

STATE OF OREGON  
COUNTY OF COOS  
PROPOSED CERTIFICATE OF WATER RIGHT

OK  
Having  
Cert  
[Signature]

THIS CERTIFICATE ISSUED TO

~~ROBERT AND GAIL SPRAGUE, JR.~~ ~~C/O SHELIA JENKINS~~ RICHARD AND DONNA RAYBORN  
ROUTE 2, BOX 560  
BANDON, OREGON 97411

confirms the right to use the waters of AN UNNAMED STREAM, a tributary of BEAR CREEK, for DOMESTIC USE FOR ONE FAMILY.

This right was perfected under Permit 41466. The date of priority is FEBRUARY 8, 1977. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.005 CUBIC FOOT PER SECOND, or its equivalent in case of rotation, measured at the point of diversion from the source.

The point of diversion is located as follows:

SE 1/4 NE 1/4, SECTION 27, T 28 S, R 14 W, W.M.; 1920 FEET SOUTH AND 1480 FEET EAST FROM THE NORTH QUARTER CORNER OF SECTION 27.

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

A description of the place of use to which this right is appurtenant is as follows:

SW 1/4 SE 1/4  
SECTION 22  
TOWNSHIP 28 SOUTH, RANGE 14 WEST, W.M.

THIS CERTIFICATE IS ISSUED TO CORRECTLY DESCRIBE THE SOURCE OF THE APPROPRIATION AS "AN UNNAMED STREAM, TRIBUTARY TO BEAR CREEK", AND THE POINT OF DIVERSION AS BEING AT THE CONCRETE BLOCK DAM AS PROVIDED BY SPECIAL ORDER, RECORDED IN VOLUME 43, PAGES 312 THROUGH 318, SPECIAL ORDER RECORDS OF THE WATER RESOURCES DEPARTMENT.

The right to the use of the water for the above purpose is restricted to beneficial use on the lands or place of use described. The use confirmed herein may be made only at times when sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows.



# Oregon

John A. Kitzhaber, M.D., Governor

## Water Resources Department

Commerce Building  
158 12th Street NE  
Salem, OR 97310-0210  
(503) 378-3739  
FAX (503) 378-8130

July 15, 1998

RICHARD & DONNA RAYBURN  
RT 2 BOX 560  
BANDON OR 97411

REFERENCE: File 55205

The assignment by deed of Permit 41466 to you has been recorded in the records of the Water Resources Department. Our records have been changed accordingly and the original assignment is enclosed.

Sincerely,

Dallas S. Miller  
Water Rights Specialist

DSM:jh

enclosure

cc: John Drolet, Watermaster  
Sue DeHaas, Grants Pass Office

**STATE OF OREGON  
WATER RESOURCES DEPARTMENT**

RECEIPT # **22413**

158 12TH ST. N.E.  
SALEM, OR 97310-0210  
378-8455 / 378-8130 (FAX)

APPLICATION # \_\_\_\_\_  
PERMIT # \_\_\_\_\_  
TRANSFER # \_\_\_\_\_

RECEIVED FROM: Richard Rayburn  
BY: \_\_\_\_\_

APPLICATION	55-205
PERMIT	
TRANSFER	

CASH:  CHECK: #  96-292 OTHER: (IDENTIFY)

TOTAL REC'D \$ 35.00

**0417 WRD MISC CASH ACCT**

ADJUDICATIONS	\$
PUBLICATIONS / MAPS	\$
OTHER: (IDENTIFY)	\$
OTHER: (IDENTIFY)	\$

**REDUCTION OF EXPENSE**

CASH ACCT.	\$
VOUCHER #	

**0427 WRD OPERATING ACCT**

MISCELLANEOUS		\$
0407 COPY & TAPE FEES		\$
0410 RESEARCH FEES		\$
0408 MISC REVENUE: (IDENTIFY)		\$ 35.00
(New) TC165 DEPOSIT LIAB. (IDENTIFY)		\$

*PCA # 66111  
Assignment*

(Existing) TC168	<b>WATER RIGHTS:</b>	<b>EXAM FEE</b>	<b>RECORD FEE</b>
0201 SURFACE WATER		\$	0202 \$
0203 GROUND WATER		\$	0204 \$
0205 TRANSFER		\$	0206 \$
	<b>WELL CONSTRUCTION</b>	<b>EXAM FEE</b>	<b>LICENSE FEE</b>
0218 WELL DRILL CONSTRUCTOR		\$	0219 \$
	LANDOWNER'S PERMIT		0220 \$
OTHER (IDENTIFY)			

**0437 WELL CONST. START FEE**

0211 WELL CONST START FEE	\$	CARD #	
0210 MONITORING WELLS	\$	CARD #	
OTHER (IDENTIFY)			

**0539 LOTTERY PROCEEDS**

1302 LOTTERY PROCEEDS	\$
-----------------------	----

**0467 HYDRO ACTIVITY**

0233 POWER LICENSE FEE (FW/WRD)	LIC NUMBER	\$
0231 HYDRO LICENSE FEE (FW/WRD)		\$
HRDRO APPLICATION		\$

RECEIPT # **22413**

DATED: 6-30-98 BY: M. Marko



RECEIVED

JUN 30 1998

REQUEST FOR ASSIGNMENT

WATER RESOURCES DEPT.  
SALEM, OREGON

I, (permit holder, applicant) Richard D. & Donna S. Rayburn  
Rt.2 Box 560 Bandon, Or. 97411 (541) 347-5121  
(mailing address) (city) (state) (zip) (phone)

CHECK ONE

- hereby assign all my interest in and to application/permit;

[ ] - hereby assign all my interest in and to a portion of application/permit (include a map showing portion of application assigned);

[ ] - hereby assign a portion of my interest in and to the entire application/permit;

Application # 55205, Permit # 41466;  
OR GR Statement # \_\_\_\_\_, GR Certificate of Registration # \_\_\_\_\_  
as filed in the office of the Water Resources Director, to:

Richard D. & Donna S. Rayburn  
(name of new owner)

Rt.2 Box 560 Bandon, OR. 97411 (541) 347-5121  
(address) (city) (state) (zip) (phone)

(Note: If there are other owners of the property described in this Application, Permit of Certificate of Groundwater Registration you must attach a list of their names and addresses to this form.)

I hereby certify that I have notified all other owners of the property described in this Application, Permit or Certificate of Registration of this request for assignment.

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_  
applicant/permit holder Richard D. Rayburn  
applicant/permit holder Donna S. Rayburn

DO NOT WRITE IN THIS BOX

STATE OF OREGON, )  
                          ) ss  
County of Marion. )  
I certify that the within was  
received by me on the 30th day of  
June, 1998, at 8 o'clock  
A. m., and was recorded in the  
Miscellaneous Records, Vol. 8  
Page 212  
Water Resources Director

The completed assignment must be submitted to the Water Resources Department together with a recording fee of \$25. Additional pages will cost \$5 per page.

WATER RESOURCES DEPARTMENT  
158 12TH STREET NE  
SALEM, OREGON 97310-0210

OK  
DSM



96 07 0847

WARRANTY DEED

SUZANNE P. DAVIS, Grantor, conveys and warrants to RICHARD D. RAYBURN and DONNA S. RAYBURN, Husband and wife as tenants by the entirety; Grantee, the following described real property, together with appurtenances, free of encumbrances except as specifically set forth herein, situated in COOS COUNTY, STATE OF OREGON:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

SUBJECT TO: Real property and/or mobile home taxes for 1996/97, which are a lien but not yet payable.

The true consideration paid for this conveyance is NINETY THOUSAND AND 00/100 (\$90,000.00). ( ) However, the whole consideration includes other value given or promised (check if other consideration statement applies).

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.

Dated this 16 day of July 1996.

[Signature of Suzanne P. Davis]

SUZANNE P. DAVIS

STATE OF OREGON )
County of Jackson ) ss.

RECEIVED

JUN 30 1998

WATER RESOURCES DEPT. SALEM, OREGON

This instrument was acknowledged before me on the 16 day of July 1996 by SUZANNE P. DAVIS



[Signature of Diane Del Carlo]
Notary Public for Oregon
My commission expires: 7-14-99

Until a change is requested, send all tax statements to:

Richard D. Rayburn
Rt. 2 Box 560
Bandon OR 97411
Return documents to:

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

I certify that the within was received by me on the 30th day of June, 1998, at 8 o'clock A.M., and was recorded in the Miscellaneous Records, Vol. 8 Page 213

Water Resources Director

FIRST AMERICAN TITLE OF WILLAMETTE VALLEY

RECORDING #

96070847

I, Mary Ann Wilson, Coos County Clerk, certify the within instrument was filed for record at



2:45 ON 07/19/1996 M. WILSON

By Deputy

# pages 2 Fee \$ 38.00

96 07 0847

Exhibit "A"

Commencing at the one-half mile stake between Section 22 and 27, Township 28 South, Range 14 West of the Willamette Meridian, Coos County, Oregon, thence North 26 rods to a stake as the place of beginning; thence 13 rods East; thence 13 rods North, thence 13 rods West; thence 13 rods South to beginning.

Account No. 9736.70, Map 28-14-22 TL 1400.

**RECEIVED**

JUN 30 1998

WATER RESOURCES DEPT.  
SALEM, OREGON

STATE OF OREGON, )

) ss

County of Marion. )

I certify that the within was received by me on the 30th day of June, 1998, at 8 o'clock

A m., and was recorded in the Miscellaneous Records, Vol. 8

Page 214

Water Resources Director



# Oregon

John A. Kitzhaber, M.D., Governor

## Water Resources Department

Commerce Building  
158 12th Street NE  
Salem, OR 97310-0210  
(503) 378-3739  
FAX (503) 378-8130

July 14, 1998

RICHARD AND DONNA RAYBURN  
RT 2, BOX 560  
BANDON, OR 97411

REFERENCE: File 55205

Dear Permittee:

You can disregard our letter of 7/8/98 advising you we could not entirely assign permit 41466 because the diversion is not on your property. Since the place of use is entirely on your property we can do the assignment. We will send you a letter informing you when the assignment is completed.

If you have questions please contact me at the address below or phone (503)378-3739 ext. 272.

Sincerely,

Dallas Miller  
Water Rights Specialist

cc: Watermaster, District 19





# Oregon

John A. Kitzhaber, M.D., Governor

## Water Resources Department

Commerce Building  
158 12th Street NE  
Salem, OR 97310-0210  
(503) 378-3739  
FAX (503) 378-8130

July 8, 1998

RICHARD AND DONNA RAYBURN  
RT 2, BOX 560  
BANDON, OR 97411

REFERENCE: File 55205

Dear Permittee:

Regarding your request for assignment of permit 41466, according to the deed you submitted, only the place of use on the permit is owned by you. The spring is not located on the property deeded to you. We can do a partial assignment to you, but who owns the property under the spring? I would like to get the correct names of all the owners of property under this permit, so we can issue a certificate with the correct names.

Enclosed is receipt 22413 for the \$ 35 recording fee submitted. If you have questions please contact me at the address below or phone (503)378-3739 ext. 272.

Sincerely,

Dallas Miller  
Water Rights Specialist

cc: Watermaster, District 19

554  
41466

BEFORE THE WATER RESOURCES DEPARTMENT OF OREGON

IN THE MATTER OF CONTESTED WATER	)	PIC-1
RIGHT CERTIFICATE 59065 IN THE	)	STATEMENT, FINDINGS OF
NAMES OF ROBERT SPRAGUE, JR., &	)	FACT, CONCLUSIONS OF LAW,
GAIL SPRAGUE C/O SHELIA JENKINS	)	OPINION AND PROPOSED ORDER

STATEMENT

This proceeding was initiated by the filing of a protest against the issuance of the Water Right Certificate numbered 59065, pursuant to the provisions of ORS 537.260(3).

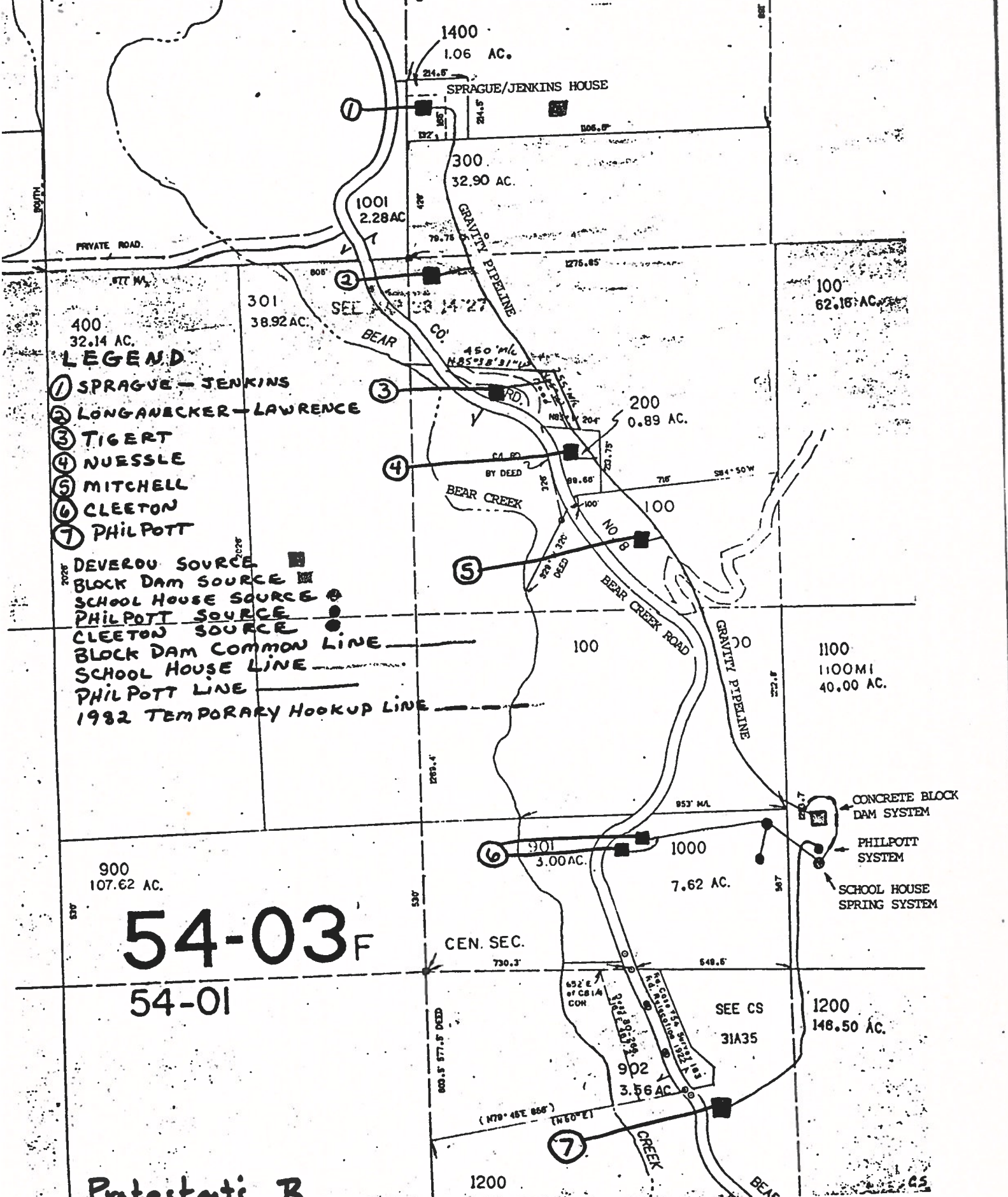
The Water Right Certificate numbered 59065 was issued on December 29, 1988, in the names of Robert Sprague, Jr., and Gail Sprague c/o Shelia Jenkins. The certificate describes a right to appropriate not to exceed 0.005 cubic foot per second of water from a spring, a tributary of Bear Creek, for the purpose of domestic use for one family within the SW 1/4 SE 1/4 of Section 22, Township 28 South, Range 14 West, WM, Coos County, Oregon, under a date of priority of February 8, 1977. The point of diversion is described as being located 2050 feet south and 1540 feet east from the North Quarter-Corner of Section 27, within the SE 1/4 NE 1/4 of Section 27, Township 28 South, Range 14 West, WM. The certificate states, "The right has been perfected under Permit 41466." (Exhibit WRD-4)

On February 21, 1989, Harold Cleeton, Jennifer Cleeton and Sambra Mitchell jointly filed a protest and contest against the issuance of Water Right Certificate 59065. Proof of service was served on Shelia Jenkins, current owner of the real property to which the water right described by the said certificate is appurtenant. In the filed documents it is alleged that the water right described by the subject certificate was not established by performance under the provisions of Water Right Permit 41466.

Pursuant to the Director's notice of hearing dated April \_\_, 1989, the matter was brought to a contested case hearing in Bandon, Oregon, on June 13, 1989. The hearing was held before James W. Carver, Jr., a contract employe of the Water Resources Department, authorized to preside in behalf of the Director as a finder of fact.

