR heirs and assigns forever. And the said GrantorS do hereby covenant to and with the said GranteeS, that TheY ARE the ownerS in fee simple of said premises; that said premises are free from all encumbrances; except for general taxes and assessments for the year 2004 and subsequent years, covenants, conditions, restrictions and easements of record; and that TheY will warrant and defend the same from all lawful claims whatsoever.

DATED: October 27, 2004

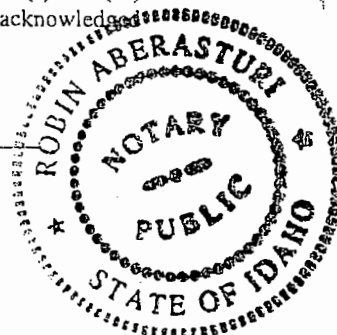
Ruby E. Staples
RUBY E. STAPLES

Shirley C. Shaft
SHIRLEY C. SHAFT

STATE OF IDAHO
COUNTY OF CANYON

On this 30 day of OCTOBER, 2004, before me, a notary public,
personally appeared RUBY E. STAPLES AND SHIRLEY C.
SHAFT, known or identified to me to be the person(s) who(se)
name(s) is/are subscribed to the within instrument and acknowledged
to me that he/she/they executed the same.

Robin Aberasturi
Notary Public
Residing at HOMEDALE, IDAHO
My commission expires: 03-26-2010



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SALEM, OR

STATE OF OREGON

COUNTY OF MALHEUR

CERTIFICATE OF WATER RIGHT

This is to Certify, That Alfred R. Ditton

of Jordan Valley, 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
Spring Branch

a tributary of Cow Creek for the purpose of irrigation and domestic
under Permit No. 5159 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 July 9, 1921;

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
0.25 cubic foot per second.

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

The amount of water used for irrigation, together with the amount secured under any other
right existing for the same lands, shall be limited to one-eightieth of one cubic foot per second per
acre, or its equivalent in case of rotation.

A description of the lands irrigated under the right hereby confirmed, and to which such
right is appurtenant (or, if for other purposes, the place where the water is put to beneficial
use), is as follows: Fifteen (15) acres in the Southeast Quarter of the Northwest
Quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$) and Five (5) acres in the Northeast Quarter of the Southwest
Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section Twenty-four (24), Township Twenty-eight (28) South,
Range Forty-six (46) East of the Willamette Meridian, in Malheur County, Oregon.

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

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

WITNESS the signature of the State Engineer,

affixed this 1st day

of April, 1922.

Rhea Luper,
State Engineer.

CERTIFICATE NO. 4999

* Permit No. 5159

ABSTRACT MADE

APPLICATION FOR A PERMIT

To Appropriate the Public Waters of the State of Oregon

I, Alfred R Ditton
 (Name of Applicant)
 of Jordan Valley, County of Malheur
 (Postoffice)
 State of Oregon, do hereby make application for a permit to appropriate the following described public waters of the State of Oregon subject to existing rights:

If the applicant is a corporation, give date and place of incorporation

1. The source of the proposed appropriation is Spring Branch
 (Name of stream)
 tributary of Cow Creek

2. The amount of water which the applicant intends to apply to beneficial use is $\frac{1}{4}$
 cubic feet per second.

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

4. The point of diversion is located From the $\frac{1}{4}$ sec. corner common to Sec. 13 and 24
 (Give distance and bearing to section corner)
course south 1986 ft. to headgate and point of diversion.

being within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 24, Tp. 28 S
 (Give smallest legal subdivision) (No. N. or S.)
 R. 46 E, W. M., in the county of Malheur
 (No. E. or W.)

5. The Ditch to be each lateral $\frac{1}{4}$ mile long
 (Main ditch, canal or pipe line)
 miles in length, terminating in the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 24, Tp. 28
 (Give smallest legal subdivision) (No. N. or S.)
 R. 46 E, W. M., the proposed location being shown throughout on the accompanying map.
 (No. E. or W.)

