

Application No. R- 81411

HB 2153

FILE#: R 81411

ROBERT HABECKER
HABECKER, CAROLYN
33817 GAGE RD
MITCHELL, OR

97750

Permit No. _____

Certificate No. 73477 81488

Stream Index, Page No. _____

FEES PAID

Date _____

Amount

Receipt No.

12-27-94

#/10000

17672

Cert. Fee

FEES REFUNDED

Date _____

Amount

Check No.

Date filed _____

Priority _____

Action suspended until _____

Return to applicant _____

Date of approval _____

CONSTRUCTION

Date for beginning _____

Date for completion _____

Extended to _____

Date for application of water _____

Extended to _____

PROSECUTION OF WORK

Form "A" filed _____

Form "B" filed _____

Form "C" filed _____

FINAL PROOF

Blank mailed _____

Proof received _____

Date Certificate issued JAN 6 1997

JAN 6 1997
Aug 8 2005

ASSIGNMENTS

Date _____

To Whom

Address

Volume

Page

REMARKS



Oregon

Theodore R. Kulongoski, Governor

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

Date Mailed: August 4, 2005

NOTICE OF CERTIFICATE ISSUANCE

The Department received information regarding errors contained in an existing water right of Certificate. These errors are brought to the attention of Water Right Staff in effort to correct and improve our records. We have contacted the County Assessor's Office and obtained your name as the current owner of the land involved in the Right. Attached is a certificate that corrects the description the water right. The water right is limited to a specific amount of water, but not more than can be beneficially used for the purposes stated within the certificate.

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

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

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

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

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

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

STATE OF OREGON

COUNTY OF WHEELER

CERTIFICATE OF WATER RIGHT (HB - 2153)

THIS CERTIFICATE ISSUED TO

BRYAN AND HEATHER SPITZER
P.O. BOX 242
MITCHELL, OREGON 97750

confirms the right to store the waters of the WEST BRANCH BRIDGE CREEK, A TRIBUTARY OF THE JOHN DAY RIVER, IN TWO RESERVOIRS, for IRRIGATION.

The right to store and use these waters was perfected under Reservoir Application R-81411. The date of priority is January 1, 1993. The amount of water entitled to be stored and used each year under this right is not more than 2.23 ACRE-FEET, BEING 0.89 AF IN RESERVOIR 1 AND 1.35 AF IN RESERVOIR 2.

The reservoirs are located as follows:

SW 1/4 SE 1/4, SECTION 19, TOWNSHIP 11 SOUTH, RANGE 21 EAST, W.M.
NE 1/4 NW 1/4, SECTION 30, TOWNSHIP 11 SOUTH, RANGE 21 EAST, W.M.

The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe, with a minimum diameter of 8", or the provision of other means to evacuate water when determined necessary for public safety or to satisfy prior downstream rights as determined by the Water Resources Director.

This right is subject to a Reservoir Mitigation Order, signed by the Water Resources Director, January 16, 1998.

R-81411.LHN

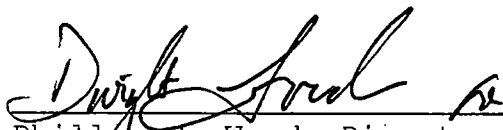
Certificate Number 81488

THIS CERTIFICATE IS ISSUED TO CORRECTLY DESCRIBE THE QUANTITY OF WATER, LOCATION OF RESERVOIRS AND SUPERSEDES CERTIFICATE 73477.

The issuance of this superseding certificate does not confirm the status of the water right in regard to the provisions of ORS 540.610 pertaining to forfeiture or abandonment.

The right to store and use the water for the above purpose is restricted to beneficial use at the place of use listed above.

Issued AUGUST 4, 2005.


Phillip C. Ward, Director
Water Resources Department



Recorded in State Record of Water Right Certificates Number 81488.

R-81411.LHN

Oregon Water Resources Department
Water Rights Division

Water Rights Certificate
Number 73477

Reservoir Mitigation Order

Application History

A reservoir was constructed prior to January 1, 1995. As evidence of the right to store water, pursuant to ORS 537.407(1), an application was submitted.

Pursuant to ORS 537.407(3)(b) the Department has received information demonstrating that the reservoir results in injury to an existing water right.