As set out in the notice of hearing, the issue to be determined is whether the water right described by Certificate of Water Right numbered 59065 was or was not established by performance under the provisions of Permit 41466. (Exhibit WRD-6)

Shelia Jenkins, owner of the property described as the place of use under Water Right Certificate 59065, was present at the hearing and was represented by Jerry O. Lesan, Attorney at Law, Coos Bay, Oregon. Contestants Harold Cleeton, Jennifer Cleeton and Sambra Mitchell were are present at the hearing. Jennifer Cleeton served as the spokesperson for the three of them.



**LEGEND**

- ① SPRAGUE - JENKINS
- ② LONGANECKER - LAWRENCE
- ③ TIGERT
- ④ NUESSE
- ⑤ MITCHELL
- ⑥ CLEETON
- ⑦ PHILPOTT

- DEVEROU SOURCE
- BLOCK DAM SOURCE
- SCHOOL HOUSE SOURCE
- PHILPOTT SOURCE
- CLEETON SOURCE
- BLOCK DAM COMMON LINE
- SCHOOL HOUSE LINE
- PHILPOTT LINE
- 1982 TEMPORARY HOOKUP LINE

900  
107.62 AC.

**54-03<sub>F</sub>**

54-01

Protestants B.

(Figure 1)



The relative locations of certain water system developments referred to herein as the School House Spring system, the concrete block dam and tank system, the Philpott system, and the gravity pipeline system, and the approximate locations of the Sprague/Jenkins residence, Bear Creek and Bear Creek Road are illustrated on Figure 1 which is a xerographic reduction of Protestants' Exhibit B, with the addition of certain indentifying labels.

#### FINDINGS OF FACT

The hearing record established the following chronology of events concerning use of water from the spring described by Water Right Certificate 59065 as the source of appropriation:

1. Water Right Certificate 7650, issued in the name of School District No. 11, describes a right established under Permit 8385 (Application 11983) for use of water from an unnamed spring located North 72 degrees, 5 minutes East, a distance of 1530 feet from the Center Corner of Section 27, Township 28 South, Range 14 West, WM, for "School purposes" within the SW 1/4 SE 1/4 of Section 22 of said township and range, under a date of priority of March 14, 1928. It appears from the record that the said unnamed spring is the same spring as the one referred to in this proceeding as "School House Spring." (See Exhibit WRD-7)
2. In 1973, the school house and associated property were no longer being used for school purposes. The property had come into private ownership and the school house had been converted into a residence. The residence was being served with water from the School House Spring by means of a gravity pipeline system. There was also a second residence on the property, near the converted school house.
3. In August of 1975, Robert G. Sprague, Jr., and Gail Sprague, then husband and wife, purchased and moved onto the property. They obtained water for their domestic use from the School House Spring through the gravity pipeline system. Several other properties were also being served with water for domestic use through the same system. (Protestants' Exhibit B)
4. The school house building which had been converted to a residence burned down about 1981 and was not replaced.
5. By early 1977, the flow from School House Spring had diminished and was no longer adequate to meet the domestic water needs of the several users being served through the gravity pipeline system.  
  
Several of the users agreed to develop the water available at a site about 300 feet north of the School House Spring. The new, proposed site was where a gully that extended to the north from School House Spring joined with a gully coming down from the east.
6. About February-March of 1977, construction was begun on a concrete block dam that would intercept water at the location where the said two gullies come together, and on a concrete block tank located a short distance to the north of the dam. (Protestants' Exhibit A)

7. On February 8, 1977, Robert G. Sprague, Jr., and Gail F. Sprague filed Application 55205 for a permit to appropriate water available at the concrete block dam, point of diversion #1, within the SE 1/4 NE 1/4 of Section 27, Township 28 South, Range 14 West, WM, for their continued domestic use. The application also proposed possible appropriation of supplemental (additional) water for the same purpose from a spring located within the SW 1/4 SE 1/4 of Section 22 of the same township and range, point of diversion #2.

The testimony of Robert G. Sprague, Jr., established that although the Application 55205 described the proposed source at point of diversion #1 as an unnamed spring it was the applicants' intent that the source of appropriation at point of diversion #1 was the water flow intercepted by the concrete block dam.

8. When the concrete block dam and tank were completed and operating later in 1977, the gravity pipeline system was disconnected from the School House Spring development and was connected to the block dam development only.

Testimony established that most of the water flow intercepted by the concrete block dam came from the gully from the east. A lesser portion of the intercepted flow came from the gully from the south which received any excess flow from School House Spring. Witnesses could not recall any specific measurement of the flows.

9. Testimony established that no water was appropriated for use under the terms of Permit 41466, from the unnamed spring described by Application 59065 as the proposed point of diversion #2.
10. The block dam development continued to serve as the only source of water for the gravity pipeline system serving water to the Sprague residence together with other residences.
11. Shortly after completion of the concrete block dam and tank system in 1977, Harold Cleeton determined that the new system was not suitable for obtaining domestic water by means of gravity flow to his residence. He removed himself from the concrete block dam and tank system and rebuilt the School House Spring Development to serve as his source of domestic water.
12. In about 1980 or 1981 the Philpott domestic water intake system was constructed to develop water from beneath the ground surface in the gully north of School House Spring, between the School House Spring and the concrete block dam. The said Philpott development replaced a prior system that had not been operational since about 1960. (Protestants' Exhibit A)
13. The concrete block dam and tank system had continuing operational and maintenance problems from the time of its construction in 1977 until late 1982. Most of the maintenance work was done by Harold Cleeton, even though he was not receiving water for his use through that system.
14. By late 1982, the flow of water obtained by the concrete block dam system had diminished to the point that it was no longer adequate to meet the needs of the users on the gravity pipeline system.



15. On December 25, 1982, Harold Cleeton, one of the protestants, made a "temporary" pipeline connection from the School House Spring system to the gravity pipeline system immediately below the outlet from the concrete block tank. With this connection, the School House Spring again served as the source of water for the several users served through the gravity pipeline system. (See line A-B on Protestants' Exhibit A)
16. The said "temporary" pipeline connection, A-B, has continued in operation to the present time.
17. On October 31, 1983, Lynn Cashion, a water rights examiner for the Water Resources Department, was on site to inspect the performance of works under Permit 41466. Robert G. Sprague, Jr., guided Ms. Cashion to the School House Spring system as the source of water for the appropriation.
18. On October 13, 1983, Robert G. Sprague, Jr., wrote a letter to the Water Resources Department, including the statement, "At this meeting I happen to see an old map of the school house spring, while comparing it with my application for water rights on the same spring I noticed that my location was off a little. I just wanted to let you know that my intention was to file on the school house spring. . . My permit is 41466."

Testimony clearly established that Mr. Sprague's original intent was to file on the water flow intercepted by the concrete block dam at the junction of the two gullies illustrated on Protestants' Exhibit A.

Mr. Sprague admitted, under oath, that his statement that his intention was to file on the school house spring was not a true statement.

19. Gail Sprague, former wife of Robert G. Sprague, Jr., became sole owner of the Sprague property through a dissolution of marriage proceeding and subsequently sold the property to the current owner, Shelia Jenkins. The record does not establish the date Shelia Jenkins gained possession of the property.

#### ULTIMATE FINDINGS OF FACT

When Application 55205 was filed by Robert G. Sprague, Jr., and Gail Sprague it was for a permit for appropriation of not to exceed 0.005 cubic foot per second of water under a date of priority of February 8, 1977, from water flow intercepted by the above described concrete block dam for domestic use for one family. The application also proposed possible appropriation of supplemental (additional) water for the same purpose from a spring located within the SW 1/4 SE 1/4 of Section 27, Township 28 South, Range 14 West, WM.

Water Right Permit 41466, issued by James E. Sexson, Water Resources Director, on April 27, 1977 to Robert G. Sprague, Jr., and Gail Sprague, provides: "This is to certify that I have examined the foregoing application and do hereby grant the same, subject to existing rights and the following limitations and conditions: . . ." Under the provisions of ORS chapter 537 in 1977, the Water Resources Director's authority extended only to the denial or the approval, subject to limitations and conditions, of the application properly before him.

*How is finding this made?*



Permit 41466 did authorize the appropriation of 0.005 cubic foot per second of water under a date of priority of February 8, 1977, from water flow intercepted by the above described concrete block dam at the junction of the two unnamed gullies, for domestic use for one family. The conditions of the permit required that "[a]ctual construction work shall begin on or before April 27, 1978, and shall thereafter be prosecuted with reasonable diligence and be completed on or before October 1, 1978. Complete application of the water to the proposed use shall be made on or before October 1, 1979.

The authorized appropriation of water from the flow intercepted by the above described concrete block dam and application of the water to beneficial use under the terms of the permit was accomplished within the times allowed by the permit.

The record is clear that the said established appropriation of water to beneficial use under the terms of the Permit 41466, by diversion of the water at the location of the block dam, continued until December of 1982.

#### CONCLUSIONS OF LAW

Pursuant to ORS 537.211, water was appropriated to beneficial use under the terms of Permit 41466 from the source and at the point of diversion (point of diversion No. 1) in the manner intended by the applicants when they completed and filed Application 55205.

An undetermined portion of the water flow intercepted by the concrete block dam was the same water as available by diversion directly at the spring known as School House Spring. Therefore, diversion of water at the School House Spring as a result of an unauthorized change in point of diversion did not work a forfeiture of the right established by performance under the terms of Permit 41466.

Pursuant to ORS 537.260(2), it was appropriate for the Water Resources Director to issue a certificate of water right to describe the right established by performance under the terms of Permit 41466. However, due to misleading statements to the Water Resources Department by the former owner Robert G. Sprague, Jr., the Water Right Certificate 59065 incorrectly described the source of the appropriation as a spring with the point of diversion being located 2050 feet south and 1540 feet east from the North Quarter-Corner of Section 27, being within the SE 1/4 NE 1/4 of Section 27, Township 28 South, Range 14 West, WM.

Water Right Certificate 59065 should be canceled and in lieu thereof a new certificate should be issued to correctly describe the source of appropriation as an "unnamed stream, tributary to Bear Creek," and the point of diversion at the location of the concrete block dam at the confluence of the two gullies as described above.

#### OPINION

The Application 55205 did not propose an appropriation of water with a point of diversion located at the above described School House Spring. Water Right Permit

41466, issued by James E. Sexson, Water Resources Director, on April 27, 1977 to Robert G. Sprague, Jr., and Gail Sprague, provides: "This is to certify that I have examined the foregoing application and do hereby grant the same, subject to existing rights and the following limitations and conditions: . . ." Under the provisions of ORS chapter 537 in 1977, the Water Resources Director's authority extended only to the denial or the approval, subject to limitations and conditions, of the application properly before him.


The Application 55205 did not propose and, therefore, the Permit 41466 did not authorize an appropriation of water from a point of diversion located at the School House Spring.

Oregon water law, ORS chapters 536 to 540, does not provide for a change in the point of diversion authorized by a water right permit. ORS 540.510 to 540.530 does provide a procedure for seeking approval of the Water Resources Commission for a change in use, place of use and/or point of diversion under a perfected water right. The physical change in point of diversion from the concrete block dam to the School House Spring, as made by Harold Cleeton in installing the "temporary" connection between the School House Spring system and the concrete block dam system, was without any authority under the water laws of Oregon. Therefore, the authorized point of diversion for appropriation of water under the right established under the terms of Permit 41466 is at the concrete block dam.

#### PROPOSED ORDER

NOW. THEREFORE, it is ORDERED that Water Right Certificate 59065 issued in the name of Robert Sprague, Jr., and Gail Sprague c/o Shelia Jenkins, be canceled and in lieu thereof a new certificate be issued to correctly describe the source of the appropriation as "an unnamed stream, tributary to Bear Creek," and the point of diversion as being at the concrete block dam as described above.

Dated and signed at Salem, Oregon this 14<sup>th</sup> day of July, 1989.

  
WILLIAM H. YOUNG  
Water Resources Director

NOTE: The above order is issued by the Director pursuant to authority delegated by the Water Resources Commission (Commission) pursuant to ORS 536.025(2). A party to the proceeding may file exceptions to this proposed order, with the Commission, within 30 days from date of service (date of mailing) of a copy of this proposed order on that party. If exceptions are filed, opportunity will be provided for argument to the Commission, and the final order will be issued by the Commission.

If exceptions are not filed within the said 30-day period, the final order will be issued by the Director pursuant to delegated authority.



STATE OF OREGON

INTEROFFICE MEMO

TO: Steve A

DATE: 10/24/90

FROM: L. Nunn

SUBJECT:

I sent out a field form w/instruction to survey the  
Concrete Block Dam ASAP.

Doesn't C# 59065 need to be cancelled and this put back  
into an Icheate state? - Cert will be superseded w/  
new one as soon as we get new div. pt.  
location -



### Abstract of Permit No. 41466

Application No. 55205

Certificate No.

Name Robert & Gail Sprague, Jr.

Address Route 2, Box 560  
Bandon, Oregon 97411

Source of water supply Spring #1 & #2

Use Domestic use for one family ✓

Point of diversion #1: 490' N & 1530' W, #2: 1320' S & 1480' W from SE cor., sec. 22, being within

Number of acres #2: SE 1/4 NE 1/4 sec. 27, #2: SW 1/4 SE 1/4 sec. 22, T.28S., R.14W., W.M.; Coos County

*UNNAMED STREAM - SEE PG 308 V. 43 ATTACHED  
(A CONCRETE BLOCK DAM)*

*WRD ORDER*

#### DESCRIPTION OF LAND TO BE IRRIGATED OR PLACE OF USE

Twp.	Range	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4			
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4
28 S	14 W	22																
																		DOM

Priority date February 8, 1977

Amount of water 0.005 c.f.s.

Time limit to begin construction 4-27-78

Time limit to complete construction ~~10-1-78~~ extended to extended to

Time limit to completely apply water ~~10-1-79~~ extended to extended to

Remarks: Limitations:

*NR*

*FILE 1305 PASS CONC.  
Alford*

11:00 AM 1-2-A  
DEC 31 1983  
PO 15

CGM

*SEAR USEL 116600  
41011-150-11R  
10-29-91 BCS*

basin 1/1, volume 2  
41011-180-10B

55-2005  
11/2/89

BEFORE THE WATER RESOURCES DEPARTMENT OF OREGON

IN THE MATTER OF CONTESTED WATER	)	PIC-1
RIGHT CERTIFICATE 59065 IN THE	)	STATEMENT, FINDINGS OF
NAMES OF ROBERT SPRAGUE, JR., &	)	FACT, CONCLUSIONS OF LAW,
GAIL SPRAGUE C/O SHELIA JENKINS	)	OPINION AND PROPOSED ORDER

STATEMENT

This proceeding was initiated by the filing of a protest against the issuance of the Water Right Certificate numbered 59065, pursuant to the provisions of ORS 537.260(3).