6. The name of the ditch, canal or other works is Spring Branch Ditch

DESCRIPTION OF WORKS

DIVERSION WORKS—

7. (a) Height of dam two feet, length on top six feet, length at bottom four feet; material to be used and character of construction plank
 (Loose rock, concrete, masonry, rock and brush, timber crib, etc., wasteway over or around dam)

(b) Description of headgate Plank, one foot opening for each gate
 (Timber, concrete, etc., number and size of openings)

* A different form of application is provided where storage works are contemplated. These forms can be secured without charge, together with instructions, by addressing the State Engineer, Salem, Oregon.

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CANAL SYSTEM—

8. (a) Give dimensions at each point of canal where materially changed in size, stating miles from headgate. At headgate: Width on top (at water line) one feet; width on bottom 3/4 feet; depth of water 1/3 feet; grade four feet fall per one thousand feet.

(b) At 1/4 miles from headgate. Width on top (at water line) one feet; width on bottom 3/4 feet; depth of water 1/3 feet; grade four feet fall per one thousand feet.

FILL IN THE FOLLOWING INFORMATION WHERE THE WATER IS USED FOR:

IRRIGATION—

9. The land to be irrigated has a total area of 20 acres, located in each smallest legal subdivision, as follows:

(Give area of land in each smallest legal subdivision which you intend to irrigate.)

15 A. SE $\frac{1}{4}$ of NW $\frac{1}{4}$ and

5 A. in NE $\frac{1}{4}$ of SW $\frac{1}{4}$ Sec. 24 T 28 S R 46 E.W.M.

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(If more space required, attach separate sheet)

POWER, MINING, MANUFACTURING, OR TRANSPORTATION PURPOSES—

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10. (a) Total amount of power to be developed theoretical horsepower.

(b) Total fall to be utilized feet.

(Head)

(c) The nature of the works by means of which the power is to be developed

(d) Such works to be located in of Sec.

(Legal subdivision)

Tp. (No. N. or S.), R. (No. E. or W.), W. M.

(e) Is water to be returned to any stream? (Yes or No)

(f) If so, name stream and locate point of return

Sec., Tp. (No. N. or S.), R. (No. E. or W.), W. M.

(g) The use to which power is to be applied is

(h) The nature of the mines to be served

MUNICIPAL SUPPLY—

11. To supply the city of
 County, having a present population of, and an
 (Name of)
 estimated population of in 19.....

(Answer questions 12, 13, 14 and 15 in all cases)

12. Estimated cost of proposed works, \$ 100.00
 13. Construction work will begin on or before Sep. 1st, 1921
 14. Construction work will be completed on or before Sixty days
 15. The water will be completely applied to the proposed use on or before
 April 1st, 1922

Duplicate maps of the proposed ditch or other works, prepared in accordance with the rules of the
 State Water Board, accompany this application.

Alfred R Ditton

(Name of applicant)

Signed in the presence of us as witnesses:

- (1) Aaron H (?)
 (Name) (Address of Witness)
 (2)
 (Name) (Address of Witness)

Remarks:

STATE OF OREGON, }
 County of Marion, } ss.

This is to certify that I have examined the foregoing application, together with the accompanying
 maps and data, and return the same for correction or completion, as follows:

In order to retain its priority, this application must be returned to the State Engineer, with correc-
 tions, on or before, 19.....

WITNESS my hand this day of, 19.....

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 State Engineer.

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SALEM, OR

Application No. 7984

Permit No. 5159

PERMITTO APPROPRIATE THE PUBLIC
WATERS OF THE STATE
OF OREGON

District No. _____

This instrument was first received
in the office of the State Engineer at
Salem, Oregon, on the 9th day
of July, 1921,
at 8:30 o'clock A.M.

Returned to applicant for correction

Corrected application received

Approved:
Aug. 12, 1921

Recorded in Book No. 18 of
Permits, on Page 5159

Percy A. Cupper

State Engineer.

1 map RS

\$11.00

STATE OF OREGON, }
County of Marion, } ss.

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This is to certify that I have examined the foregoing application and do hereby grant the same, subject to the following limitations and conditions: If for irrigation, this appropriation shall be limited to one-eightieth of one cubic foot per second, or its equivalent, for each acre irrigated, and shall be subject to such reasonable rotation system as may be ordered by the proper state officer.