ORS 537.407(6) specifies that "...the director shall require the owner of the reservoir to take appropriate action to mitigate injury to existing water rights or impact to the existing fishery resource."

Therefore, the Department has determined that with the following additional mitigation condition(s), the injury to existing water rights and/or detrimental impact to existing fishery resources, described above, will be mitigated.

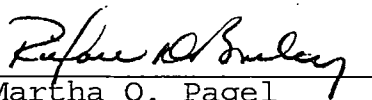
Order

If required by the Watermaster, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Watermaster (Department).

The pond may be filled one time only per year. No diversion of water to storage can occur during times all water rights are not met on the on West Bridge Creek and/or Bridge Creek.

Therefore, pursuant to ORS 537.407, the use evidenced by certificate 73477 shall be allowed to continue if the injury/negative impact of the reservoir is mitigated as described above.

DATED January 16, 1998


Martha O. Pagel
Director

TIIS R2/E

RECEIVED

JUL 29 1996

WATER RESOURCES DEPT.
SALEM, OREGON

RECEIVED

DEC 27 1994

WATER RESOURCES DEPT.
SALEM, OREGON

1°30' Curve Left
T. Δ=13°50'

375' Spiral
s=2°48'45"
α=0.4

426+46.37 P.C.S.
430+21.37 P.T.

420+99.15 P.S.C.

417+24.15 P.S.

South R.O.W. line is
for relocated hwy.

At NE corner Section 25

Found original marked corner
stone 12x8x3 inches and
ring of stone. Set
brass cap
monument.

10SHD Rec. N71°06'E 2430.82'
N71°14'24"E 2430.82'

At N 1/4 corner Section 30

I did not find any acceptable
evidence of this corner. Set brass
cap monument at single proportionate
measure between the NW and NE
corners of Section 30.

K.N.

17 Acres, More or Less, in Section 19
60 ft. wide

(S89°54'E)

N88°22'25"E 5033.96'

140.00 c
2418.72

(43.25 ch)
2615.24'

Tie:
N51°06'21"E
368.09'

Tie:
from fd. section corner a
3/8" iron pin with yellow plastic
cap marked Bachand L.S. 1122
bears S40°20'15"E, 165.71 ft.

Tie:
from pin set at
NE corner Govt.
Lot 1, a 5/8" iron
pin with yellow
plastic cap mkd
Bachand L.S. 1122
bears S28°09'10"E
127.19 ft.

Govt. Lot 1

R.H.
E 1/2 E 1/2 NW 1/4

R.H.
W 1/2 NE 1/4

125.07 Acres
in Section 30

Govt. Lot 2

K.N.
W 1/2 E 1/2 NW 1/4

C 1/4 corner
not set.

R.H.

N87°31'33"E

5121.83'

1043.68'

347.90'

621.38'

621.38'

932.81'

310.94'

2740.03'

5362.41'

N 11°13'W 2749.30'

N 0°50'35"W 2758.67'

N 1°08'48"W 2779.09'

(S 0°57'E 40.00 ch)

1389.54'

694.78'

694.77'

Mailing List for Certificate

Mailing Date: August 4, 2005

Application ✓ R-81411

Certificate 81488

Permit/Certificate Holder: (include copy of map
and Reservoir Mitigation Order)

✓ BRYAN AND HEATHER SPITZER
PO BOX 242
MITCHELL, OR 97750

Copies Mailed	
By:	<i>[Signature]</i> (STAFF)
on:	<i>Aug 4 2005</i> (DATE)

Copies of Final Certificate to be sent to:

1. ✓ Watermaster # 21: (include copy of map)
2. ✓ Data Center (include copy of map)
3. ✓ Water Availability

Other persons to receive copies: (Include map)

STATE OF OREGON
COUNTY OF Wheeler

CERTIFICATE OF WATER RIGHT (HB - 2153)

THIS CERTIFICATE ISSUED TO

ROBERT HABECKER
HABECKER, CAROLYN
33817 GAGE RD
MITCHELL, OR 97750

confirms the right to store the waters of
TWO RESERVOIRS AND STORE WATERS OF WEST BRANCH BRIDGE CREEK,
A TRIBUTARY OF JOHN DAY RIVER
for IRRIGATION.