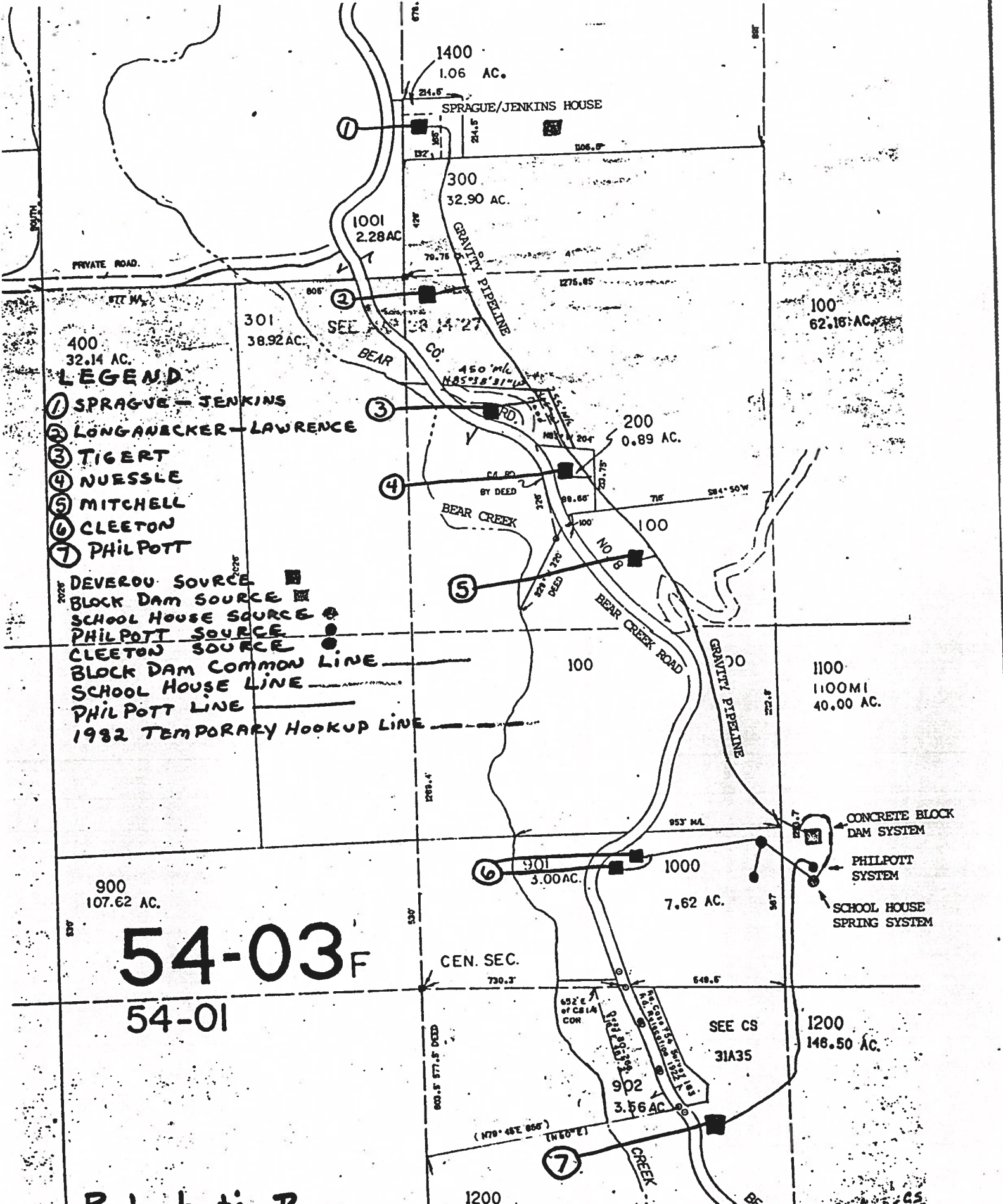
The Water Right Certificate numbered 59065 was issued on December 29, 1988, in the names of Robert Sprague, Jr., and Gail Sprague c/o Shelia Jenkins. The certificate describes a right to appropriate not to exceed 0.005 cubic foot per second of water from a spring, a tributary of Bear Creek, for the purpose of domestic use for one family within the SW 1/4 SE 1/4 of Section 22, Township 28 South, Range 14 West, WM, Coos County, Oregon, under a date of priority of February 8, 1977. The point of diversion is described as being located 2050 feet south and 1540 feet east from the North Quarter-Corner of Section 27, within the SE 1/4 NE 1/4 of Section 27, Township 28 South, Range 14 West, WM. The certificate states, "The right has been perfected under Permit 41466." (Exhibit WRD-4)

On February 21, 1989, Harold Cleeton, Jennifer Cleeton and Sambra Mitchell jointly filed a protest and contest against the issuance of Water Right Certificate 59065. Proof of service was served on Shelia Jenkins, current owner of the real property to which the water right described by the said certificate is appurtenant. In the filed documents it is alleged that the water right described by the subject certificate was not established by performance under the provisions of Water Right Permit 41466.

Pursuant to the Director's notice of hearing dated April \_\_, 1989, the matter was brought to a contested case hearing in Bandon, Oregon, on June 13, 1989. The hearing was held before James W. Carver, Jr., a contract employe of the Water Resources Department, authorized to preside in behalf of the Director as a finder of fact.

As set out in the notice of hearing, the issue to be determined is whether the water right described by Certificate of Water Right numbered 59065 was or was not established by performance under the provisions of Permit 41466. (Exhibit WRD-6)

Shelia Jenkins, owner of the property described as the place of use under Water Right Certificate 59065, was present at the hearing and was represented by Jerry O. Lesan, Attorney at Law, Coos Bay, Oregon. Contestants Harold Cleeton, Jennifer Cleeton and Sambra Mitchell were are present at the hearing. Jennifer Cleeton served as the spokesperson for the three of them.



**LEGEND**

- ① SPRAGUE - JENKINS
  - ② LONGANECKER - LAWRENCE
  - ③ TIGERT
  - ④ NUESSELE
  - ⑤ MITCHELL
  - ⑥ CLEETON
  - ⑦ PHILPOTT
- DEVEROU SOURCE
  - BLOCK DAM SOURCE
  - SCHOOL HOUSE SOURCE
  - PHILPOTT SOURCE
  - CLEETON SOURCE
  - BLOCK DAM COMMON LINE
  - SCHOOL HOUSE LINE
  - PHILPOTT LINE
  - 1982 TEMPORARY HOOKUP LINE

**54-03<sub>F</sub>**

54-01

Protestants B.

(Figure 1)



The relative locations of certain water system developments referred to herein as the School House Spring system, the concrete block dam and tank system, the Philpott system, and the gravity pipeline system, and the approximate locations of the Sprague/Jenkins residence, Bear Creek and Bear Creek Road are illustrated on Figure 1 which is a xerographic reduction of Protestants' Exhibit B, with the addition of certain indentifying labels.

#### FINDINGS OF FACT

The hearing record established the following chronology of events concerning use of water from the spring described by Water Right Certificate 59065 as the source of appropriation:

1. Water Right Certificate 7650, issued in the name of School District No. 11, describes a right established under Permit 8385 (Application 11983) for use of water from an unnamed spring located North 72 degrees, 5 minutes East, a distance of 1530 feet from the Center Corner of Section 27, Township 28 South, Range 14 West, WM, for "School purposes" within the SW 1/4 SE 1/4 of Section 22 of said township and range, under a date of priority of March 14, 1928. It appears from the record that the said unnamed spring is the same spring as the one referred to in this proceeding as "School House Spring." (See Exhibit WRD-7)
2. In 1973, the school house and associated property were no longer being used for school purposes. The property had come into private ownership and the school house had been converted into a residence. The residence was being served with water from the School House Spring by means of a gravity pipeline system. There was also a second residence on the property, near the converted school house.
3. In August of 1975, Robert G. Sprague, Jr., and Gail Sprague, then husband and wife, purchased and moved onto the property. They obtained water for their domestic use from the School House Spring through the gravity pipeline system. Several other properties were also being served with water for domestic use through the same system. (Protestants' Exhibit B)
4. The school house building which had been converted to a residence burned down about 1981 and was not replaced.
5. By early 1977, the flow from School House Spring had diminished and was no longer adequate to meets the domestic water needs of the several users being served through the gravity pipeline system.  
  
Several of the users agreed to develop the water available at a site about 300 feet north of the School House Spring. The new, proposed site was where a gully that extended to the north from School House Spring joined with a gully coming down from the east.
6. About February-March of 1977, construction was begun on a concrete block dam that would intercept water at the location where the said two gullies come together, and on a concrete block tank located a short distance to the north of the dam. (Protestants' Exhibit A)

7. On February 8, 1977, Robert G. Sprague, Jr., and Gail F. Sprague filed Application 55205 for a permit to appropriate water available at the concrete block dam, point of diversion #1, within the SE 1/4 NE 1/4 of Section 27, Township 28 South, Range 14 West, WM, for their continued domestic use. The application also proposed possible appropriation of supplemental (additional) water for the same purpose from a spring located within the SW 1/4 SE 1/4 of Section 22 of the same township and range, point of diversion #2.

The testimony of Robert G. Sprague, Jr., established that although the Application 55205 described the proposed source at point of diversion #1 as an unnamed spring it was the applicants' intent that the source of appropriation at point of diversion #1 was the water flow intercepted by the concrete block dam.

8. When the concrete block dam and tank were completed and operating later in 1977, the gravity pipeline system was disconnected from the School House Spring development and was connected to the block dam development only.

Testimony established that most of the water flow intercepted by the concrete block dam came from the gully from the east. A lesser portion of the intercepted flow came from the gully from the south which received any excess flow from School House Spring. Witnesses could not recall any specific measurement of the flows.

9. Testimony established that no water was appropriated for use under the terms of Permit 41466, from the unnamed spring described by Application 59065 as the proposed point of diversion #2.
10. The block dam development continued to serve as the only source of water for the gravity pipeline system serving water to the Sprague residence together with other residences.
11. Shortly after completion of the concrete block dam and tank system in 1977, Harold Cleeton determined that the new system was not suitable for obtaining domestic water by means of gravity flow to his residence. He removed himself from the concrete block dam and tank system and rebuilt the School House Spring Development to serve as his source of domestic water.
12. In about 1980 or 1981 the Philpott domestic water intake system was constructed to develop water from beneath the ground surface in the gully north of School House Spring, between the School House Spring and the concrete block dam. The said Philpott development replaced a prior system that had not been operational since about 1960. (Protestants' Exhibit A)
13. The concrete block dam and tank system had continuing operational and maintenance problems from the time of its construction in 1977 until late 1982. Most of the maintenance work was done by Harold Cleeton, even though he was not receiving water for his use through that system.
14. By late 1982, the flow of water obtained by the concrete block dam system had diminished to the point that it was no longer adequate to meet the needs of the users on the gravity pipeline system.

15. On December 25, 1982, Harold Cleeton, one of the protestants, made a "temporary" pipeline connection from the School House Spring system to the gravity pipeline system immediately below the outlet from the concrete block tank. With this connection, the School House Spring again served as the source of water for the several users served through the gravity pipeline system. (See line A-B on Protestants' Exhibit A)
16. The said "temporary" pipeline connection, A-B, has continued in operation to the present time.
17. On October 31, 1983, Lynn Cashion, a water rights examiner for the Water Resources Department, was on site to inspect the performance of works under Permit 41466. Robert G. Sprague, Jr., guided Ms. Cashion to the School House Spring system as the source of water for the appropriation.
18. On October 13, 1983, Robert G. Sprague, Jr., wrote a letter to the Water Resources Department, including the statement, "At this meeting I happen to see an old map of the school house spring, while comparing it with my application for water rights on the same spring I noticed that my location was off a little. I just wanted to let you know that my intention was to file on the school house spring. . . My permit is 41466."

Testimony clearly established that Mr. Sprague's original intent was to file on the water flow intercepted by the concrete block dam at the junction of the two gullies illustrated on Protestants' Exhibit A.

Mr. Sprague admitted, under oath, that his statement that his intention was to file on the school house spring was not a true statement.

19. Gail Sprague, former wife of Robert G. Sprague, Jr., became sole owner of the Sprague property through a dissolution of marriage proceeding and subsequently sold the property to the current owner, Shelia Jenkins. The record does not establish the date Shelia Jenkins gained possession of the property.

#### ULTIMATE FINDINGS OF FACT

When Application 55205 was filed by Robert G. Sprague, Jr., and Gail Sprague it was for a permit for appropriation of not to exceed 0.005 cubic foot per second of water under a date of priority of February 8, 1977, from water flow intercepted by the above described concrete block dam for domestic use for one family. The application also proposed possible appropriation of supplemental (additional) water for the same purpose from a spring located within the SW 1/4 SE 1/4 of Section 27, Township 28 South, Range 14 West, WM.

Water Right Permit 41466, issued by James E. Sexson, Water Resources Director, on April 27, 1977 to Robert G. Sprague, Jr., and Gail Sprague, provides: "This is to certify that I have examined the foregoing application and do hereby grant the same, subject to existing rights and the following limitations and conditions: . . ." Under the provisions of ORS chapter 537 in 1977, the Water Resources Director's authority extended only to the denial or the approval, subject to limitations and conditions, of the application properly before him.

*How is this finding made?*



Permit 41466 did authorize the appropriation of 0.005 cubic foot per second of water under a date of priority of February 8, 1977, from water flow intercepted by the above described concrete block dam at the junction of the two unnamed gullies, for domestic use for one family. The conditions of the permit required that "[a]ctual construction work shall begin on or before April 27, 1978, and shall thereafter be prosecuted with reasonable diligence and be completed on or before October 1, 1978. Complete application of the water to the proposed use shall be made on or before October 1, 1979.

The authorized appropriation of water from the flow intercepted by the above described concrete block dam and application of the water to beneficial use under the terms of the permit was accomplished within the times allowed by the permit.

The record is clear that the said established appropriation of water to beneficial use under the terms of the Permit 41466, by diversion of the water at the location of the block dam, continued until December of 1982.

#### CONCLUSIONS OF LAW

Pursuant to ORS 537.211, water was appropriated to beneficial use under the terms of Permit 41466 from the source and at the point of diversion (point of diversion No. 1) in the manner intended by the applicants when they completed and filed Application 55205.

An undetermined portion of the water flow intercepted by the concrete block dam was the same water as available by diversion directly at the spring known as School House Spring. Therefore, diversion of water at the School House Spring as a result of an unauthorized change in point of diversion did not work a forfeiture of the right established by performance under the terms of Permit 41466.

Pursuant to ORS 537.260(2), it was appropriate for the Water Resources Director to issue a certificate of water right to describe the right established by performance under the terms of Permit 41466. However, due to misleading statements to the Water Resources Department by the former owner Robert G. Sprague, Jr., the Water Right Certificate 59065 incorrectly described the source of the appropriation as a spring with the point of diversion being located 2050 feet south and 1540 feet east from the North Quarter-Corner of Section 27, being within the SE 1/4 NE 1/4 of Section 27, Township 28 South, Range 14 West, WM.

Water Right Certificate 59065 should be canceled and in lieu thereof a new certificate should be issued to correctly describe the source of appropriation as an "unnamed stream, tributary to Bear Creek," and the point of diversion at the location of the concrete block dam at the confluence of the two gullies as described above.

#### OPINION

The Application 55205 did not propose an appropriation of water with a point of diversion located at the above described School House Spring. Water Right Permit



41466, issued by James E. Sexson, Water Resources Director, on April 27, 1977 to Robert G. Sprague, Jr., and Gail Sprague, provides: "This is to certify that I have examined the foregoing application and do hereby grant the same, subject to existing rights and the following limitations and conditions: . . ." Under the provisions of ORS chapter 537 in 1977, the Water Resources Director's authority extended only to the denial or the approval, subject to limitations and conditions, of the application properly before him.

The Application 55205 did not propose and, therefore, the Permit 41466 did not authorize an appropriation of water from a point of diversion located at the School House Spring.

Oregon water law, ORS chapters 536 to 540, does not provide for a change in the point of diversion authorized by a water right permit. ORS 540.510 to 540.530 does provide a procedure for seeking approval of the Water Resources Commission for a change in use, place of use and/or point of diversion under a perfected water right. The physical change in point of diversion from the concrete block dam to the School House Spring, as made by Harold Cleeton in installing the "temporary" connection between the School House Spring system and the concrete block dam system, was without any authority under the water laws of Oregon. Therefore, the authorized point of diversion for appropriation of water under the right established under the terms of Permit 41466 is at the concrete block dam.

#### PROPOSED ORDER

NOW. THEREFORE, it is ORDERED that Water Right Certificate 59065 issued in the name of Robert Sprague, Jr., and Gail Sprague c/o Shelia Jenkins, be canceled and in lieu thereof a new certificate be issued to correctly describe the source of the appropriation as "an unnamed stream, tributary to Bear Creek," and the point of diversion as being at the concrete block dam as described above.

Dated and signed at Salem, Oregon this 14<sup>th</sup> day of July, 1989.

*John E. Borden for W.H. Young*  
WILLIAM H. YOUNG  
Water Resources Director

NOTE: The above order is issued by the Director pursuant to authority delegated by the Water Resources Commission (Commission) pursuant to ORS 536.025(2). A party to the proceeding may file exceptions to this proposed order, with the Commission, within 30 days from date of service (date of mailing) of a copy of this proposed order on that party. If exceptions are filed, opportunity will be provided for argument to the Commission, and the final order will be issued by the Commission.

If exceptions are not filed within the said 30-day period, the final order will be issued by the Director pursuant to delegated authority.



STATE OF OREGON

RECEIVED

DEC 10 1990

INTEROFFICE MEMO

11K  
28-14W-22

TO: SP Applegate

WATER MASTER  
DISTRICT 13

DATE: 12-1-89

FROM: JCBrown

SUBJECT: PIC 89-1

SPECIAL ORDER VOL 43 pages 312 through 318 call for the issuance of a new certificate describing the location of the "Concrete Block Dam System" as the point of diversion. It will be necessary to survey the location prior to the issuance of certificate.

81-125-1379

Note: Survey - Do not inspect. Use found corner N<sup>1</sup>/<sub>4</sub> Sec. 27  
Read order. Do as soon as possible.

J

No MAP.

TOWNSHIP 28S. RANGE 14W. W. M.															SECTION 22		
NE			NW				SW				SE				APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER
NE	NW	SW	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
ACREAGE IN LOT OR LEGAL SUBDIVISION AS SHOWN BY GOVERNMENT PLAT. IF OTHER THAN 40 ACRES																	
															8686	5948	8707
															6379	3982	2430
															11985	8385	7650
		-DAM-												DAM	33373	26413	28549
									DAM						33464	26440	28802
					85				10						33468	26493	32056
										DAM					✓ 55013	41271	
										STK					55205	44006	59065
															✓ 59787	46035	
															65322	47670	
5																	

NCR  
by  
2/92



FILE: 55205

41011 180







## Water Resources Department

COOS COUNTY ANNEX, 290 NORTH CENTRAL ST., COQUILLE, OREGON 97423 PHONE 396-3121  
EXT. 254

RECEIVED

MAY 20 1991

WATER RESOURCES DEPT.  
SALEM, OREGON

05-17-91

file # 55205  
61511

Sheila Jenkins  
Route 2, Box 560  
Bandon, Oregon 97411

Dear Madam:

Reference is made to your phone enquiry of last week regarding authorized water use from the concrete block system referred to as a source of water for the above referenced water rights. It is my understanding that it is your intention to once again begin diverting water from that source.