The right herein granted is limited to the appropriation of water from Spring
Branch for domestic and irrigation purposes.

The amount of water appropriated shall be limited to the amount which can be applied to beneficial use and not to exceed 0.25 cubic feet per second, or its equivalent in case of rotation. The priority date of this permit is July 9, 1921

Actual construction work shall begin on or before August 12, 1922 and shall thereafter be prosecuted with reasonable diligence and be completed on or before June 1, 1923

Complete application of the water to the proposed use shall be made on or before October 1, 1924

WITNESS my hand this 12th day of August, 1921

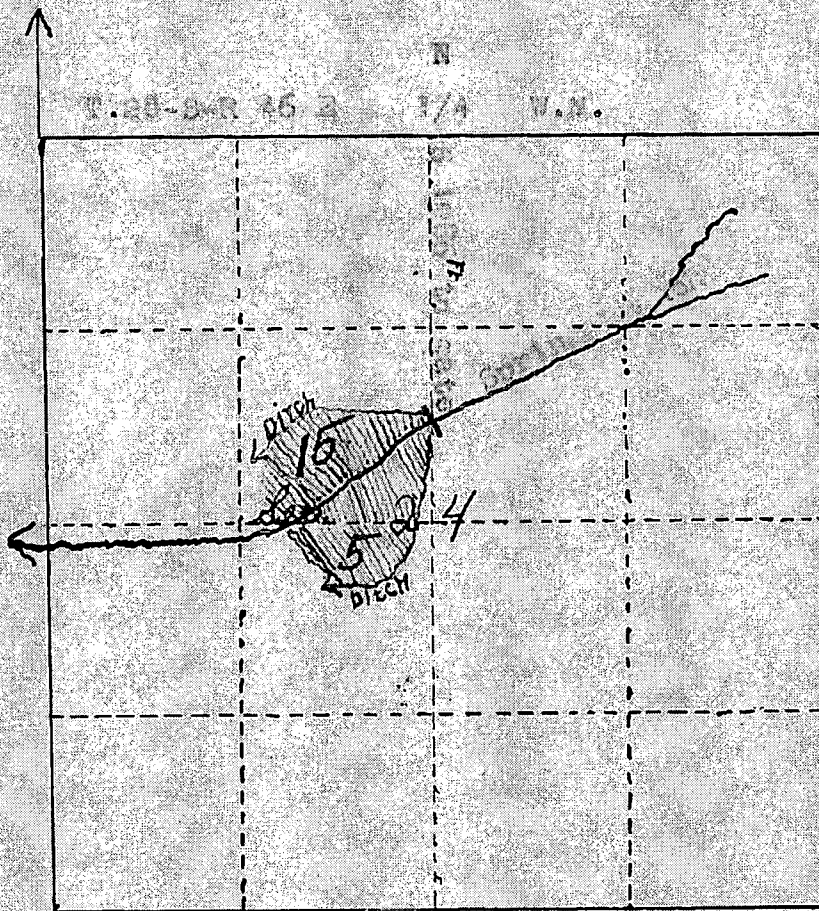
Percy A. Cupper

State Engineer.

Permits for power development are subject to the limitation of franchise as provided in Section 6633, Lord's Oregon Laws, and the payment of annual fees as provided in Chapter 213, Session Laws of 1916.

This form approved by the State Water Board, March 11, 1909.

Application No. 7984
Permit No. 5159



DIRECTOR OF STATE ENGINEER

1. REPORTED

JUL 5 1921

SALEM, OREGON

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SALEM, OR

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON

2 FOR THE COUNTY OF MALHEUR

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3 DANIEL H. HAYLETT,)

APR 17 2017

4 Plaintiff,)

No. 6467-E

SALEM, OR

5 vs.)