The right to store and use these waters was perfected under Reservoir Application R-81411.
The date of priority is January 1, 1993. The amount of water entitled to be stored and
used each year under this right is not more than 2.23 ACRE-FEET, BEING 0.89 AF
IN RESERVOIR 1 AND 1.35 AF IN RESERVOIR 2

Located as follows:

SW 1/4 SE 1/4 SECTION 19, TOWNSHIP 11 SOUTH, RANGE 21 EAST WM.
NE 1/4 NW 1/4 SECTION 19, TOWNSHIP 11 SOUTH, RANGE 21 EAST WM.

30 ✓

0.89
1.35
2.24

The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe, with a minimum diameter of 8", or
the provision of other means to evacuate water when determined necessary for public safety or to satisfy prior downstream rights as
determined by the Water Resources Director.

The right to store and use the water for the above purpose is restricted to beneficial use at the place of use listed above.

WITNESS the signature of the Water Resources Director, affixed JANUARY 6, 1997.



Martha O. Pagel

Recorded in State Record of Water Right Certificates numbered 73477

81488

TIIS R2/E

RECEIVED

JUL 29 1996

WATER RESOURCES DEPT.
SALEM, OREGON

RECEIVED

DEC 27 1994

WATER RESOURCES DEPT.
SALEM, OREGON

1°30' Curve Left
T. Δ=13°50'

375' Spiral
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R.H.
E 1/2 E 1/2 NW 1/4

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W 1/2 NE 1/4

125.07 Acres
in Section 30

Govt. Lot 2

K.N.
W 1/2 E 1/2 NW 1/4

C 1/4 corner
not set.

R.H.

Oregon Water Resources Department
Water Rights Division

Water Rights Certificate
Number 73477

Reservoir Mitigation Order

Application History

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Therefore, the Department has determined that with the following additional mitigation condition(s), the injury to existing water rights and/or detrimental impact to existing fishery resources, described above, will be mitigated.

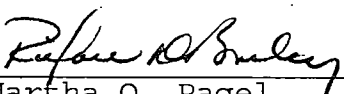
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Therefore, pursuant to ORS 537.407, the use evidenced by certificate 73477 shall be allowed to continue if the injury/negative impact of the reservoir is mitigated as described above.

DATED January 16, 1998


Martha O. Pagel
Director

Notice of Right to Contested Case Hearing

The owner of the reservoir that is the subject of this mitigation order may request a contested case hearing if the owner disagrees with the order. Most disagreements are settled through a series of informal discussions before the hearing date arrives.

If the department does not receive a request for hearing within the time stated in this notice you have waived your right to a hearing under ORS Chapter 183, unless your failure to request a hearing was beyond your reasonable control, as provided in OAR 137-03-075.

The record of this proceeding to date, including information in Department files on the subject of this proceeding, is automatically part of the contested case record upon default for the purpose of proving a prima facie case.

In order to process your request for a contested case hearing please include the following in writing:

- The reference number (located near the top right corner of the order.);
- Your name, address, and telephone number;
- A detailed description of why the condition(s) proposed in this order is not necessary to protect existing water rights or fishery resources;
- Any citation of legal authority to support your protest, if known.

Your request for a contested case hearing must be received by the Department no later than 60 days after the date of this order.