In response to your enquiry, I just do not know how I can be any clearer than I was in my September 6, 1989 letter to you (copy attached). However, this time the two authorized water users are highlighted in yellow. Please get in touch if you can not understand that letter.

Regarding your proposed resumption of water use from the concrete block system; in reviewing a copy of the Statement, Findings of Fact, Conclusions of Law, Opinion, and Proposed order that was mailed to your attorney, Jerry O. Lesan, in July of 1989, I find that paragraph three of volume 43 page 317 under Ultimate Findings of Fact states:

"The record is clear that the said established appropriation of water to beneficial use under the terms of the Permit 41466, by diversion of the water at the location of the block dam, continued until December of 1982."

I would also direct you to ORS 540.610(1). In part, it reads:

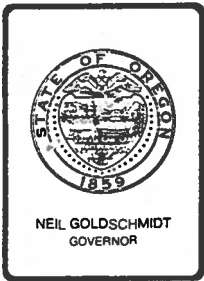
"Whenever the owner of a developed or perfected water right ceases or fails to use all or part of the water appropriated for a period of five successive years, the failure to use shall establish a rebuttable presumption of forfeiture of all or part of the water right."

If you have not used water from the concrete block system for a period of five successive years, your right to do so may be forfeit.

Sincerely,

John P. Drolet  
Watermaster, District XIX

CF: Jackie Warner  
Alen Lawrence  
Linda Tigert  
Sambra Mitchell  
Harold Clecton



# Water Resources Department

COOS COUNTY ANNEX, 290 NORTH CENTRAL ST., COQUILLE, OREGON 97423 PHONE 396-3121 EXT. 254

September 6, 1989

TO:

- Sheila Jenkins
- Alen W. and Tonya L. Lawrence
- Ernest and Linda R. Tigert
- Robert D. Nuessle
- Sambra Mitchell
- Harold and Jennifer Cleeton

Dear Bear Creek Community Water Users:

Now that the recent administrative hearing has been held and the Water Resources Director has redefined the authorized diversion point for the Sprague/Jenkins water right, this might be an opportunity to identify authorized water uses and authorized water sources for the Bear Creek community.

What follows is a synopsis of those water use permits and water rights:

<u>NAME PERMIT NUMBER</u>	<u>USE</u>	<u>SOURCE</u>	<u>Ap#</u>
<u>Sheila Jenkins</u> Permit # 8385 # 41466	school use in house dom. use	School House Spring Concrete Block System	11985 55205
<u>Alen W. &amp; Tonya Lawrence</u> Permit # 45896	dom., lawn & garden supplemented by	Concrete Block System Tigert Spring	61511
<u>Ernest and Linda R. Tigert</u> Permit # 29536	in house dom. use irrigation	Tigert Spring Bear Creek	39687
<u>Robert D. Nuessle</u> Permit # N/A	any use of surface water from a source other than one which occurs on Nuessle property constitutes an illegal use of water and a violation of O.R.S. 537.130		
<u>Sambra Mitchell</u> Permit # 48325	dom., lawn & garden	School House Spring	67957
<u>Harold &amp; Jennifer Cleeton</u> Permit # 48406	dom., lawn & garden supplemented by	School House Spring Cleeton Spring	67336

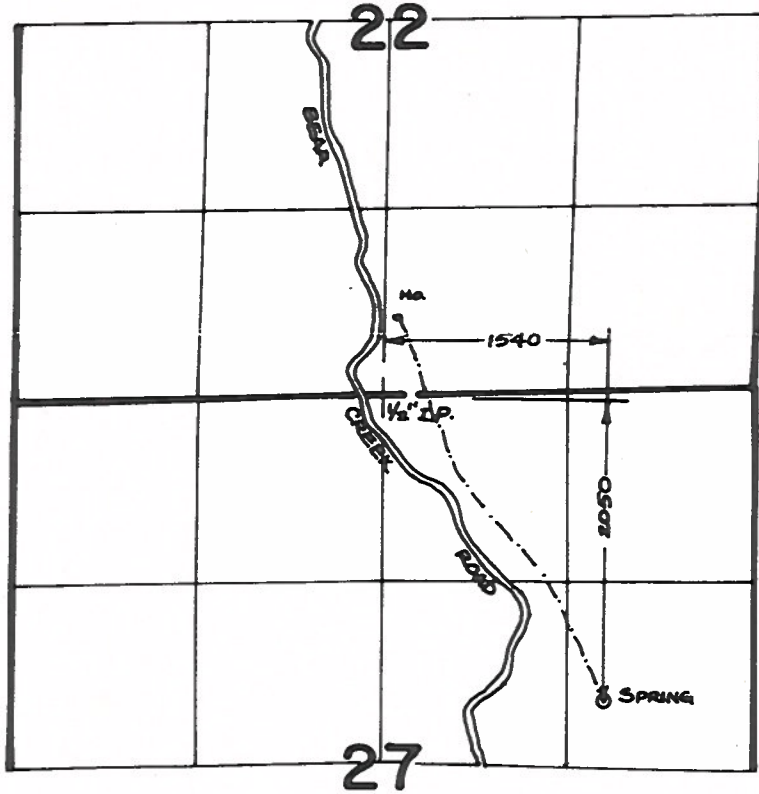
The issuance of a water use permit and its subsequent certification as a water right does not, in and of itself, convey easement or access.

Please get in touch if you have questions.

Sincerely,

*John P. Drolet*  
John P. Drolet

# T. 28 S., R. 14 W., W.M.



SCALE : 4" = 1 MILE

## FINAL PROOF SURVEY UNDER

Application No. .55205.. Permit No. ...41466.....  
IN NAME OF

.....  
Surveyed .OCT. 31., 19.83., by ..L.E...CASHION...  
10/24 85 J M Schmorde





STATE OF OREGON

INTEROFFICE MEMO

TO: *SP Applegate*

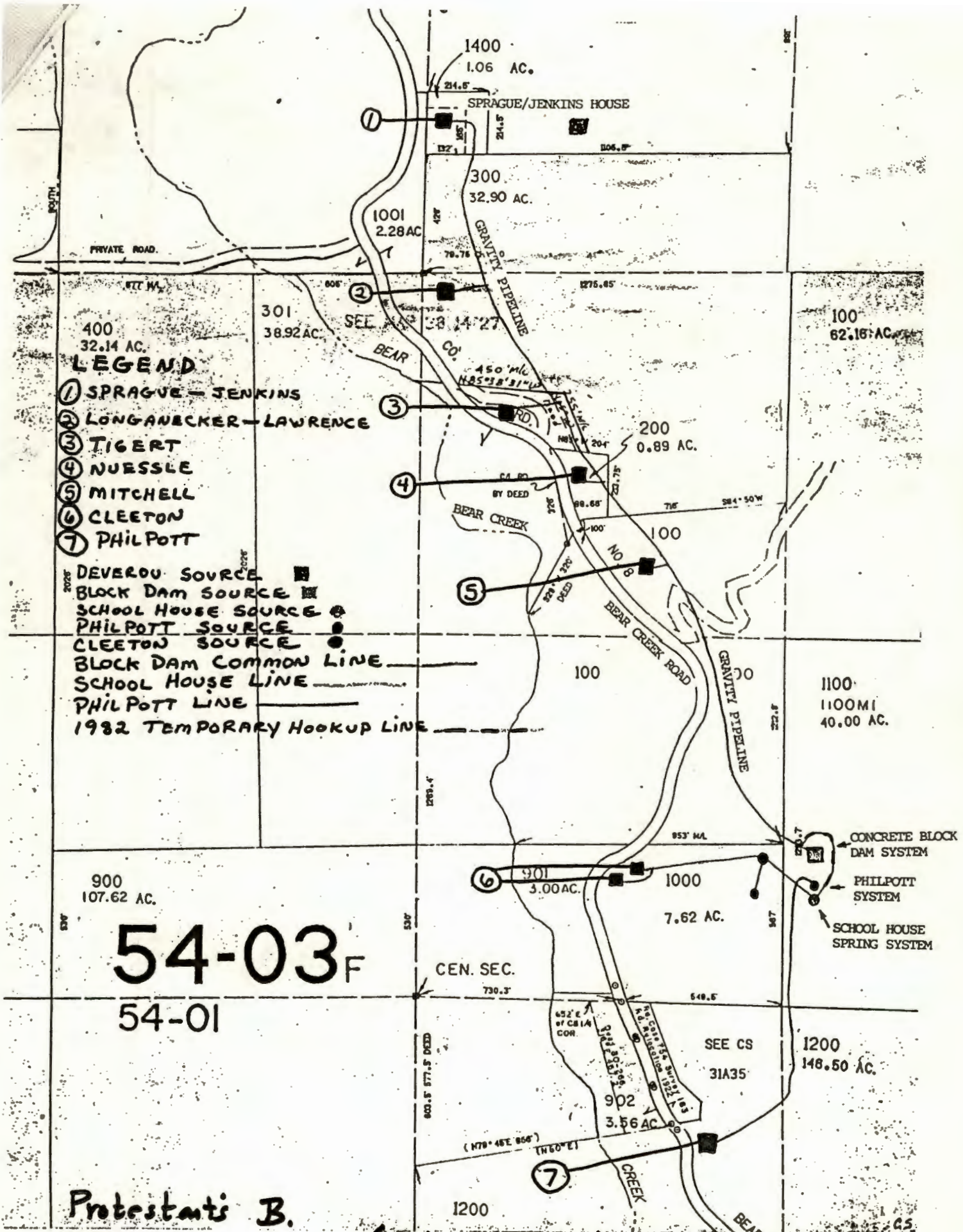
DATE: *12-1-89*

FROM: *SC Brown*

SUBJECT: *PIC 89-1*

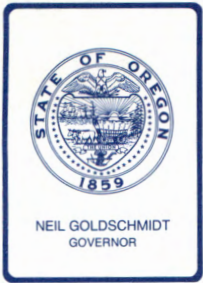
*SPECIAL ORDER VOL 43 pages 312 through 318 call for the issuance of a new certificate describing the location of the "Concrete Block Dam System" as the point of diversion. It will be necessary to survey the location prior to the issuance of certificate.*





Protestants B.

(Figure 1)



## Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310

PHONE 378-3739

10/31/88

ROBERT/GAIL SPRAGUE, JR.

RT 2 BOX 560  
BANDON, OR 97411

### NOTICE

Reference: Application S 55205, Permit S 41466

The enclosed map and proposed certificate of water right defines the extent water was used within the terms of your permit. This information is based upon a survey and inspection made by a representative of this department.

A certificate of water right will be mailed to you if you agree with the information. A response is not required.

If you do not agree with these findings, Oregon Administrative Rule 690-11-110 allows the permittee or landowner 60 days from the date of this letter to petition the department to reconsider the contents of the proposed certificate.



# CLASS ACT

a special bounty of earthgifts

2 September 1988

RECEIVED

SEP - 6 1988

RESOURCES DEPT.  
SALE OREGON

Dear Steve -

Please include the enclosed photocopy in your file and note that for credibility I've asked Don Schmessing's office for documentation.

In addition I will be sending you and Bud further information for your file.

Yours sincerely,  
Sheila



SHEILA JENKINS

Route 2, Box 560 Bandon-By-The-Sea, Oregon (503) 347-3235  
97411

2 September 1988

RECEIVED

SEP - 6 1988

WATER RESOURCES DEPT.  
SALEM, OREGON

Gail F. Sprague  
The Lady in the Loom  
P.O. Box 98  
Bailey's Island, Maine 04003

Dear Gail:

This seems like deja vu! I know we did this about the same time in 1984 - John Drolet even has annotations pencilled in "assigned to Jenkins..." in his file, but Salem's files are still in your name and Robert's so I cannot be included in their work unless this assignment is completed.

When I saw the annotations in Drolet's file I indicated that neither of the Sprague's want to be bothered with this and certainly Robert as he has already indicated that he is friend's with the Cleeton's - his response (Drolet) was that you could sign and send a copy of your divorce papers to show that you were divorced at the time of sale and that would eliminate Robert.

I know you will be glad to be rid of this. Thank you for encouraging me to fight for my rights.

I got my glasses yesterday - now it's easier to get a handle on this -- the surgeries were successful and now the hard part is repaying the \$7500 -- but the joy of getting back to my work and see the RE-Vision!

May the wind be ever at your back.

Sincerely,

*Sheila*

Sheila Jenkins

Rt. 2 Box 560

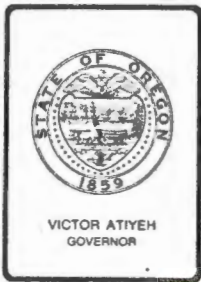
Bandon- By- The Sea, Or. 97411

*Sheila F. Jenkins*

cc: *Steve Applegate ✓*  
*John Drolet*  
*Bill Bradbury -*  
*file*

Enclosure





## Water Resources Department

COOS COUNTY ANNEX, 290 NORTH CENTRAL ST., COQUILLE, OREGON 97423 PHONE 396-3121 EXT. 254

RECEIVED

JUL 07 1988

WATER RESOURCES DEPT.  
SALEM, OREGON

June 6, 1988

ap. #55205

per. #41466

} Bear Cr. Spring

Sheila Jenkins  
Route 2, Box 560  
Bandon, Ore. 97411

Dear Mrs. Jenkins:

As you know, this office is in the process of compiling data prior to certifying as water rights various permits in the Bear Creek area. One item of information recently brought to my attention is that the Spragues' 1977 application has not yet been assigned to you.

Unlike a water right, which is an appurtenance to the property and automatically transfers with the property title, a permit is personal property and belongs to the permittee(s). You will find enclosed the required assignment form.

Because both Robert and Gail Sprague are signatories on the permit, it shall be necessary that both their signatures appear on the assignment form. Please contact me if you have questions.

Sincerely,

John P. Drolet  
Watermaster, District XIX

JPD/jp

cc: Robert G. Sprague Jr.  
Steve Applegate



## Water Resources Department

COOS COUNTY ANNEX, 290 NORTH CENTRAL ST., COQUILLE, OREGON 97423 PHONE 396-3121  
EXT. 254

January 9, 1989

Ernest & Linda Tigert  
Rt. 2, Box 585  
Bandon, Ore. 97411

ap. # 55205  
per. # 41466

Dear Mr. & Mrs. Tigert:

Reference is made to our conversation January 3 regarding Mrs. Jenkins complaint of lack of water from the old Bear Creek School spring. Water Resources Department records indicate that your property (T28S R14W Sec 27 TL 301) has a water right to use water from a spring which is located on the Lawrence property. I believe that that is currently your primary source of domestic water.

If it is your intention to ever use water from the Bear Creek School spring it will be incumbent upon you to apply for a water use permit for that source. Please find attached an application form, instruction booklet, fee schedule, and list of surveyors qualified to complete your application map.

Absent your submission of an application within 60 days, I shall be obliged to place a seal on your gate valve leading from the School spring.

Please get in touch if you have questions.

Sincerely,

John P. Drolet  
Watermaster, District XIX

JPD/jp

cc: Robert Steimer



## Water Resources Department

COOS COUNTY ANNEX, 290 NORTH CENTRAL ST., COQUILLE, OREGON 97423 PHONE 396-3121  
EXT. 254

01-09-89

Mr. & Mrs. Robert D. Nuessle  
Rt. 2, Box 590  
Bandon, Ore. 97411

file # 55205  
permit # 41466  
and  
file # 48403  
permit # 36347

Dear Mr. & Mrs. Nuessle:

On January 3, of this year I was asked to follow up on a complaint lodged by Mrs. Sheila Jenkins regarding water use from the old Bear Creek School spring. Mrs. Jenkins claimed to be out of water.

It is my understanding that you have access to water from the old spring through the pipeline which crosses your property. Unfortunately, at no time in the past has anyone applied for a water use permit from the school spring for your property. If it is your intention to continue to use water from the school spring, it shall be necessary that you obtain a water use permit.

The permit which Harvey Longanecker obtained in 1971 for what is now your property was cancelled in 1977. Reference is made to the 1976 letter mailed to you by this department regarding that permit.

Application forms and an instruction booklet for a new water use permit are enclosed. Please get in touch if you have questions.

Sincerely,

John P. Drolet  
Watermaster, Dist. XIX

JPD/jp

atch: application form  
CWRE list  
instruction booklet

cc: Robert Steimer



POD #1

RECEIVED

FEB - 8 1977

WATER RESOURCES DEPT  
SALEM, OREGON

Application No. \_\_\_\_\_

DESCRIPTION OF SPRING

1. Is spring on property of applicant? no
2. If not, give name and address of legal owner. Gladys Oakes  
Philpott; 1304 S.E. 25<sup>th</sup> Ave.; Portland, Oregon 97214
3. Have you secured consent of owner to appropriate water from this spring and for construction of pipeline or other works? yes
4. If you do not have such consent, do you expect to secure right of way through condemnation? \_\_\_\_\_
5. What is the maximum flow from spring? 5-8 G.P.M.  
(Gallons per minute or  
cubic feet per second)

What is the minimum flow? 1-2 G.P.M.