FINDINGS, CONCLUSIONS

6 EVERETT LYNN,)

AND DECREE
SALEM, OR

7 Defendant.)

8 This cause coming on regularly to be heard on Motion of the Plain-
9 tiff for Finding and Decree in accordance with the Findings and Opinion of
10 Honorable M. A. Biggs, former Judge of this Court, now deceased, the
11 Plaintiff being represented by Lytle, Schroeder & Denning, and the Defen-
12 dant by Charles W. Swan, Esq., and it appearing to the Court;

13 a. That this is a cause in equity;

14 b. That the cause came on regularly to be heard by the Court
15 without the intervention of a jury, and at the conclusion of the
16 trial each party rested his case;

17 c. That each party submitted a brief on the law and the facts
18 to assist the Court in arriving at its decision;

19 d. That on the 26th day of December, 1956, the Judge of the
20 Court, M. A. Biggs, made and filed a document entitled "Opinion
21 of Court: which determined all the material issues and gave con-
22 clusions of law which directed the decree to be entered herein;

23 e. That the Defendant made no objection to such findings, con-
24 clusions and directions and that the Plaintiff moved for a modifi-
25 cation of the Court's opinion on four separate points;

26 f. That thereafter the said M. A. Biggs died, and did so die
27 before any further action was taken or had in the case;

28 g. That on motion and consent of the Plaintiff the motion for

I'm not sure that
the order of this
document is right.
It appears that
when it was copied
they missed the bottom
of some pages.

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1 in Malheur County, Oregon, described as follows:

2 The East Half ($E\frac{1}{2}$) of Section Twenty-four (24), East
3 Half of the Southeast Quarter ($E\frac{1}{2}SE\frac{1}{4}$) of Section
4 Thirteen (13), Township Twenty-eight (28) South,
5 Range Forty-six (46) E.W.M.; and Lots Three (3) and
6 and Four (4) of Section Eighteen (18), and Lots
7 One (1), Two (2), Three (3), and Four (4) of Section
8 Nineteen (19), Township 28 South, Range Forty-seven
9 (47) E.W.M.;

10 and that two springs are located on said land, the large spring being located
11 in the $SW\frac{1}{4}NE\frac{1}{4}$ of Section 24, T. 28 S. R. 46, E.W.M., and the small or sweet
12 water spring being located in the $NW\frac{1}{4}SE\frac{1}{4}$ of Section 24, T. 28 S. R. 46, E.W.M.

II

13 That defendant Lynn is the owner of the lands and premises situate
14 in Malheur County Oregon, described as follows:

15 Southeast Quarter of Northwest Quarter ($SE\frac{1}{4}NW\frac{1}{4}$)
16 and Northeast Quarter of the Southwest Quarter
17 ($NE\frac{1}{4}SW\frac{1}{4}$) of Section Twenty-four (24) Township
18 Twenty-eight (28) South, Range Forty-six (46)
19 E. W. M.

III

20 That on the 9th day of July, 1921, one Alfred Ditton, a predecessor
21 in interest of Defendant Lynn, filed with the State Engineer of the State of
22 Oregon an application to appropriate one-fourth of a cubic foot of water
23 per second from a spring located in the $SW\frac{1}{4}NE\frac{1}{4}$ of said Section 24, T. 28 S.,
24 R. 46, E. W. M., which is known as the "large spring", and which at that time
25 was Government land; and a further application to construct a dam for a ditch
26 or ditches to carry one-fourth of a cubic foot of water per second to the
27 Ditton land (now belonging to Defendant Lynn), for the purpose of irrigation
28 of 20 acres of the above described Ditton land, and for domestic use.

That permit was issued in accordance with the application and by
virtue thereof the Defendant Lynn has a prior right with a priority date of
July 9, 1921, for $1/4$ c.f.s. from the water of said large spring for the
irrigation of 20 acres in the $SE\frac{1}{4}NW\frac{1}{4}$ and the $NE\frac{1}{4}SW\frac{1}{4}$ of said Section 24,

See attached page
for bottom portion

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Section 24, Township 28 South, Range 46 E. N. 40, and the adjacent lands.

That the water for defendants right flows from the

IV

Township 28 South, Range 46 E. N. 40, and the adjacent lands.

Section of 20 acres in the SW 1/4 of Section 24, Township 28 South,

Range 46 E. N. 40, and the adjacent lands.