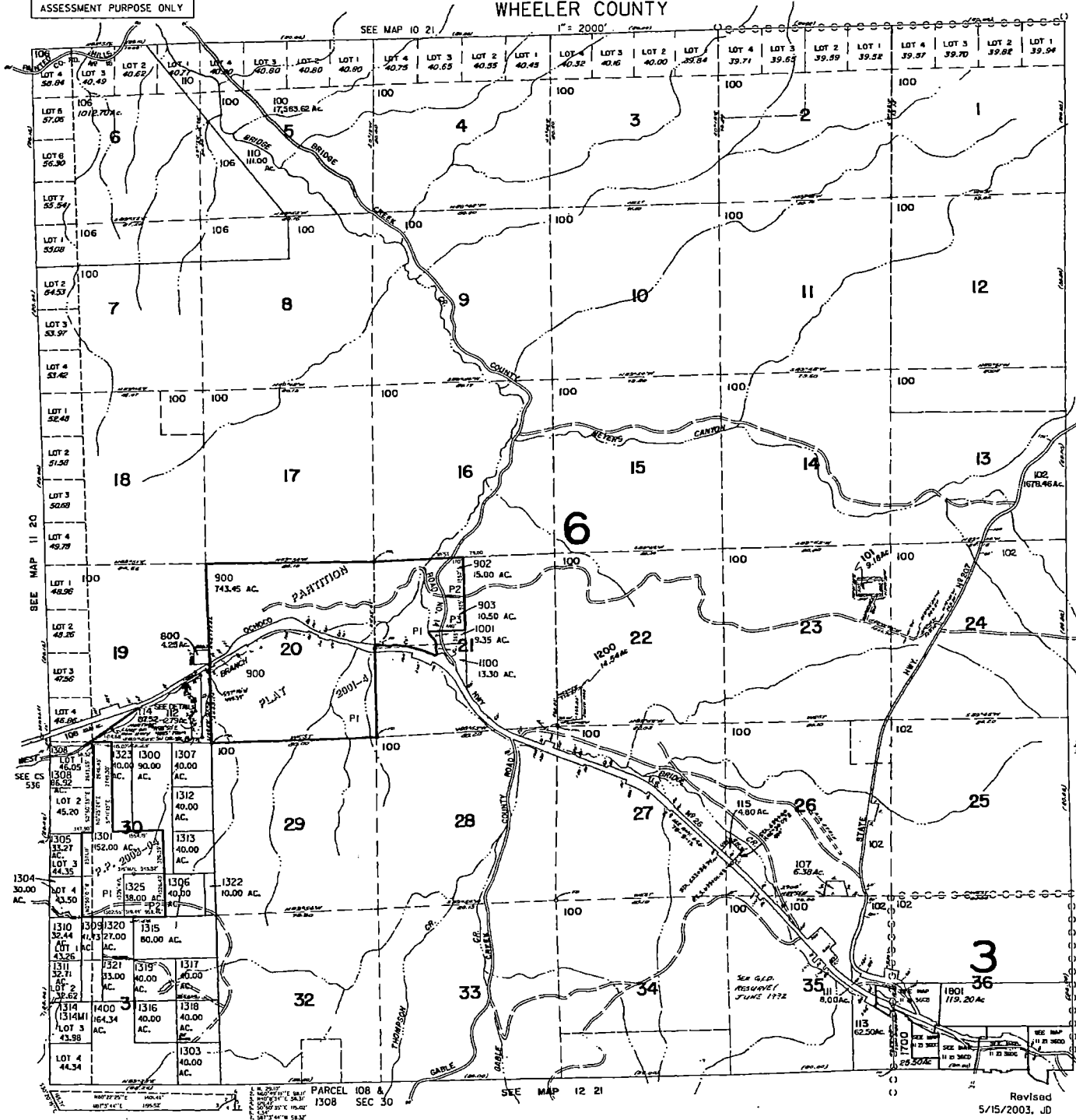
Send your request for a contested case hearing to:

Ponds Program Appeals
Water Rights Section
Oregon Water Resource Department
158 12th ST NE
Salem OR 97310

THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY

T.11S. R.21E. W.M.
WHEELER COUNTY

11 21
& INDEX



CANCELLED NO.
103
104
105
109
116
200
300
400
500
600
700
901
1000
1101
1302
1324
1401
1500
1600
1800
1900

SEE MAP 11 22

11 21
& INDEX

X-Mailer: QUALCOMM Windows Eudora Version 6.2.0.14
Date: Wed, 08 Jun 2005 14:20:46 -0700
To: Stephen.C.BROWN@wrд.state.or.us
From: Vern Church <Vernon.L.CHURCH@wrд.state.or.us>
Subject: Fwd: Re: Spitzer contact info.
X-OriginalArrivalTime: 08 Jun 2005 21:20:47.0297 (UTC) FILETIME=[EFF5F310:01C56C6F]
X-Spam-Checker-Version: SpamAssassin 2.63 (2004-01-11) on
kettle.wrд.state.or.us
X-Spam-Status: No, hits=-4.9 required=5.0 tests=BAYES_00 autolearn=ham
version=2.63
X-Spam-Level:

Bryan & Heather Spitzer
P.O. Box 242
Mitchell, OR 97750
541-462-3767
TI 1323 for NENW, Section 30

Added to file 6.8.2005
def

Find Location

Basin
John Day

Township
Township: S
Range: W
Section: SEARCH

Find Water Right Application Number
G SEARCH
Permit Number
G SEARCH
Cert Number
SEARCH
Claim Number
GR SEARCH

Tools

Map navigation icons: pan, zoom, scale, etc.

OWRD Web Mapping (beta)

Last Update: 12/1/2004

Table of Contents

Layer	Visible	Active
Township	☒	☐
WAB	☐	☐
Sections	☒	☐
Point of Diversion	☒	☐
Place of Use	☐	☐
Cities	☒	☐
Major Roads	☒	☐
Roads	☐	☐
Groundwater Restricted	☒	☐
Basins	☐	☐
Watermaster Districts	☐	☐
Counties	☐	☐
303D Streams	☐	☐
303D Lakes	☐	☐
Quad Maps	☐	☐
Aerial Photos	☒	☐
Topography	☒	☐

Refresh

Manage TOC

January 16, 1998

WATER
RESOURCES
DEPARTMENT

ROBERT AND CAROLYN HABECKER
33817 GAGE RD.
MITCHELL, OR 97750

Reference: File R-81411

Dear Certificate Holder:

Thank you for your continuing efforts in our program for issuing final water rights certificates for existing ponds and reservoirs. We know it has been a long and complicated process, and we appreciate your cooperation.

As indicated in our letters to you last November, we had previously received written comments indicating that your reservoir could be detrimental to fish or might cause injury to other water rights. You were provided an opportunity to submit additional information addressing those comments.

Since then, we have reviewed all the information available to us, and have determined that certain conditions are necessary to mitigate the potential harm to fish or other water rights. The enclosed Mitigation Order spells out the additional conditions we are proposing.

If you agree with these conditions, and comply with the Mitigation Order, the process will be complete.

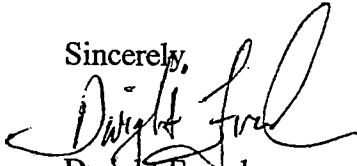
If you disagree with this order, you may request a contested case hearing, and submit in writing your reasons why the order should be changed or rescinded. You may wish to submit maps or sketches to help us to better understand the particulars of your situation. Once we receive your request for a contested case hearing, we will contact you to discuss the situation and how we might be able to settle disagreements without holding a hearing. If we are unable to agree on a solution, we will schedule a contested case hearing at a time that is agreeable to both you and the Department. The appeal rights are described in more detail in the order enclosed.



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

Once again, thank you for your participation in this program. If you have any questions please call one of the water rights staff listed below. My extension number is 268.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dwight French".

Dwight French

Water Rights Section Manager

Enclosures

cc: Watermaster

Russ Klassen 1-800-624-3199 Ext 266

Laura Snedaker Ext 331

Dallas Miller Ext 272

Mailing List for MO Copies

Application R 81411
73477

MO Date January 6, 1998

Original mailed to:

Applicant: ☒ Is there a new address? Y _____

1. WRD - File # R 81411
2. WRD - Watermaster # 4
3. WRD - Regional Manager (not Bob Main): NCR

Copies Mailed	
By: <u>TCB</u>	(SUPPORT STAFF)
on: <u>1/26/98</u>	(DATE)

Other Commenters:

4. ODFW District Biologist: Y _____
5. WaterWatch of Oregon: Y _____
6. Other Commenters Y _____

Other Interested Persons (CWRE, Agent, etc.)