Is flow measured or estimated? estimated

6. Does the stream flowing from spring form a well defined natural channel? yes
7. Does the water flow off the lands on which it first arises? yes
8. Give the name of the stream or other body of water into which water from the spring flows. unnamed spring
9. If the water from the spring sinks or evaporates before reaching other water, give distance water flows from spring before vanishing.  
\_\_\_\_\_

10. Remarks \_\_\_\_\_

Robert S. Sprague Jr.  
Gail F. Sprague  
Signature of Applicant

Application No. 55205  
Permit No.

Copy of Legal description

Beginning at the 1/2 mile stake between sections 22 and 27, township 28 south, Range 14 west of the Willamette Meridian, Coos County, Oregon; thence North 26 rods to a stake as the place of beginning; thence East 13 rods; thence North 13 rods; thence West 13 rods; thence South 13 rods to the place of beginning.

Thank you  
Robert Guil Sprague

RECEIVED

FEB - 8 1977

WATER RESOURCES DEPT  
SALEM, OREGON

Application No. 55205  
Permit No.



378-3066

April 4, 1977

File 55205

Robert and Gail Sprague, Jr.  
Route 2, Box 560  
Bandon, OR 97411

Dear Mr. and Mrs. Sprague:

Thank you for returning application No. 55205 and the supporting map.

Permits will be issued for use of water from Coquille River and its tributaries. However, water may not be available during dry periods.

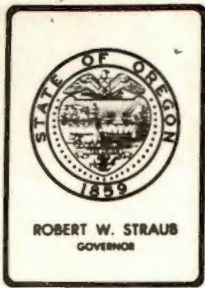
May 19, 1977

Robert and Gail Sprague, Jr.  
Route 2, Box 560  
Bandon, OR 97411

55205

41466 with map.





## Water Resources Department

1178 CHEMEKETA STREET N.E., SALEM, OREGON 97310 PHONE 378-3066

February 22, 1977

File 55205

Robert and Gail Sprague, Jr.  
Route 2, Box 560  
Bandon, OR 97411

Dear Mr. and Mrs. Sprague:

We have received your map, fees of \$35.00, spring description sheet, legal land description, and an application for a permit to use 0.005 cubic foot per second of water from spring No. 1 for primary domestic use and 0.005 cubic foot per second of water from spring No. 2 for supplemental domestic use for one family. For reference, your application is No. 55205.

Your application appears to be in satisfactory form for the proposed use. However, I did receive a phone call from the Watermaster's office indicating that you wished to have your application returned to you. Therefore, I am returning your map and application to you and it is endorsed so that in order to retain its priority date, it must be received in this office on or before April 22, 1977.

Sincerely,

Vestal R. Garner  
Water Rights Engineer

VRG:lds  
Encl: Receipt No. 57968

RECEIVED

9/12/88

SEP 27 1988

WATER RESOURCES DEPT.  
SALEM, OREGON

TO: STEVE APPLEGATE

FROM: MIKE SCHMORDE

SUBJECT: VISIT TO 'SCHOOLHOUSE SPRING' IN MAY '88

I VISITED THE BATTLE ZONE LAST MAY WHEN J.P. FELT THAT THE PROBLEMS ON BEAR CREEK ROAD WERE GOING TO HEAT-UP AGAIN AND THAT HE AND I SHOULD COMPARE NOTES. I DROVE TO MRS. CLEETON'S HOME AND THEN WALKED TO THE SPRING AREA. WHEN I FIRST VISITED THE AREA TO SURVEY THE CLEETON PERMIT, I DIDN'T WALK DOWN THE DRAINAGE AND TO LOOK AT WHAT MRS. CLEETON HAD DESCRIBED AS SPRAGUE'S & LONGANECKER'S OLD DOMESTIC SYSTEMS. I FOUND THE REMNANTS OF A SILTED-IN <sup>CONCRETE BLOCK DAM</sup> ~~DOMESTIC SYSTEM~~ ON THE UNNAMED STREAM FORMED BY THE WATER ESCAPING FROM THE SCHOOLHOUSE SPRING AREA AND BELOW THE CONFLUENCE WITH ANOTHER UNNAMED <sup>STREAM</sup> ~~SPRING~~ FLOWING FROM ANOTHER SPRING AREA. A 3" B. POLY PIPE RUNS APPROXIMATELY 100 FT. DOWN THE HILL TO A CONCRETE BLOCK STORAGE TANK WITH A OOR PLYWOOD TOP. THE TANK WAS NO LONGER BEING USED.

MY THOUGHTS ARE THAT SPRAGUE AND LONGANECKER HAVE RETURNED TO USING THE SCHOOLHOUSE SPRING AFTER THEIR UNNAMED STREAM DEVELOPEMENT SILTED-IN.

Mike



5/19/88

# VISITED THE AREA OF "SCHOOLHOUSE SPRING"

FOUND THE TOPS OF 2 - 3' DIAM CONCRETE LIDS ON 3' DIAM CONCRETE PIPE LAYED VERTICALLY - 1 AS A SPRINGBOX THE SECOND IS A SETTLING TANK BOTH CONNECTED BY 4" PVC PIPE. ALSO 4" PERF PVC INTO SPRING AREA.

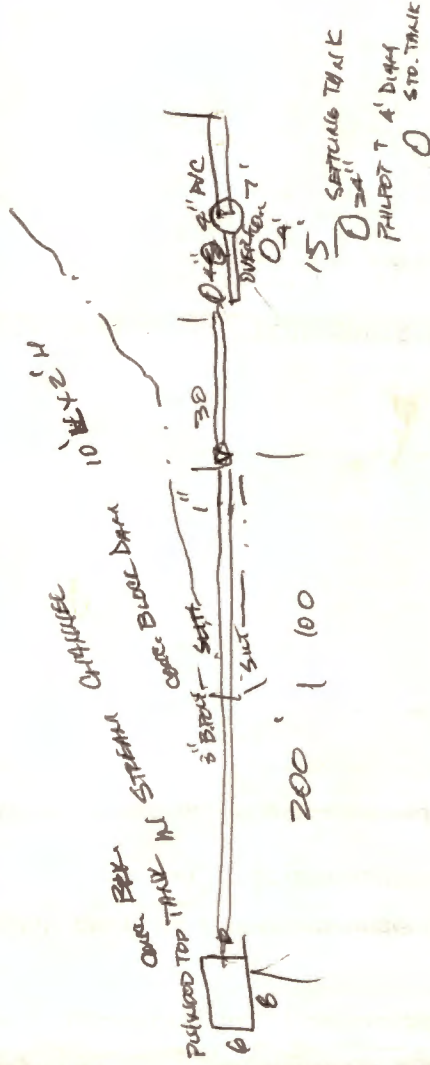
LEADING FROM ~~SET~~ SETTLING TANK 1" B. POLY PIPE DOWN-HILL 30' TO VALVE AT A TEE. ONE LEADS TO CLEETON OTHER TO SPRAGUE - LONGBALECKER

DOWN ANOTHER 100' FT. 10'(W) X 2' H CONCRETE BLOCK DAM JUST BELOW CONFLUENCE W/ ANOTHER UNNAMED STREAM FROM ANOTHER SPRING AREA. POOL SILTED. 100 FT (±) OF 3" B. POLY PIPE FROM DAM TO 6'(L) X 8'(W) X 3'(H) CONCRETE BOX W/ PLYWOOD TOP USED PROBABLY AS STOR. TANK

M. Schmidt  
FI 5/19/88



3-4' DAM



21187

# Application for Extension of Time

TO THE WATER RESOURCES DIRECTOR OF OREGON

I, .....

Name

.....

Mailing Address

.....

City State Zip

record owner of water right permit No. ...., do hereby request that the time in which to:

- complete the construction of works and/or purchase and installation of the equipment necessary to the use of water, which time now expires on October 1, 19....., be extended to October 1, 19.....; and/or the time in which to
- accomplish beneficial use of water to the full extent now intended under the terms of said permit, which time now expires on October 1, 19....., be extended to October 1, 19.....

I have accomplished the following described works and/or purchase and installation of equipment necessary to the use of water under said permit:

within the past year .....

.....

.....

prior to this past year .....

.....

.....

and have accomplished beneficial use of water to the extent of (IF FOR IRRIGATION, STATE HOW MANY ACRES HAVE BEEN IRRIGATED) .....

.....

.....

(If additional space is required, attach separate sheet)

(If signing for a corporation please identify your title)

Dated .....

MAIL COMPLETED APPLICATION AND STATUTORY FEE OF \$~~100~~ FOR EACH PERMIT TO:

100.00

Water Resources Department  
3850 Portland Road N.E.  
Salem, Oregon 97310

RECEIVED

NOV 23 1988

WATER RESOURCES DEPT.  
SALEM, OREGON

reference: Harold & Jennifer Cleeton  
Application - 67336  
permit - 48406

Mr. Applegate,

We understand that in order to start the appeals process against the Sprague, Jenkins permit we need to receive our final certificate. If that is correct I would like to approve our proposed certificate and receive our final certificate.

I also understand that your surveyors made some corrections on footage. As long as it is understood that we have filed on the old school house system.

We also want to be notified as soon as the (Sprague, Jenkins) final certificate is issued so we can start the appeals process right away.

The reference numbers on Sprague Jenkins  
Application; 55205  
permit; 41466

Please send a notice as soon as this certificate is issued.

Thank you

Harold & Jennifer Cleeton

- Please send <sup>Done</sup> copy to file in COOS county. ☞



RECEIVED

Rt. 2, Box 600  
Bandon, OR 97411  
11/20/88

NOV 23 1988  
WATER RESOURCES DEPT  
SALEM, OREGON

Water Resources Department  
3850 Portland Rd. NE  
Salem, OR 97310

Reference: Application S 67957, Permit S 48325

Dear Sirs:

I'm writing in regard to my proposed certificate. Everything in your letter appears to correspond to the information recorded in the application filed by Charles Mitchell.

There is some disagreement among water community members in regard to other applications filed and permits granted for use of this and nearby water sources and systems which is on record in your office.

I have been given to understand that in order to appeal the order of rights granted by your office, one needs to wait until final certificates are issued before beginning this process. According to my best interpretation of the applications filed for the systems in question, there are some discrepancies in the order of rights granted by your office and to which systems applications permits pertain, and I will appeal your decision in this regard at the appropriate time.

If my understanding of the order of events in the appeal process is correct, please issue the certificate. If the appeal may proceed at this stage, please inform me at once, so that I may exercise my right to appeal appropriately.

If I need to wait for the final certificate, I will need to know as soon as a certificate is issued to Robert and/or Gail Sprague and/or Sheila and/or Benjamin Jenkins. I will also need to know of any activity in the files of Alen W. and Tonya L. Lawrence, specifically whether they apply for a permit for the system on which Charles Mitchell and the Cleetons are presently permitted.

Please send a copy of this letter to the Coos County Watermaster, John Drolet.

Sincerely,

*Sandra Mitchell*



STATE OF OREGON

INTEROFFICE MEMO  
RECEIVED

TO: Robert Steimer  
SW Regional Manager

FROM: John P. Drolet *JD*  
Watermaster, District XIX

DATE:

01-03-89

JAN - 1 1989  
WATER RESOURCES DEPT.  
SALEM, OREGON

File # 55205

Permit # 41466

SUBJECT: Bear Creek School Spring--Jenkins Complaint

Reference is made to our phone conversation earlier today regarding the Jenkins complaints.

I did have the opportunity this afternoon to inspect the point of diversion which Mrs. Jenkins shares through a common pipeline with several other families. Inflow from the spring into a settling tank was measured at 3 gpm. Outflow through the overflow was measured at 2 gpm.

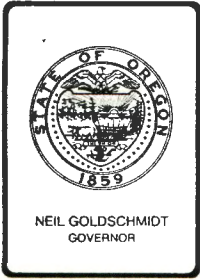
Calculations based on these measurements would appear to indicate that approximately 4,300 gallons per day are available for use and at least at the time of my measurement, approximately 2,900 gallons per day are being wasted out of the system through the overflow.

Directly after the measurements were taken I took the time to further inspect the system by disconnecting the intake from the spring to the settling tank and inspecting the intake for obstructions. Using a flashlight, I could see that at a distance of less than 6' from the end of the pipe, the inside of the 4" diameter intake was significantly clogged with fine roots from surrounding vegetation. The system was last cleaned in 1977. I rather suspect that simple maintenance of the system would yield an even greater quantity of water.

Bob, several times in past years I have made similar inspection of this diversion with substantively the same results. Additionally, I have spoken with Mrs. Jenkins on numerous occasions (most recently last Friday, December 30) and advised her that the maintenance of the water system is the user's responsibility and that our authority ends at the diversion point. None of this is news to her.

In light of past experience on this system, perhaps we should invoke O.R.S. 540.010, require complaints in writing, and require payment for office and field time spent to be charged to complainant.

Please get in touch if you have questions.



## Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310

PHONE 378-3066

February 28, 1989

Sambra Mitchell  
Harold and Jennifer Cleeton  
Rt. 2, Box 600  
Bandon, OR 97411

Re: Protest of Issuance of Certificate 59065

Dear Ms. Mitchell and Mr. and Ms. Cleeton:

We are in receipt of the Contest and Affidavit in Support of Contest of Issuance of Certificate, Protest, and Proof of Service in the above-referenced matter. Enclosed please find our receipt No. 55205 confirming payment of the \$25.00 filing fee.

As indicated in my letter to you of February 8, allowable grounds for protest of issuance of a certificate are that the permittee to whom the certificate was issued has not performed under the terms of the permit, such as taking from a different source, at a different rate, or for a different use than applied for and allowed under the permit.

You have raised the issue in your protest that the present appropriation of water as described by Certificate 59065 is not from a source intended by application #55205 and approved by permit #41466. This is an appropriate ground for protest and your filing is accepted on this ground only.

In your cover letter you indicated that you were unclear, looking at the statutes I had sent you, what showing was needed regarding public interest. Public interest is not applicable in Contests of Issuance of Certificates, and it is not necessary for you to address that.

I would like to clarify some matters and provide you with some information which may assist you in preparing your contest. In the Contest form, you reference that Certificate No. 59065 was "given a prior date to appropriately issued certificates." I want to make sure that you understand that when a certificate is issued, it is given a priority date which is the date that the application on which it is based was filed. Application No. 55205 was filed on February 8, 1977, and thus the Certificate in question has that priority date.

Secondly, you indicate in your letter that the original applicant, Robert Sprague, will provide sworn testimony that his intent to file was not on the schoolhouse springs, but on the



block dam source and system. The Department has in its files a letter from Mr. Sprague dated October 13, 1983, concerning a slight inaccuracy in his location of his intended source and point of diversion for this application. In this letter, Mr. Sprague states: "I just wanted to let you know that my intention was to file on the schoolhouse spring." The Department will introduce this letter into the record at the hearing, and will be calling employees of the Department to testify about the processing of this application, permit and certificate.

Lastly, you reference abuse by Ms. Jenkins as harming your access to water. If by this you mean that Ms. Jenkins is taking water in quantities or for uses other than those allowed under the Certificate in question, I would strongly urge you to ask the Watermaster for assistance. These sorts of problems are within his jurisdiction to investigate and respond to.

Thank you for providing the information regarding the availability of your witness, Robert Sprague. However, it will not be possible to schedule a hearing for March 24, as the law requires that a notice of hearing be given at least 30 days prior to the hearing. I will schedule a hearing in Bandon for sometime in the latter half of April.

Sincerely,



Weisha Mize  
Hearing Referee

cc: Sheila Jenkins  
John Drolet  
Steve Applegate

Rt. 2, Box 600  
Bandon, OR 97411  
347-4333  
2/17/89

RECEIVED

FEB 21 1989

WATER RESOURCES DEPT  
SALEM, OREGON

Weisha Mize, Hearing Referee  
Water Resources Dept.  
3850 Portland Rd., NE  
Salem, OR 97310

Dear Ms. Mize,

Enclosed please find the forms Proof of Service, Protest, Contest and Affidavit and \$25.00 filing fee.

Robert Sprague has agreed to appear at the hearing and give sworn testimony that his intent to file was not on the schoolhouse source, but on the block dam source and system, which are entirely different POD's. Mr. Sprague is attending school in Salem and is in Bandon on weekends. He says he will be free all day on Friday, March 24. Otherwise he is only available on Friday evenings. We hope you will be able to schedule our hearing with his time limitations in mind.

We were unclear, regarding your notes on the copies of statutes you sent to Jennifer Cleeton, whether we were to show how Ms. Jenkins or the State had been prejudicial to public interest. We feel we have been harmed by both as a result of the issuance of her certificate, and trust the enclosed is specific enough to begin the hearing process.