July 9, 1921, for 1/4 of Section 24, Township 28 South,

Range 46 E. N. 40, and the adjacent lands.

That the water for defendants right flows from the

Section of 20 acres in the SW 1/4 of Section 24, Township 28 South,

Range 46 E. N. 40, and the adjacent lands.

That the water for defendants right flows from the

Section of 20 acres in the SW 1/4 of Section 24, Township 28 South,

Range 46 E. N. 40, and the adjacent lands.

That the water for defendants right flows from the

Section of 20 acres in the SW 1/4 of Section 24, Township 28 South,

Range 46 E. N. 40, and the adjacent lands.

V

Section of 20 acres in the SW 1/4 of Section 24, Township 28 South,

Range 46 E. N. 40, and the adjacent lands.

That the water for defendants right flows from the

Section of 20 acres in the SW 1/4 of Section 24, Township 28 South,

Range 46 E. N. 40, and the adjacent lands.

That the water for defendants right flows from the

Section of 20 acres in the SW 1/4 of Section 24, Township 28 South,

Range 46 E. N. 40, and the adjacent lands.

That the water for defendants right flows from the

Section of 20 acres in the SW 1/4 of Section 24, Township 28 South,

Range 46 E. N. 40, and the adjacent lands.

That the water for defendants right flows from the

Section of 20 acres in the SW 1/4 of Section 24, Township 28 South,

Range 46 E. N. 40, and the adjacent lands.

That the water for defendants right flows from the

Section of 20 acres in the SW 1/4 of Section 24, Township 28 South,

Range 46 E. N. 40, and the adjacent lands.

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1 judgment and serve the same upon attorney for Defendant; SALEM, OR

2 i. That the "Opinion of Court" with the deletion of the caption,

3 is as follows:

4 "The Plaintiff is the owner of the property described in the
5 Complaint and upon which two springs are located, the large spring in the
6 southwest quarter of the northeast quarter of Section 24, and the sweet water
7 spring in the northwest quarter of the southeast quarter of Section 24, Town-
8 ship 28 South, Range 46 E. W. M.

9 The defendant is the owner of the land described in the Answer,
10 and the only land of the defendant that is pertinent to this case is the south-
11 east quarter of the northwest quarter and the northeast quarter of the south-
12 west quarter of Section 24, Township 28 South, Range 46, E. W. M.

13 Alfred Ditton filed on the land that is described in defendant's
14 answer in December, 1920, and acquired title to said land. On the 9th day of
15 July, 1921, Ditton filed with the State Engineer of the State of Oregon an ap-
16 plication to appropriate one-fourth of a cubic foot of water per second from
17 a spring located in the southwest quarter of the northeast quarter of said
18 Section, Township and Range, which is known as the "large spring", and which
19 at that time was Government land; and a further application to construct a dam
20 for a ditch or ditches to carry one-fourth of a cubic foot of water per second
21 to the Ditton land for the purpose of irrigation of 20 acres of land on the
22 above-described Ditton land, and for domestic use.

23 A permit in accordance with said application was issued on the 12th
24 day of August, 1921, for 1/4 c.f.s. of water for the purpose of irrigating
25 the said 20 acres of land on the Ditton property. Ditton thereafter construc-
26 ted a ditch and a small dam and fenced the large spring and applied water to
27 his land under the permit, and the use of said water has continued for each
28 and every year since that time. However, the testimony shows that at the
present time Lynn is irrigating a larger portion of land than was originally
allowed under the permit, the amount under irrigation at the present time
being approximately 40 acres.

On the 28th day of August, 1926, Daniel H. Haylett secured title
to the land described in his Complaint by a patent from the Government of the
United States of America. However, the patent which he obtained from the
Government contains this restriction or reservation;

"subject to any vested and accrued water rights for mining,
agricultural, manufacturing or other purposes, and rights
to ditches and reservoirs used in connection with such
water rights as may be recognized and acknowledged by the
local customs, laws and the decisions of the courts, and
there is reserved from the lands hereby granted a right-
of-way thereon for ditches or canals constructed by the
authority of the United States."