7. _____
8. _____
9. _____
10. _____

CASEWORKER :

Information	Below	This	For	Mitigation	Team	Use	Only	
SMBS	SMSS	BPC	<u>KR1</u>	<u>KR2</u>	J	BSD	BSD2	<u>KA</u> MD
MD1	MD2	MD3	B57	B58	BYPASS	B51A	Basin	<u>6</u>

~~IF RRB WM~~
* * W BP BARKER CRK & / or DOR CRK

August 29, 1996

FILE#: R 81411

ROBERT HABECKER
HABECKER, CAROLYN
33817 GAGE RD
MITCHELL, OR

97750

WATER
RESOURCES
DEPARTMENT

Dear Applicant,

The Department has received and filed your House Bill 2153 Reservoir Application. A receipt is enclosed unless one has been previously issued. The application has been assigned the number found on the address label. Please refer to this number when contacting the Department.

In accordance with House Bill 2376 (1995 Ponds Legislation) a Certificate of Water Right will be issued within the next few weeks.

If you have any questions, feel free to contact the Water Rights Information Group at 1-800-624-3199 extension 499 statewide or at (503)378-8455 extension 499 from outside Oregon. Correspondence can be sent to:

Oregon Water Resources Department
158 12th Street NE
Salem, Oregon 97310-0210

Sincerely,



Ms. Anita Mc Loud
Water Rights Specialist
Water Rights/Adjudication Division

cc: CWRE



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

RECEIVED

JUL 29 1996

Completeness Checklist

WATER RESOURCES DEPT.
SALEM, OREGON

Before you resubmit your HB 2153 application...Have you:

- ☐ Answered each question on the application as completely as possible?
- ☐ Signed and dated the oath statement in the application? If not, please sign and return the oath statement on the bottom of this page.
- ☐ Attached a legible map showing township, range, section, quarter-quarter, tax lot number, and location of each reservoir on your application?
- ☐ Included a land use form signed by your local government or a receipt signed and dated by a local government official acknowledging the land use request was received by the local planning department?
- ☐ Enclosed evidence that the reservoir was constructed prior to January 1, 1993? Construction receipts, dated aerial photos, or a notarized affidavit by the landowner or other knowledgeable person will meet this requirement.
- ☐ Only 10 reservoirs per application. Excess reservoirs must be filed for under a separate application.

I/We certify that the information I have provided is an accurate representation of the proposed water use and is true and correct to the best of my knowledge.

Carolyn Halverson

Name

Title

Date

7-22-96

Robert Jack Hebert

Name

Title

Date

7-22-96

Name

Title

Date

Name

Title

Date

BARGAIN AND SALE DEED

KNOW ALL MEN BY THESE PRESENTS, That... Brooks Resources Corporation, an Oregon corporation, hereinafter called grantor, for the consideration hereinafter stated, does hereby grant, bargain, sell and convey unto Robert Habecker and Beverly Habecker, husband and wife, hereinafter called grantee, and unto grantee's heirs, successors and assigns all of that certain real property with the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, situated in the County of Wheeler, State of Oregon, described as follows, to-wit:

See EXHIBIT A attached hereto.

RECEIVED

JUL 29 1996

WATER RESOURCES DEPT.
SALEM, OREGON

RECEIVED

DEC 27 1994

WATER RESOURCES DEP
SALEM, OREGON

(IF SPACE INSUFFICIENT, CONTINUE DESCRIPTION ON REVERSE SIDE)

To Have and to Hold the same unto the said grantee and grantee's heirs, successors and assigns forever.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$ 27,000.00

However, the actual consideration consists of or includes other property or value given or promised which is part of the consideration (indicate which). (The sentence between the symbols @, if not applicable, should be deleted. See ORS 93.036.)

In construing this deed and where the context so requires, the singular includes the plural and all grammatical changes shall be implied to make the provisions hereof apply equally to corporations and to individuals.

In Witness Whereof, the grantor has executed this instrument this 3rd day of April, 1983; if a corporate grantor, it has caused its name to be signed and seal affixed by its officers, duly authorized thereto by order of its board of directors.

Brooks Resources Corporation

William L. Smith, President

(If executed by a corporation, affix corporate seal)

STATE OF OREGON,

County of _____, 19____

Personally appeared the above named _____

and acknowledged the foregoing instrument to be _____ voluntary act and deed.

Before me:

(OFFICIAL SEAL)

Notary Public for Oregon

My commission expires _____

STATE OF OREGON, County of Deschutes

April 3, 1983

Personally appeared William L. Smith

each for himself and not one for the other, did say that he is the president of Brooks Resources Corporation

and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and each of them acknowledged said instrument to be the voluntary act and deed.