Yours truly,

Sambra Mitchell, Harold and Jennifer Cleeton

*Sambra Mitchell*  
*Jennifer Cleeton*  
*Harold Cleeton*

RECEIVED

FEB 21 1989

WATER RESOURCES DEPT.  
STATE OF OREGON

CONTEST AND AFFIDAVIT IN SUPPORT OF  
ISSUANCE OF CERTIFICATE

(We), Harold & Jennifer Cleeton & Samba Mitchell  
name(s)

Rt. 2, Box 610 & Box 600  
mailing address

Bandon, OR 97411, 347-4355  
city state, zip telephone

pursuant to ORS 537.260, do hereby contest the issuance of  
Certificate numbered 59065 in the name(s) of Robert & Gail  
Sprague / Sheila Jenkins pertaining to use of water  
from Schoolhouse Spring, a tributary of Bear Creek.

This contest is based on my/our personal knowledge that the  
above-named certificate holder/permittee did not perform within  
the terms of the permit, as follows: Sprague/Jenkins  
permit is in error is prej. to pub. int. as it was  
not issued in conformance to OR water law and  
given a prior date to appropriately issued certificates.

Therefore, the Certificate numbered 59065 should not issue.

(We) request the Water Resources Director to cancel it and  
hopefully reissue on correct water source.

I (We) recognize that it will be necessary to present testimony  
and evidence in an administrative hearing before the Water  
Resources Director, in support of the allegations made in this  
contest. Proof of service of a copy of this contest and  
affidavit on the permittee/ certificate holder is attached.

DATED and signed this 17 day of February, 1989.



RECEIVED

FEB 21 1989

PROTEST

WATER RESOURCES DEPT.  
SALEM, OREGON

I (We), Sambra Mitchell, Harold & Jennifer Cleeton  
name(s)

Rt 2, Box 600 and Box 610  
mailing address

Bandon, OR 97411, 347-4355  
city state Zip telephone

do hereby protest the approval of pending application numbered 59065

in the name(s) of Robert & Gail Sprague / Sheila Jenkins

pertaining to use of water from Schoolhouse Spring, tributary of Bear Creek  
name of river, creek, etc.

My (Our) water rights which would be adversely affected by the proposed use of

water are: Mitchell - 60092 10/14/83 Cleeton 60093 10/3/83  
(identify by permit or certificate number and priority date)

My (Our) water rights would be adversely affected in the following way(s):

Because 59065 is in error, our priority dates and access to water are affected by abuse by Ms. Jenkins

Therefore, I (we) request the Water Resources Director to cancel 59065

and reissue on appropriate water source.  
(the action you want the director to take in this matter)

I (We) recognize that it may be necessary to present testimony and evidence in an administrative hearing before the Water Resources Director, in support of the allegations made in this protest.

Proof of service of a copy of this protest on the applicant is attached.

Dated and signed this 17 day of February, 1989.

Sambra Mitchell  
signature

Harold Cleeton

Jennifer Cleeton

RECEIVED

FEB 2 1989

WATER RESOURCES DEPT  
S.E. 711 ORSON

P R O O F   O F   S E R V I C E

I, Sambra Mitchell, being first duly sworn, depose and say that on the date of Feb. 17, 1989, I did mail a copy of the attached protest to the applicant by regular mail by placing it in an envelope addressed to:

Sheila Jenkins  
(name)  
Rt 2 Box 560  
(address)  
Bandon OR 97411  
(city) (state) (zip)

and depositing it in the United States Mail with sufficient postage prepaid thereon.

In Witness Whereof, I have hereunto set my hand this 17th day of February, 1989.

Sambra N. Mitchell  
(signature)

Subscribed and sworn to before me this 17th day of February 1989.

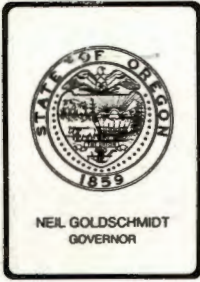
(Notarial Seal)

Laura A. Craig  
Notary Public for Oregon

My commission expires 2/29/1992

Laura Craig  
LAURA A. CRAIG  
NOTARY PUBLIC - OREGON  
My Commission Expires 2/29/1992





## Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310

PHONE 378-3066

February 8, 1989

Harold and Jennifer Cleeton  
Rt. 2, Box 610  
Bandon, OR 97411

RE: Contest of issuance of Certificate 59065

Dear Mr. and Mrs. Cleeton:

Enclosed please find a contest and affidavit form and proof of service form. If you wish to contest the issuance of the Certificate, please complete the forms and return them with the \$25.00 filing fee.

I have also enclosed a copy of the pertinent statutes for your reference.

The permit on which the contested certificate is based authorized appropriation of 0.005 cfs from each of two unnamed springs for domestic use only at a dwelling located on the west side of the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 22, Township 28 South, Range 14 West, Willamette Meridian.

One spring, to be used as a primary source, was identified as being located 1810' south and 1010' west from the SE corner of Section 22, within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 27. The other spring, to be used as a supplemental source, was identified as being located 490' north and 1530' west of the SE corner of Section 22, within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 22, all in T. 28 S., R. 14 W., WM, Coos County.

The permit required that a substantial beginning of the works necessary to the authorized use of water be made on or before April 27, 1978, and that the construction phase of the project be completed by October 1, 1978. The authorized use was to have been accomplished by October 1, 1979.

The field survey done by employees of the Department prior to the issuance of the Certificate found water being diverted from the spring in the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 27 and being used in the residence. It appears that the survey did find that the spring to be developed as a supplemental source was never developed.

Permissible grounds for challenge to issuance of the certificate are that the permittee did not perform under the terms of the permit, such as water is being taken from a source other than the unnamed spring, or in a quantity other than 0.005 cfs, or for a use other than domestic use.



Please understand that the system being used is irrelevant, as long as the source of water for whatever system is the unnamed spring on which the permit was issued.

Sincerely,

Weisha Mize  
Hearing Referee

encl.  
cc: file  
Sheila Jenkins

67336 SA has

Harold and Jennifer Cleeton  
Rt 2 Box 610  
Bandon Or 97411  
1/23/89

Robert, Gail Sprague  
Jenkins, Sheila

Certificate. 59065 55205

RECEIVED

JAN 25 1989

WATER RESOURCES DEPT.  
SALEM, OREGON

Steve Applegate  
Water Resources Dept  
Water Rights DIV  
3850 Portland Rd., NE  
Salem Or 97310

Dear Mr. Applegate,

It is our understanding that Ms. Jenkins has received her final certificate giving her first right on the schoolhouse system. We lived here in 1977 when Mr. Sprague filed on that water right. Mr. Sprague filed on a block dam system that is in the same area as the schoolhouse system. He wrote an ammended letter in 1983 attempting to change his location to the schoolhouse system since the block dam was in need of repairs and to avoid refiling.

We have been told that a change of system through an ammended letter was out of order. It has also affected our priority date. Mr. Sprague says his original intent was on the block dam system and we feel it should remain so. there are also several things in the application that indicate his intent was on the block dam system.

We also have much evidence through a water meter and witnesses that Ms. Jenkins for the past two summers has abused the water well beyond her domestic right to the point of running the community completly out of water on several occasions. We have also had to defend ourselves against false accusations of water theft reported to the watermaster. It has been time consuming to continually have to deal with the situation as it stands.

It has always been known by longterm community members that Mr. Sprague and Mr. longenecker filed on the block dam system and were surprised to find out that the Water Resources Dept confused both systems as one. We feel we must ask for an appeal. Ms. Jenkins water right should be on the block dam system mainly because it was Mr. Spragues original intent and to also help the community in the future from having to deal with water abuse and false accusations as well as keeping all concerned in water.

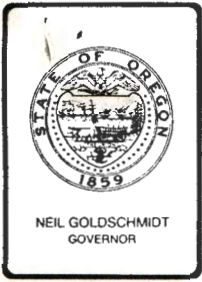
At this time we would like to appeal the Water Resources Dept decision giving Ms. Jenkins water rights on the schoolhouse system. We would like to be notified as to when we can arrange an appeals date and time so that all concerned are present.

sincerely,

Harold and Jennifer Cleeton

Copiestto; Mitchell, MMr. Drolet

*Harold, Jennifer Cleeton*



## Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310

PHONE 378-3066

Copy

February 7, 1989

Sambra Mitchell  
Rt. 2, Box 600  
Bandon, OR 97411

RE: Contest of issuance of Certificate 59065

Dear Ms. Mitchell:

Enclosed please find a contest and affidavit form and proof of service form. If you wish to contest the issuance of the Certificate, please complete the forms and return them with the \$25.00 filing fee.

I have also enclosed a copy of the pertinent statutes for your reference.

The permit on which the contested certificate is based authorized appropriation of 0.005 cfs from each of two unnamed springs for domestic use only at a dwelling located on the west side of the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 22, Township 28 South, Range 14 West, Willamette Meridian.

One spring, to be used as a primary source, was identified as being located 1810' south and 1010' west from the SE corner of Section 22, within the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 27. The other spring, to be used as a supplemental source, was identified as being located 490' north and 1530' west of the SE corner of Section 22, within the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 22, all in T. 28 S., R. 14 W., WM, Coos County.

The permit required that a substantial beginning of the works necessary to the authorized use of water be made on or before April 27, 1978, and that the construction phase of the project be completed by October 1, 1978. The authorized use was to have been accomplished by October 1, 1979.

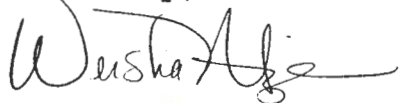
The field survey done by employees of the Department prior to the issuance of the Certificate found water being diverted from the spring in the SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 27 and being used in the residence. It appears that the survey did find that the spring to be developed as a supplemental source was never developed.

Permissible grounds for challenge to issuance of the certificate are that the permittee did not perform under the terms of the permit, such as water is being taken from a source other than the unnamed spring, or in a quantity other than 0.005 cfs, or for a use other than domestic use.



Please understand that the system being used is irrelevant, as long as the source of water for whatever system is the unnamed spring on which the permit was issued.

Sincerely,



Weisha Mize  
Hearing Referee

encl.  
cc: file  
Sheila Jenkins

RECEIVED

FEB - 1 1989

WATER RESOURCES DEPT.  
SALEM, OREGON

Rt 2 Box 600  
Bandon OR 97411  
1/23/89

Steven P. Applegate  
Water Resources Dept  
3850 Portland Rd NE  
Salem, OR 97310

Dear Mr. Applegate

Thank you for the notification of Certificate issued to Robert and Gail Sprague, c/o Sheila Jenkins numbered 59065 55205. This letter is to let you know that I, along with the Cleetons intend to appeal this certificate for reasons outlined in earlier correspondence with you and known to John Drolet, Coos County Watermaster.

Please inform me of steps I need to take to set up a date for this appeal

Yours truly,

*Sambra N. Mitchell*

Sambra N. Mitchell

cc: John Drolet  
Jennifer Cleeton

STATE OF OREGON

COUNTY OF COOS

PROPOSED CERTIFICATE OF WATER RIGHT

ROBERT SPRAGUE, JR. AND GAIL SPRAGUE,  
of ROUTE 2, BOX 560, BANDON, OREGON 97411, has a right to the use of  
the waters of A SPRING, a tributary of BEAR CREEK, for the purpose of  
DOMESTIC USE FOR ONE FAMILY.

The right has been perfected under Permit 41466. The date of priority  
is FEBRUARY 8, 1977. The right is limited to not more than 0.005  
CUBIC FOOT PER SECOND or its equivalent in case of rotation, measured  
at the point of diversion from the source.

The point of diversion is located as follows:

SE 1/4 NE 1/4, SECTION 27, T 28 S, R 14 W, W.M.;  
2050 FEET SOUTH & 1540 FEET EAST FROM N1/4 CORNER SECTION 27.

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

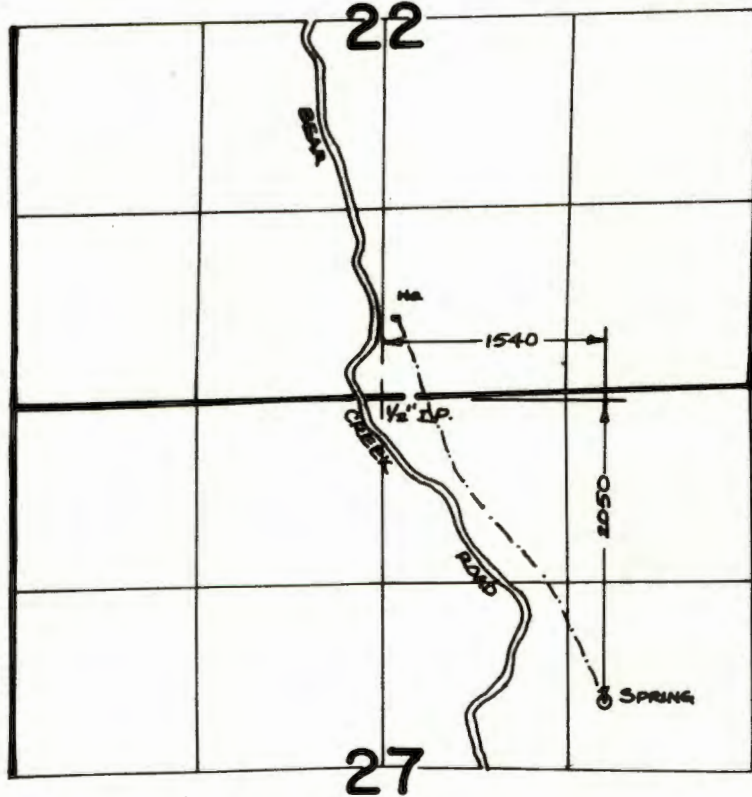
A description of the place of use under the right, and to which such  
right is appurtenant, is as follows:

SW 1/4 SE 1/4  
SECTION 22  
TOWNSHIP 28 SOUTH, RANGE 14 WEST, W.M.

The right to the use of the water for the above purpose is restricted  
to beneficial use on the lands or place of use described. The right  
is subject to minimum flows established by the Water Resources  
Commission with an effective date prior to this right.



T. 28 S., R. 14 W., W.M.



SCALE : 4" = 1 MILE

**FINAL PROOF SURVEY**  
UNDER

Application No. .55205.. Permit No. ...41466.....  
IN NAME OF

.....+.....

Surveyed .OCT..31., 19.83., by ..L.E...CASHION...  
10/24 85 J M Schmorde

# Abstract of Permit No. 41466

Application No. 55205

Certificate No.

**Name** Robert & Gail Sprague, Jr.  
 Route 2, Box 560  
**Address** Bandon, Oregon 97411

**Source of water supply** Spring #1 & #2

**Use** Domestic use for one family

**Point of diversion** #1; 490'N & 1530'W, #2; 1810'S & 1010'W from SE cor., sec.22, being within #2; SE $\frac{1}{2}$ NE $\frac{1}{2}$  sec.27, #2; SW $\frac{1}{2}$ SE $\frac{1}{2}$  sec.22, T.28S., R.14W., W.M.; Coos County

**Number of acres** ↑  
 1

### DESCRIPTION OF LAND TO BE IRRIGATED OR PLACE OF USE

Twp.	Range	Sec.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$			
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$
28 S	14 W	22																DOM

**Priority date** February 8, 1977

**Amount of water** 0.005 c.f.s.

**Time limit to begin construction** 4-27-78

**Time limit to complete construction** 10-1-78 extended to extended to

**Time limit to completely apply water** 10-1-79 extended to extended to

**Remarks:** Limitations:

41011-180-108

Info: Mr Sprague, own observation

Div. Pt: 4" pipe driven into hillside (POD #1)  
Circular settling & holding tanks set in ground below spring

Source: unnamed spring

Use: domestic for @ family (on this permit)

Pump: none - gravity feed

Photo: 41011 - 180 12A

Pipe: 1" and 3/4" flexible pipe from spring to house

Comments: Mr. Sprague states there are several families on this spring. Names of some of them are given below. All have agreed to limit use to domestic purposes. POD #2 has never been developed or used.

O. Langenecker }  
T. Eberle } others on same spring  
C. [unclear] } (some have filed, some [unclear])  
E. [unclear]

W.R.E.

31 Oct 1983



55205

**RECEIVED**  
OCT 16 1983  
WATER RESOURCES DEPT.  
SALEM, OREGON

Oct 13, 1983

Dear Mr. Estes,

While at a recent meeting with John Drollet the water master and my neighbors (who are on the same water line) I came across something on my application for water rights that I thought you should know about.

At this meeting I happen to see an old map of the school house spring. While comparing it with my application for water rights on the same spring I noticed that my location was off a little.

I just wanted to let you know that my intention was to file on the school house spring.

2.

I hope that my lack of  
accuracy on my application  
won't pose a problem for  
your survey crew.  
Thank you for your  
patience in this matter.

Sincerely  
Robert L. Spague Jr.

P.S.