The plaintiff has never made any application to the State Engineer
of the State of Oregon for a water right, but has used the lands for pastur-
ing and grazing purposes, and a certain amount of water is necessary for the
There seems to have been no difficulty

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1 swampy, muddy, marshy place in the ground from which it seems that at a
2 number of places the water seeps up. It is necessary, to get the full
3 benefit of that water, that the spring be cleaned out and that the water
be directed to a certain channel or ditch, and for that reason the spring
was cleaned out in 1939 by the defendant in this case.

4 Then in 1947 Lynn did a very large amount of work on the big spring.
5 He put a tight horse and cattle fence around it, and put in the dams and
6 headgates that were greater than the works that were allowed in the permit
for the application of water and for the ditch and the dams.

7 The record seems to be silent as to what the flow of water from the
8 spring was, except that on the 27th day of November, 1955, Melvin Davenport,
9 a professional registered engineer, made a measurement of the water and found
that it was flowing 225 gallons of water per minute, which is approximately
one-half of one cubic foot per second.

10 Ditton filed on one-fourth of one cubic foot per second in 1921, and
11 at that time had an acreage much larger that could have been subjected to
12 the application of water, and it would be reasonable for a court to conclude
13 that since there was available irrigable land the Applicant would apply for
the full flow of the spring, and that probably in 1921 one-fourth of one cubic
foot per second of water was the extent of the flow from the spring. After
the development of the spring by Lynn, the water has been increased to
practically double the amount of the flow originally from the spring.

14 There was testimony in this case that prior to the time that the
15 fence was put around this spring by Lynn, stock had mired in this swampy
16 parcel of ground, and that on one or more occasions it had been necessary
to drag livestock out from around the spring.

17 For that reason, some protection should be made against livestock
18 getting into the spring, for two reasons: First, livestock would greatly
impede and diminish the flow of the spring, and, secondly, to lessen the
danger of livestock falling in.

19 The dam and headgates are much larger than were allowed in the
20 application for the diversion of water from the State Engineer, and the flow
of this water, due to the headgate and dam, has probably deprived the
plaintiff of the benefit of some of the water.

21 Therefore, the Court finds that the Defendant is entitled to the use
22 of one-fourth of one cubic foot per second of water from the big spring
23 for the irrigation of a 20 acre tract of land, and that is the limit of the
use of water that he may make from the spring.

24 The record shows that there must be another one-fourth cubic foot
25 per second of water flowing from the spring. Therefore, none of the
26 works of the defendant shall interfere with that continuous flow for the
benefit of the plaintiff for watering his livestock and use for domestic pur-
27 poses. So whatever the condition or quantity of that water flowing from the
spring is, the defendant is not entitled to more than one-fourth of a cubic
28 foot per second, and the balance of the water shall be made available to the
plaintiff for stock watering purposes at all times.

EXHIBIT 2 It appears that the ditch from the big

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1 properties of the plaintiff, and I am therefore going to allow a nominal
2 damage of \$250 to the plaintiff.

3 The water from the sweet water spring has been used either by the
4 defendant or his predecessor in interest from the time that the residence
5 was taken up on the defendant's land. There is testimony in this case
6 that until the development was made of the water from the sweet water
7 spring, there was practically no flow, and that the defendant or his prede-
8 cessor in interest developed the spring and made use of it.

9 There is some testimony in this case--rather weak--of consent by
10 Mr. Haylett to the defendant Lynn to use this water for domestic purposes,
11 which is denied by Mrs. Haylett. Nevertheless, the water has been used
12 over a long period of time. From the briefs it does not appear to the
13 Court that there would be too much contention over this water from the sweet
14 water spring if the defendant used just the amount necessary for his domes-
15 tic purposes and permitted the other to flow upon the plaintiff's land.

16 The defendant has not acquired a right to the use of the water from
17 the small spring by reason of adverse use, because no right can be so ac-
18 quired. But where consent has been given for the use of water, or an oral
19 license, then that may ripen into a perpetual license, where a large amount
20 of work has been done and expense has been incurred, with the knowledge of
21 the adverse party.