Before me:

Notary Public for Oregon

My commission expires Jan 22, 1987

GRANTOR'S NAME AND ADDRESS

GRANTEE'S NAME AND ADDRESS

After recording return to:

NAME, ADDRESS, ZIP

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

Robert Habecker
1867 Bonaira Way
Newport Beach, CA 92660

NAME, ADDRESS, ZIP

SPACE RESERVE FOR RECORDER'S

#5531
STATE OF OREGON } ss.
County of Wheeler

I hereby certify that the within instrument was received for record.

APR 26 1983

10:00 am

and assigned

NO 4-36-402
(Deeds)

In the Microfilm Records of said county

Witness my Hand and Seal of County

AHLENE STEGNER
County Clerk

JUL 29 1996

EXHIBIT "B"

WATER RESOURCES DEPT

SALEM, OREGON

RECEIVED

DEC 27 1994

WATER RESOURCES DEPT
SALEM, OREGON

FURTHER TERMS AND DISCLOSURES CONTINUED FROM ESCROW INSTRUCTIONS AND EARNEST MONEY RECEIPT AND AGREEMENT:

1. Purchaser herein acknowledges receipt of the preliminary report for title insurance, which they understand and accept.
2. Unless billed directly for property taxes by Wheeler County Treasurer, the herein purchasers agree to pay their pro-rata share of property taxes to the sellers herein. Seller agrees to furnish receipts and records of same.
3. The parties hereto acknowledge that the land described in the real estate contract is a portion of a larger tract of land described as follows:

TOWNSHIP 11 SOUTH, RANGE 20 EAST, W.M.: Section 14: S $\frac{1}{2}$ of the SW $\frac{1}{4}$; SW $\frac{1}{4}$ of the SE $\frac{1}{4}$; Section 15: SE $\frac{1}{4}$ of the SE $\frac{1}{4}$; Section 21: NE $\frac{1}{4}$ of the SE $\frac{1}{4}$; Section 22: E $\frac{1}{2}$ of the NE $\frac{1}{4}$, S $\frac{1}{2}$; Section 23: All; Section 24: All except Lot 14; Section 25: All; Section 26: N $\frac{1}{2}$ of the NE $\frac{1}{4}$, SE $\frac{1}{4}$ of the NE $\frac{1}{4}$, NE $\frac{1}{4}$ of the NW $\frac{1}{4}$, S $\frac{1}{2}$ of the NW $\frac{1}{4}$; SW $\frac{1}{4}$; W $\frac{1}{2}$ of the SE $\frac{1}{4}$, NE $\frac{1}{4}$ of the SE $\frac{1}{4}$; Section 27: SE $\frac{1}{4}$ of the NE $\frac{1}{4}$, E $\frac{1}{2}$ of the SE $\frac{1}{4}$; Section 34: E $\frac{1}{2}$ of the E $\frac{1}{2}$, SW $\frac{1}{4}$ of the SE $\frac{1}{4}$; Section 35: All; Section 36: All; TOWNSHIP 11 SOUTH, RANGE 21 EAST, W.M.: Section 30: All; Section 31: Lots 1, 2, & 3, E $\frac{1}{2}$ of the NW $\frac{1}{4}$, NE $\frac{1}{4}$, N $\frac{1}{2}$ of the SE $\frac{1}{4}$, SE $\frac{1}{4}$ of the SE $\frac{1}{4}$; TOWNSHIP 12 SOUTH, RANGE 20 EAST, W.M.: Section 1: All except Govt. Lot 6; Section 2: Lots 1, 3, 4, and SE $\frac{1}{4}$ of the NE $\frac{1}{4}$, NE $\frac{1}{4}$ of the SE $\frac{1}{4}$, S $\frac{1}{2}$ of the NW $\frac{1}{4}$, SW $\frac{1}{4}$; Section 3: Lots 1 & 2, S $\frac{1}{2}$ of the NE $\frac{1}{4}$, N $\frac{1}{2}$ of the SE $\frac{1}{4}$; Section 12: Lot 1, N $\frac{1}{2}$ of the NE $\frac{1}{4}$; TOWNSHIP 12 SOUTH, RANGE 21 EAST, W.M.: Section 6: Lots 5, 6, & 7; Section 7, Lot 1.