My permit # is 41466

# Abstract of Permit No. 8385

Application No. 11983      Certificate No. 7650

Name      School District No. 11  
 Address      Bandon, Oregon  
 Source of water supply      Unnamed spring, trib. Bear Creek  
 Use      School purposes  
 Point of diversion      N. 72°05' E. 1530 ft. distant from center of Sec. 27,  
 T. 28 S., R. 14 W.W.M., being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$  said  
 Number of acres      Sec. 27.

### DESCRIPTION OF LAND TO BE IRRIGATED OR PLACE OF USE

Twp.	Range	Sec.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$			
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$
28S	14W	22																X

Priority date      March 14, 1928  
 Amount of water      0.1 c.f.s.  
 Time limit to begin construction  
 Time limit to complete construction      extended to      extended to  
 Time limit to completely apply water      extended to      extended to  
 Remarks:



Application No. 11883  
Plat No. 8585

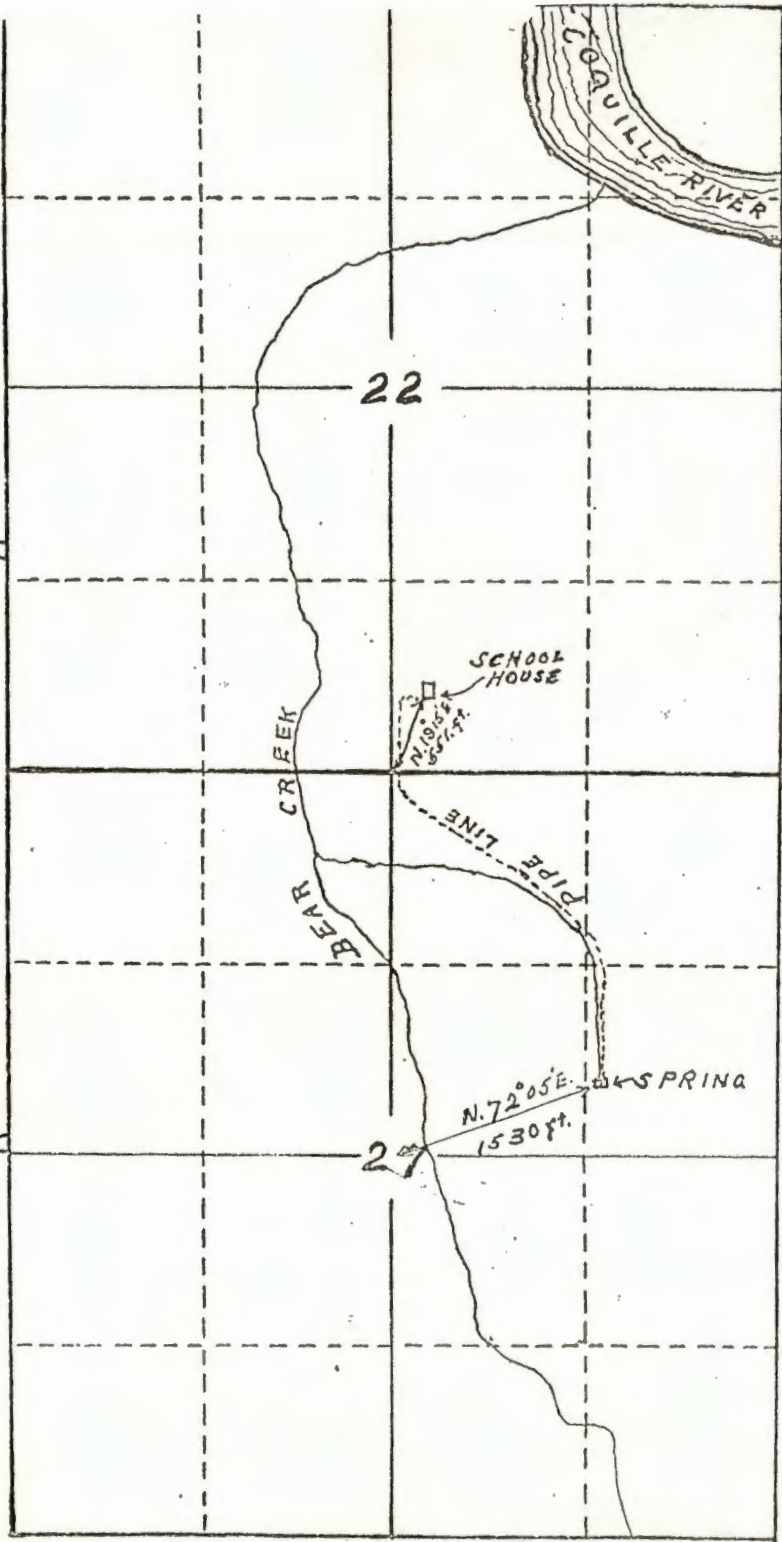


— Scale —  
— 1 Inch = 20 Chains. —

I, C.S.M. Cullock, of Bandon, Oregon,  
do hereby certify that this map was made  
from notes taken during an actual survey  
made by me on March 8<sup>th</sup> 1928,  
and that it correctly represents the  
work described in the accompanying  
application, together with the location  
of streams and other ditches in the  
immediate vicinity.

Charles S. M<sup>c</sup> Cullock  
Registered Prof. Engineer.  
Oregon No 620.  
Dec. 8<sup>th</sup> 1919.

Charles S. M<sup>c</sup> Cullock



T. 28 S.  
R. 14 W.

# Abstract of Permit

This is to certify that I have examined APPLICATION 67336 and do hereby grant the same SUBJECT TO EXISTING RIGHTS INCLUDING THE APPROPRIATE MINIMUM FLOW POLICIES ESTABLISHED BY THE WATER POLICY REVIEW BOARD and the following limitations and conditions:

This permit is issued to Harold D. Cleeton and Jennifer Cleeton of Route 2, Box 610, Bear Creek Road, Bandon, Oregon 97411, phone 347-~~XXXX~~, <sup>33742</sup> for the use of the waters of two springs, for the PURPOSE of domestic use for two families including the irrigation of not to exceed one-half acre lawn and noncommercial garden for each

that the PRIORITY OF THE RIGHT dates from October 3, 1983 for 0.01 cubic foot per second and February 9, 1984 for 0.01 cfs

and is limited to the amount of water which can be applied to beneficial use and shall not exceed 0.02 cfs

The POINT OF DIVERSION is to be LOCATED: Diversion 1 - <sup>1975 SOUTH</sup> ~~490~~ feet <sup>1525 EAST</sup> North and ~~1130~~ feet West from the <sup>N</sup> NE 1/4 Corner of Section 27, being within the SE 1/4 NE 1/4 of Section 27; Diversion 2 - <sup>2150 SOUTH</sup> ~~320~~ feet North and <sup>1275 EAST</sup> ~~1565~~ feet West from the <sup>N</sup> NE 1/4 Corner of Section 27, Township 28 South, Range 14 West, WM, in the County of Coos.

A description of the PLACE OF USE under the permit, and to which such right is appurtenant, is as follows:

Township 28 South, Range 14 West, WM Section 27 ~~Section 27~~ SW 1/4 NE 1/4 Domestic use for two families including the irrigation of not to exceed one-half acre lawn and non-commercial garden for each

Actual construction work shall begin on or before May 7, 1985 and shall thereafter be prosecuted with reasonable diligence and be completed on or before October 1, 19 86 .

Complete application of the water to the proposed use shall be made on or before October 1, 19 87 .

Witness my hand this 7th day of May . 19 84 .

\_\_\_\_\_  
WATER RESOURCES DIRECTOR

This permit, when issued, is for the beneficial use of water. By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan. It is possible that the land use you propose may not be allowed if it is not in keeping with the goals and the acknowledged plan. Your city or county planning agency can advise you about the land-use plan in your area.

*JK 11/24/85*



INFO: MET W/ MRS. CLEETON. THEY UTILIZE TWO UNNAMED SPRINGS. SPRING #1 FLOWS TO A STORAGE TANK AND DOWN TO RESIDENCE. SPRING #2 FLOWS FROM 3 SETTLING TANKS AND DOWN TO RESIDENCE. (SPRING #2 WAS BARELY FLOWING)

SOURCE: UNNAMED SPRING #1 FOR DOMESTIC  
UNNAMED SPRING #2 FOR DOMESTIC

DIV. PT: SPRING #1  
2-24" ~~DIAMETER~~ CONCRETE RINGS ONE ON TOP OF OTHER 4 FT. HIGH TOTAL (SETTLING TANK)  
20 FT - 2" PVC DRIVEN INTO SPRING AREA. FROM SPRING TO SETTLING TANK  
SPRING #2  
20 FT - 4" PVC DRIVEN INTO SPRING AREA TO 2 - 4' HIGH 24" DIAM. SETTLING TANK  
GALLON STORAGE TANK

PIPE: SPRING #1  
20' 4" PVC DRIVEN INTO HILLSIDE FROM SPRING  
200 FT. 3/4" B. PLASTIC FROM SETTLING TANK TO STORAGE TANK  
400 FT. 3/4" B. PLASTIC FROM STORAGE TANK TO RESIDENCES

SPRING #2  
850 FT. 3/4" B. PLASTIC FROM STORAGE TANK TO RESIDENCES

RES. #1  
6 HOSE BIBBS  
300 FT. GARDEN HOSE  
3 RAINBIRD ROTATING SPRINKLERS

RES. #2  
2 HOSE BIBBS

MAX SPRINKLERS: 3

USES: DOMESTIC FOR 2 RESIDENCES, IRRIGATION OF FRUIT TREES IN NEW ORCHARD, IRRIGATION OF BACKYARD LAWN, VEGETABLE GARDEN AND FLOWERS.

HEAD: 46 PSI ~~DATA~~ (MEASURED AT HOSE BIBB)  
160 FT. L FROM QUAD

TIE: PHOTO 41011-180-12A

MON: 530/527 BC  
533/534

Mike Schmale WIRE  
10/24/05

FLOW CALCULATIONS

SPRING #1  
MANNING'S EQ.  
 $Q = \left( \frac{1.49}{n} \right) A R^{2/3} S^{1/2}$   
 $= (1.49 / 0.00153) (0.06241) (160/400)^{1/2}$   
 $= 0.009 \text{ CFS (MAX FLOW)}$

FOR 3/4" B. PLASTIC W/ n=0.01  
FLOWING 11.5 CFS

SPRING #2  
MANNING'S EQ.  
 $Q = \left( \frac{1.49}{n} \right) (0.00153) (0.06241) (160/850)^{1/2}$   
 $Q = (1.49 / 0.00153) (0.06241) (0.43386)$   
 $= 0.006 \text{ CFS (MAX FLOW)}$

FOR 3/4" B. PLASTIC W/ n=0.01 FLOWING  
" "

TOTAL = 0.009 + 0.006  
= 0.015



SCHEDULE A

Amount \$ 6,500.00

Date May 22, 1973

8:34

ACB:00XMKX

INSURED

-----HAROLD D. CLEETON, JR. and JENNIFER K. CLEETON-----

The estate or interest referred to herein is, at the date hereof, vested in

-----FRANK G. HANSEN, JR., RAMONA HANSEN and CATHERINE HANSEN, not as tenants in common but with the right of survivorship.-----

The land referred to in this policy is described as

That portion of the South 530 feet of the SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 27, Township 28 South of Range 14 West of the Willamette Meridian, Coos County, Oregon, lying East of Bear Creek County Road.-----

Application No. 69336  
Permit No. 48406

RECEIVED

SEP 20 1983

WATER RESOURCES DEPT.

SALEM, OREGON

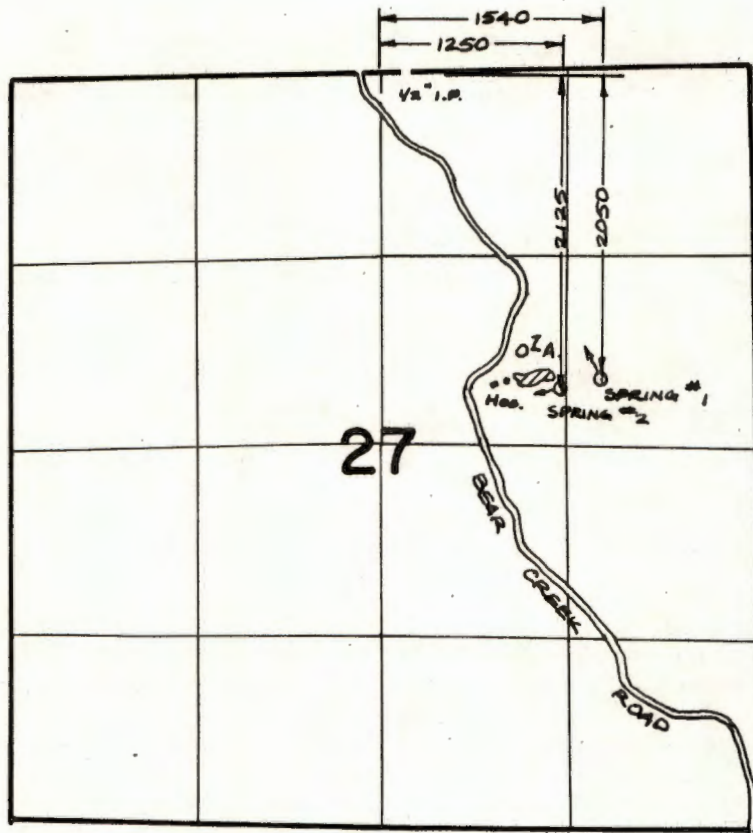
RECEIVED

OCT 3 1983

WATER RESOURCES DEPT.

SALEM, OREGON

T. 28 S., R. 14 W., W.M.



SCALE : 4" = 1 MILE

**FINAL PROOF SURVEY**  
UNDER

Application No. .67.336. Permit No. ....48.406...  
IN NAME OF

**HAROLD D. CLEETON & JENNIFER CLEETON**

Surveyed .OCT...24, 19.85, by J.M. SCHMORDE



Rt. 2 Box 600  
Bandon OR 97411  
6/10/88

9/8/88  
Need P.C.'s on  
these ASAP  
- SPA

Steve Applegate  
Water Resources Dept  
Water Rights Div  
3850 Portland Rd., NE  
Salem, OR 97310

RECEIVED

JUN 13 1988

WATER RESOURCES DEPT.  
SALEM, OREGON

Dear Mr. Applegate:

We are writing to you in the matter of the Bear Creek Water Community on the advice of John Drolet, Watermaster. We would like to express some concerns we have regarding the paperwork on file which we presume will be the basis for your decisions about water rights to the various systems now existing and under dispute.

We call your attention to the enclosed document which we submitted to the Watermaster in early May 1988 and which should be on file with you. We would like you to also take the following remarks into consideration.

For the past year we have been attempting to resolve our water difficulties and have frequently been told contradictory things, as interpretations of applications, descriptions of systems, points of diversions and transfer of permits has been unclear and all related documents not heretofore assembled, as they have been filed in various divisions of the Water Board.

Letters and surveys subsequent to original applications appearing in the file may be making the matter extra complex for you. We would like to shed light on some of these letters and the survey which all appeared at about the same time, in September and October, 1983.

Let's look at events surrounding letter of amendment from one system to another. Sprague filed on the block tank system which was under construction in 1977. Longanecker filed on that same system in 1981. Cleeton and Mitchell filed on the original schoolhouse system in 1983. The enclosed document explains the details of the construction of the new system and how the Water Community members were thinking at the time

Between 1977 and 1983 the block tank system proved deficient because it required constant maintenance which Cleeton was called upon to perform, being nearest to it and in good health and understanding how it worked



Cleeton tired of it and repaired the original schoolhouse system to full capacity. He told all concerned he would file on it, which he did, (as did Mitchell) in October 1983.

When Sprague and Longanecker were told, they apparently thought it would be in their best interest to be on the same system as Cleeton, as Cleeton would no longer repair and maintain the dam and block dam. Letters to this effect, dated in September and October 1983 appear in the file. Around the same time, a surveyor came to survey the systems and was led by Sprague, who had already decided to change his application, to the Schoolhouse System, which is described in the survey, and was never shown the block tank system on which he had filed.

The Watermaster suggests its unclear whether a change of system is allowable, but states there is some flexibility since no certificates have been issued. However, a radical change from one system to another without re-filing would seem out of order. We are concerned it would affect priority dates, among other things, unless you rule otherwise.

Because the original schoolhouse system is inadequate to service all families in the water community especially in times of draught, bad feelings, false accusations and misunderstandings have persuaded us that standing by the original intents of the applications would be fair to all and provide water in better quantity to all concerned.

We feel that having filed our applications and over the years having put more time, energy and money into the water system than either of the other parties now involved it is vexing and burdensome to have had dubious interpretations put on our activities and intentions and to need to defend our rights over and over again throughout a long period of time. We hope you will be able to solve this matter fairly and promptly, before the water gets low again and tempers begin to flare.

Is it reasonable to ask for an estimation of how long this may require?