22 Now, from the testimony in this case there is no question but what
23 the plaintiff knew that the defendant had been using this water for a long
24 period of time for domestic purposes, and that the defendant has incurred
25 quite a considerable expense in making improvements.

26 The Court is going to hold that the defendant shall have the use of
27 a sufficient amount of water from the small spring for domestic purposes,
28 but that he shall provide a proper outlet for the water not so used to run
unimpeded upon the plaintiff's land.

Quite extensive briefs have been filed by both plaintiff and defendant
in this case. I have gone through these briefs numerous times and have read
most of the authorities cited. My conclusions have been drawn from my
interpretation of the facts in the case and of the authorities that have been
cited by counsel for both sides.

Plaintiff will recover costs and disbursements.

Plaintiff's attorney is hereby requested to prepare a proposed
decree in accordance with this opinion.

DONE AND DATED in Chambers at Ontario, Oregon, this 29th day of
December, A. D., 1936.

/s/ M. A. BIGGS
Circuit Judge"

and;

The Court hereby confirms and adopts the findings and conclusions

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1 defendant's ditch along the West boundary line of the plaintiff, the course
2 of which is South immediately East of plaintiff's West boundary line. That
3 defendant may take his water, as it leaves the spring, into the ditch last
4 described or he may divert his water, as it leaves the spring, into his
5 North ditch by means of a gate located in the natural channel immediately
6 below the barrier surrounding said spring. That defendant may go upon
7 plaintiff's land for the sole purpose of performing the necessary work of
8 maintaining his ditches, cleaning out the spring, and maintaining the barrier
9 around the spring area as now in place, and that none of said works shall
10 obstruct the free and continuous flow of the water from the big spring.

V

11
12 That defendant shall have an irrevocable license to conduct water
13 from the sweet water spring through a pipeline of the size existing at the
14 time of the former Opinion of the Court, and now existing, for water solely
15 for domestic purposes, and that defendant shall provide a proper outlet for
16 the water not so used to run unimpeded upon the plaintiff's land. That
17 defendant may go upon plaintiff's land in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 24, T. 28 S.
18 R. 46, E. W. M. along his pipeline and to the head works of the sweet water
19 spring for the purpose of maintaining said pipeline and head works and
20 cleaning said spring and for making such alteration of his head works as
21 may be necessary to comply with the provisions of this Decree, and defendant
22 should not unnecessarily waste the water from said spring into outlets of
23 his pipeline; and

24 The Court being now advised in the premises;

25 IT IS HEREBY CONSIDERED, ORDERED AND DECREED as follows:

- 26 1. That the equities are with the Plaintiff Haylett.
27 2. That the Plaintiff Haylett is the owner of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of
28 Section 24, T. 28 S., R. 46, E. W. M., upon which is situate a spring

See attached page
for bottom portion

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1 defendant's ditch along the West boundary line of the plaintiff, the course
2 of which is South immediately East of plaintiff's West boundary line. That
3 defendant may take his water, as it leaves the spring, into the ditch last
4 described or he may divert his water, as it leaves the spring, into his
5 North ditch by means of a gate located in the natural channel immediately
6 below the barrier surrounding said spring. That defendant may go upon
7 plaintiff's land for the sole purpose of performing the necessary work of
8 maintaining his ditches, cleaning out the spring, and maintaining the barrier
9 around the spring area as now in place, and that none of said work shall
10 obstruct the free and continuous flow of the water from the big spring.

11
12 That defendant shall have an irrevocable license to conduct water
13 from the sweet water spring through a pipeline of the size existing at the
14 time of the former Opinion of the Court, and now existing, for water to be
15 for domestic purposes, and that defendant shall provide a proper outlet for
16 the water not so used to run unimpeded upon the plaintiff's land. That
17 defendant may go upon plaintiff's land in the NW 1/4 SE 1/4 of Section 24, T. 28 S.,
18 R. 46, E. 4 M., along his pipeline and to the head works of the sweet water
19 spring for the purpose of maintaining said pipeline and head works and
20 cleaning said spring and for making such alterations of his head works as
21 may be necessary to comply with the provisions of this Decree, and in doing
22 should not unnecessarily waste the water from said spring into either of
23 his pipelines; and