Sincerely,

*Sambra Mitchell, Jennifer Cleeton*

Sambra Mitchell and Jennifer Cleeton



STATE OF OREGON

RECEIVED

INTEROFFICE MEMO

TO: Steve Applegate  
Sen. WR Examiner

JUN 14 1988  
WATER RESOURCES DEPT.  
SALEM, OREGON

DATE:

June 13, 1988

FROM: J.P. Drolet *JPD*  
Watermaster, Dist. XIX

SUBJECT: Bear Creek School Spring

You will find attached a copy of a letter sent from this office to individuals interested in the Bear Creek school spring and a copy of a chronology of events regarding water use from the spring area prepared by one of the water users, Mrs. Cleeton.

There are few new developments since our Salem meeting; I am still awaiting a response from Bob Sprague to my letter of inquiry regarding the inconsistencies between some of his verbal testimony and correspondence in our files, and an assignment form has been mailed to Sheila Jenkins so that the transfer of the Sprague permit may be recorded.

We are all waiting with baited breath for your review of the files and surveys so that this situation may finally be reconciled.

atch: ltr to water users  
Cleeton's chronology

cc: Bud Bartels





## Water Resources Department

COOS COUNTY ANNEX, 290 NORTH CENTRAL ST., COQUILLE, OREGON 97423 PHONE 396-3121  
EXT. 254

June 10, 1988

Dear

Reference is made to conversations past and recent concerning water use from the old Bear Creek school spring and associated water developments. Documentation available to me has been somewhat unclear regarding the authorized source(s) of water for the several water use permits involved. For that reason, I took the opportunity to travel to the office of the Water Resources Department in Salem on May 31 with the hope of getting these uncertainties and inconsistencies reconciled.

The situation has been taken under advisement by the water rights section of the Department with a commitment to make a determination on the individual permits as soon as possible. I hope that that will be within two weeks to a month.

Until certain determinations are made in Salem, I am unable to answer many of the questions which have recently been asked. Directly upon receiving the results of the Department's determinations, I shall convey those results to you.

Sincerely,

John P. Drolet  
Watermaster, District XIX

JPD/jp

A copy of this letter mailed to  
Clifton  
Mitchell  
Lawrence  
Jenkins  
Applegate (Owner)



Bear Creek Water Community  
Members Cleeton and Mitchell  
5/11/88

**RECEIVED**

JUN 13 1988

WATER RESOURCES DEPT.  
SALEM, OREGON

Mr. Drolet, Watermaster  
Coos County Courthouse Annex  
Coquille, OR

Dear Mr. Drolet:

Enclosed are three documents:

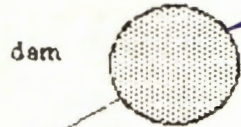
1. A map showing the two water systems and their relationships to each other with notations of how they have been connected or disconnected and where the service lines originate.
2. A chronology of events leading up to the present state of affairs in regard to the water community.
3. What we understood from studying the files at the Water Board in Salem in regard to the various permits filed by past and present water community members and which basically supports what we knew to be the case.

By now you are somewhat familiar with the systems and people involved. We have done this research and compilation in an effort to end the confusion about rights and permits and depend on you to make a fair finding, taking into account facts apparently not known by you previously. The water community is all but unable to function as it stands. Neither system is adequate to all households and their needs. False accusations of water theft or unfair manipulation have been made and relationships are no longer workable among various members of the water community. We hope you will be able to help the entire water community find a fair and agreeable solution to the problems now in evidence and anticipated in the future.

Sincerely,

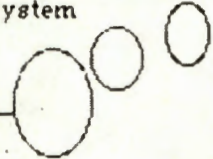
Jennifer Cleeton and Sambre Mitchell

# Bear Creek Water Community Systems



dam

original schoolhouse system



valve

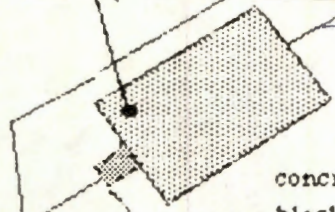


Cleaton line



Philpott sediment tank

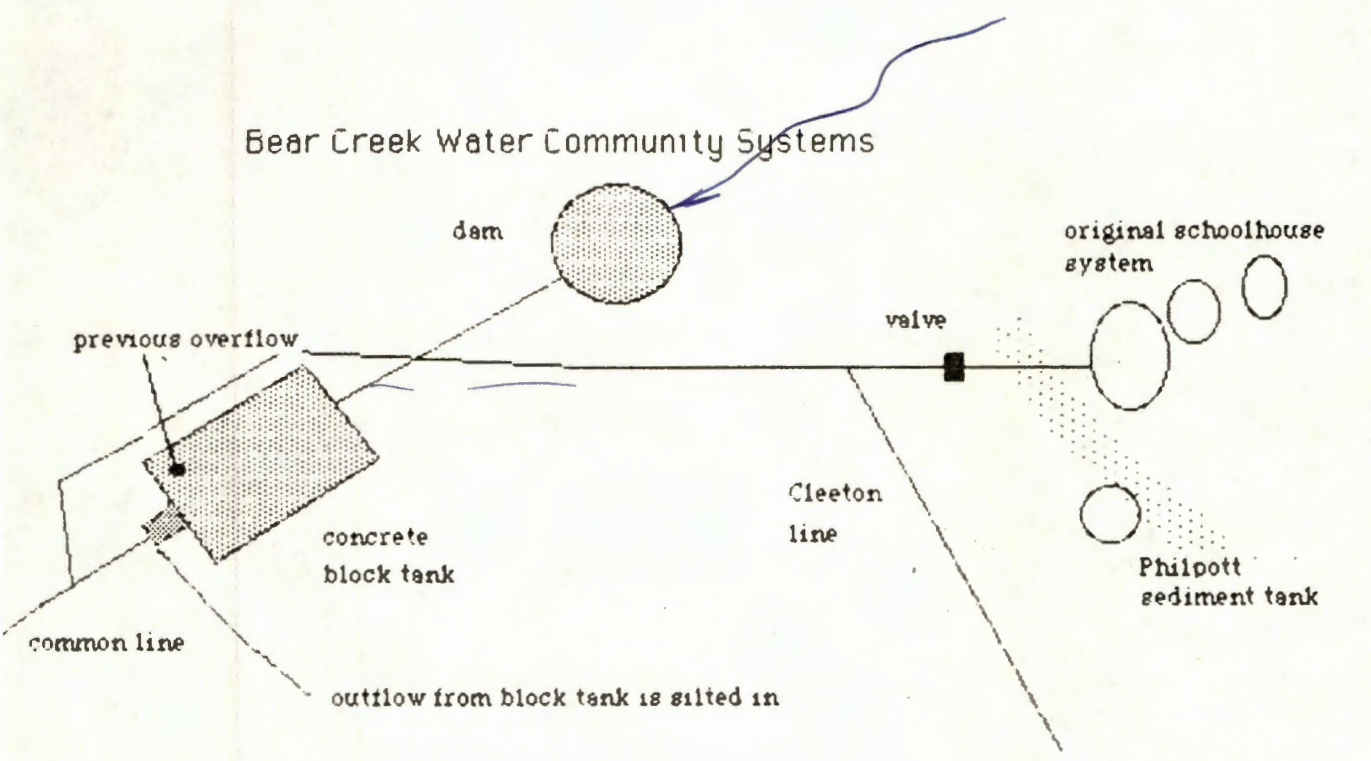
previous overflow



concrete block tank

outflow from block tank is silted in

common line



RECEIVED

Water-related events by date

JUN 13 1988

Feb. 77

WATER RESOURCES DEPT.

Schoolhouse system flow was inadequate to maintain all families. The situation was discussed and certain parties decided to build a block tank to hold water being collected from runoff from several springs. Longanecker suggested applying for permits on the concrete block system. Cleetons said they were concerned over the appropriateness of constructing a new system on the private property of a party unconcerned with the water. They continued using schoolhouse system and made repairs on it. Cleetons also built their own back-up water system on their own property, exclusive to them.

cancelled

Sprague and Longanecker stated they had applied for permits on the block system and wanted the entire water community to make the same application. Cleetons and Mitchell stated their applications would be on the schoolhouse system. Longanecker threatened lawsuit unless all parties filed on block tank with the intent to keep the water community in common agreement for purposes of rights and easements.

Construction of the block tank was completed near the end of March 1977 and families north of Cleetons used water from that tank which included the overflow from the schoolhouse system. Mitchell intended to eventually lay new pipe from the schoolhouse system to his dwelling, but events precluded this until now. At this time there were no ill feelings and Cleeton was comfortable with the overflow situation due to lack of droughts. This situation prevailed for several years

1979

Longanecker moved to new dwelling. Transfer of permit not found.

1980

Schoolhouse burned and application was not switched to remaining (now Jenkins) dwelling.

1981

Longanecker's file in Salem indicates a 1981 file date which we are unclear about

1983

Sprague property sold to Jenkins. No transfer of permit found.

It was discovered that Gladys Philpott sold the property where the systems are located to Coos Head Timber Co

Cleeton and Mitchell file for permits on schoolhouse system. Coos Head (Mr. Groben and Tom Hurt) granted verbal easement to Cleeton. Longanecker wanted to sell and had problems without written easement. Approached Coos Head aggressively and they gave him no easement. Longanecker hired an attorney and drew up an easement agreement which was unsatisfactory to other water members and never went into effect. Longanecker threatened



to sue Mitchell and Cleeton for easement. This was the event which began a period of mistrust and bad feeling among water members.

The block system was continually in need of repairs and Cleeton tired of being responsible for repairs since he wasn't using it. So he took the overflow pipe from the schoolhouse system and hooked it to the common line temporarily until Longanecker and Sprague could make repairs themselves. Sprague and Mitchell were working away from home and Longanecker suggested health problems preventing him from working on the system.

1984

About this time Longanecker moved away and made his primary home in Portland, making 2-3 visits a year to his Bear Creek property until its sale in 1988.

1985-86

Systems performing adequately as described due to absence of Mitchell and Longanecker as full-time residents although Mitchell had occasional tenants.

1986

Sambra Mitchell took occupancy of Mitchell property in August. A few repairs were made to the common line which broke in several places. No major problems occurred.

1987

Draught occurred in late spring until late fall. Jenkins, Mitchell and Cleetons were the only users of the systems. Cleetons and Mitchells frequently ran out of water entirely and approached Jenkins with inquiries about use and information about the severely diminished flow. Jenkins denied excessive use although several parties witnessed frequent irrigation of lawn and garden and compost piles. She was under the impression that the water was hers exclusively and made no particular attempt to conserve water in the interest of the rest of the community for some period. Cleetons and Mitchells to locate any leaks and found 3: one near the systems, one at Longanecker's and one above the Tigard residence. After making repairs, the outflow from the tank was still more rapid than input. Eventually water hours were agreed upon by all parties and were in effect until late November when the rains began and the flow recovered.

Although Sprague informed Cleeton that Jenkins had domestic use only in terms of his filed permit, no attempt was made to call the Water Master by Cleeton or Mitchell in hope that the situation could be handled among the water members.

*Sprague permit had no water for use of L&G*

1988

Since then, Jenkins and her Housekeeper have made several calls to Mitchell in regard to anticipated water problems for the dry part of 1988 and they have stated that a drip irrigation system was being installed as their way of conserving water, still being under the impression they have exclusive rights to the schoolhouse system including irrigation.

*No rights  
for irr.*

#### Conclusion

All of the enclosed documents are offered in an attempt to clarify the status of the Bear Creek Water Community, based on what we can understand of state and county water regulations to offer a solution to future problems of drought and deliver a better flow of water to all parties concerned as well as to remove stress from neighborhood relations



5/9/88

Examination of files at the State Water Board in Salem shows that four dwellings on the Bear Creek water community system submitted applications for water permits and were issued permit numbers as in the records of the Water Master. It should be noted there are three different systems in proximity to each other: Schoolhouse system, block tank system and a pump system belonging to Gladys Philpott. There are various discrepancies in coordinates describing points of departure and in descriptions of systems and construction of systems as well as in intent to file on one system or another for service to one dwelling or another.

These discrepancies are brought to the attention of the Water Master and members of the water community with the goal of improving both water delivery to members and relations among members. Discrepancies are noted below and followed by a suggestion which would service all concerned parties while preserving respect for the civil rights of all concerned.

Cleeton: Application describes the original "schoolhouse" system. Intent was for service for two separate dwellings, as well as for 1/2 acre each lawn and non-commercial garden irrigation. POD coordinates are accurate by survey for this system and dwellings. There has been no change in ownership of property or dwelling sites and the systems have been in continuous use since purchase of property in 1973. Permit date is Sept. '83. Water from the schoolhouse system has been linked to the property since 1928.

Mitchell: Application contains unclear POD coordinates. The description of the system fits exactly the original schoolhouse system described by Cleeton indicating intent to file on this system rather than the block tank. Usage includes domestic one family and 1/2 acre garden. There has been no change of ownership or location of dwelling since application was filed and the system has been in continuous use since 1928.

Longenecker: Application shows POD coordinates and clear measurements and description of block tank constructed in 1977. He states he filed in 1977, but file contains a permit date of 1981. Usage applied for was for one family dwelling and 1/2 acre non-commercial garden use. The dwelling occupied by Longenecker at that time was subsequently sold to Tigard in about 1979. There was no transfer of permit to Tigard noted in the file and Tigard generally uses water from another system on their property. Tigard has occupied the dwelling since 1989 since which time the community system has not been in use there.



It should be noted that another part of the Longanecker property was sold to Nuessle in 1974. This property is between Mitchem and Longanecker and has access to both water community system and Tigard system. No permit has been filed by Nuessle nor has he been using the community system continuously or exclusively.

From 1980 until the sale of property around May 1, 1988, Longanecker's new dwelling was a home at least 300 yd. from the dwelling application was filed for and no change of location for the permit was located in the file for this dwelling. However a change of permit for the new owners (Tom and Ellen) appears to be in process.

It is unclear at this point whether the permit for service from the block tank is valid for the new dwelling. Service from the original schoolhouse system was never applied for.

Jenkins: The former owner of the Jenkins property, Robert Sprague, applied on the basis of POD coordinates relating to the schoolhouse system and a description which is very unclear. Intent is implied by the fact that he was in the process of constructing the block tank and his application includes an estimate of \$650 dollars which was the amount estimated by the community for the completion of this new system in 1977. Use was limited to domestic use for one family. He also applied for permit to another system on the Devereaux property also for purposes of domestic use. The dwelling which Sprague occupied at that time was the original Bear Creek Schoolhouse and arrangements had been made for the sale to Sterling Welch of Bandon and removal from the property of the dwelling now occupied by Jenkins, clearly indicating his intent to file for service to a dwelling no longer in existence. The schoolhouse burned to the ground in 1980 and no change of application for the remaining dwelling was found in the file, nor any transfer of permit to Jenkins upon sale of the property. A letter appears in the Sprague file subsequent by 5 years and 7 months to the filing of the application requesting change of his filing from the block tank to the original system. Sprague states he felt at the time the block system was inferior in terms of water quality and maintenance required to the original system which had been cleaned and repaired by Cleeton and wished to have some notation in his file should the block tank system fail. However Sprague states the permit now on file was intended to pertain to the block system only and he feels he never completed his permit.

It is unclear whether Jenkins has valid rights to either community water system, since the schoolhouse has not been in existence for 8 years.

Due to misunderstandings and bad feelings among various water community members at this time, it would be desirable to clarify the standings of all

parties and arrive at a solution to water and easement problems which arose in summer of 1987 and are again anticipated in future. The capacity of either system to service all dwellings, livestock, gardens and yards during dry periods is clearly inadequate. All parties have access to alternate water sources on their own property. The most desirable solution would be that each water community household develop its own water system and maintain both community systems as backup to the individual systems.

Meanwhile, in view of the fact this would take time to accomplish, it would be desirable to have two separate water communities on the basis of the apparent intent of applications filed. In other words, let Cleeton and Mitchell share water and maintenance of the original schoolhouse system and Jenkins and Tom and Allen share the water and maintenance of the block system. In this case new pipe would be laid between Mitchell and Cleeton while the existing line would service T&A and Jenkins.

The attached sketch of the two systems shows their relationship and the present hookup of the common line servicing dwellings north of Cleeton and Cleeton's service line. It is clear that the block tank, now overflowing with untreated water needs only cleaning and minor repair before being ready to provide water service via the existing common line.

We realize the problem of easements is not in the Water Master's jurisdiction. The following remarks in regard to easements are included to show intent of Cleeton and Mitchell to assist the other parties in repairing and cleaning the concrete block system pending development of individual systems. These remarks are not in final form nor legally binding until such time as they are legally and satisfactorily drawn up in writing and signed by concerned parties.

Cleeton would agree to a one-time transport for materials only to the site via his road and Mitchell would agree to access from the southern area of the property to the block tank for persons to clean and service the block tank on the following basis: that the work be carried out in a period of no more than 3 consecutive days and be completed in this time. No further access would be granted. Additionally, Mitchell requires written and legal release of liability for this one-time access. Requirement of subsequent access for purposes of maintenance must be demonstrated and no access would be granted except on a per visit basis and written and legal release of liability will be furnished by the repair party.

This course suggests itself as the simplest, most straightforward solution to water rights for all parties concerned.