24 The Court being now advised in the premises:

25 THIS HEREBY CONSIDERED, ORDERED AND DECREED as follows:

- 26 1. That the equities are with the Plaintiff Haylett.
- 27 2. That the Plaintiff Haylett is the owner of the SW 1/4 NW 1/4 of
- 28 Section 24, T. 28 S., R. 46, E. 4 M., upon which is situate a spring
- 29 known as the "large spring", and is the owner of the NW 1/4 SE 1/4 of Section 24,
- 30 T. 28 S., R. 46, E. 4 M., upon which is situate a spring which is known as
- 31 the "small or sweet water spring".
- 32 3. That Defendant Lyon is the owner of a water right in the

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1 large spring in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 24, T. 28 S., R. 46, E. W. M., for
2 one-fourth cubic foot per second of water, continuous flow, for the irrigation
3 of 20 acres of land in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 24, T. 28 S., R. 46,
4 E. W. M. and for domestic use, with priority date of July 9, 1921, and that
5 such right is prior and superior to any right of the Plaintiff Haylett
6 therein and Defendant Lynn is the owner of a certain irrigation ditch run-
7 ning from the spring to the West line of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 24 and
8 from thence running South within and along said West line, and is also the
9 owner of a North ditch running from a point immediately below the barrier
10 of said spring in a Northwesterly direction to the West line of the SW $\frac{1}{4}$ NE $\frac{1}{4}$
11 of said Section 24, as now in place on the land.

12 4. That Defendant Lynn shall have the right to go upon said
13 SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 24 along said ditches and to the spring area to
14 maintain said ditches, and to clean out said spring, and to maintain the
15 stock proof fence now surrounding the spring area and not restricting
16 Plaintiff Haylett access to said spring.

17 5. That Defendant Lynn shall have a license to take water for
18 domestic purposes only, and without unnecessary waste, from the small or
19 sweet water spring on the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 24 through the pipeline,
20 now in place, leading from said spring to Defendant Lynn's residence, or
21 through any pipeline of not to exceed the capacity of the present pipeline
22 necessarily installed to replace the present line, with the right to go upon
23 Plaintiff Haylett's land in the immediate line of the present pipeline to
24 do the necessary work of maintenance of said spring and pipeline. That
25 Defendant shall within 60 days of this decree make such changes and alteration
26 in the headwork of the small spring so that all water from said spring in
27 excess of such reasonable domestic use within the capacity of said pipeline,
28 shall flow unimpeded from said spring onto the land of Plaintiff Haylett, or,

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1 at all times keep said trough full for livestock use.

2 6. That Defendant Lynn is enjoined and restrained from installing
3 or maintaining any works at the large spring so as to restrict or prevent the
4 constant free flow of the water of said spring to the head of Defendant Lynn's
5 ditches with the excess flowing onto Plaintiff Haylett's land for Plaintiff
6 Haylett's domestic and livestock use.

7 7. That Defendant Lynn is enjoined and restrained from taking
8 any water from the small or sweet water spring except as provided in
9 paragraph 5 of this decree.

10 8. That Defendant Lynn is enjoined and restrained from tres-
11 passing or being upon Plaintiff Haylett's land except as hereinabove
12 provided.

13 9. The Plaintiff Haylett is enjoined and restrained from doing
14 any act or thing, the result of which would prevent the flow of one-fourth
15 cubic feet per second from the large spring to the head of Defendant Lynn's
16 ditches or to prevent the Defendant Lynn from maintaining said ditches or his
17 access to said spring to care for, maintain, or clean out the source or
18 to do any act or thing to prevent Defendant Lynn's use of the water of the
19 small spring as in this decree provided.

20 10. The Plaintiff Haylett is hereby granted judgment against the
21 Defendant Lynn in the sum of \$250.00 and for his costs and disbursements
22 herein, to be taxed by the clerk, in the sum of \$ _____.

23 Done and dated this _____ day of September, 1962.

24
25
26 _____
Circuit Judge
27
28