and that on said larger tract of land are roads and springs, some of which may be located on the portion of the land described herein. The parties hereto agree that any owner of a portion of said larger tract of land may use roads existing at time of original sub-dividing and/or those described in Exhibit "C", and agree not to gate those roads described in Exhibit "C" to through traffic. Springs are common to the overall ownership and any party purchasing a tract within the above described property may take water for domestic purposes from any spring existing on said land. Should easements for pipe lines and electric service be necessary to use and develop water, from such springs, the parties hereto agree to execute such easements, upon demand. It is further agreed and understood, by the parties hereto, that said larger tract of land shall be considered open range until such time as any owner of a portion or portions of the said larger tract shall choose to build fence against the entering of cattle and other live-stock. It is understood that roads located on the described lands are private and are the responsibility of the respective purchaser's to maintain, at their sole cost and expense. The sellers herein, together with the purchasers, reserve the right to dedicate roads, grant easements for utilities and private roads on the basis of mutual consent and agreement.

STATE OF OREGON } ss. 7699
County of Wheeler

I hereby certify that the within instrument was received for record.

DEC 22 1989 4:19 p.m.

and assigned No. M-38-645

DEED
Microfilm Records of said
County of Wheeler
Wheeler County Clerk
Barbara S. Litten
Deputy



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

November 20, 1997

ROBERT HABECKER
HABECKER, CAROLYN
33817 GAGE RD
MITCHELL, OR 97750

REFERENCE: FILE#: R 81411

Dear Mr. and Ms. Habecker,

I want to apologize for any confusion which may have resulted from the letter we sent to you about a week ago. I hope this follow-up letter will better explain our "ponds" program, and give you a clearer picture of what is happening with your pond.

In 1995, the legislature adopted a new law intended to help address a legal problem with many existing ponds throughout the state. These ponds had been developed over the years by land owners who were not aware that water rights may have been required. In order to make sure that all the ponds were "legal" the legislature approved HB 2376 in 1995, which set out a process for filing a notice of the pond with our department. Under the law, such notices could be filed until January 31, 1997. Our job was then to determine whether any of the ponds resulted in injury to other existing water rights, or created a detrimental impact on fish.

This simplified review process was intended to make it easier for the owners of existing ponds to receive final water right certificates. The 1995 law also required that we provide a comment period, which ended on August 1, 1997. During this time, we were required to accept comments as to whether a pond may in fact be resulting in injury to other water rights or creating a detrimental impact to fish. After the close of that comment period, our department was given 180 days in which to evaluate the comments, give notice to the pond owners, and identify whether mitigation measures would be required to alleviate the injury to other water rights or impacts to fish.

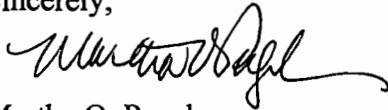
This is why you received a letter from us last week. For more than 16,000 ponds on which notices were filed under HB 2376, about 960 comments were received. From those comments, we determined that about half would appear to require mitigation measures. A total of 450 letters were sent out last week to pond owners like you.

The purpose of these letters was to advise you that the comments had been received, and to provide you with an opportunity to get back to us with any information you might have to show that the mitigation should not be required — either because you disagree with the comment that we received, or because you have a better idea of how to remedy the situation.

The letter you received included a copy of the comments we received about your pond, along with our proposed mitigation plan. We need to hear from you by December 10, 1997, as to whether you disagree with the underlying comment or with our proposed mitigation. We do encourage you to get back to us by the deadline, and we will make every effort to accommodate your suggestions.

Again, I offer my sincere apology for any confusion or irritation caused by our earlier letter. I hope this letter provides additional background information that will help you respond to the questions about your pond. If you have questions about this process, please let us know. I urge you to call our Water Rights Information staff at 1-800-624-3199 extension 499. In some circumstances they may also involve your local Watermaster for additional help. We will try our best to work through this with you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Martha O. Pagel', with a stylized, flowing script.

Martha O. Pagel
Director

m:955



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

November 12, 1997

FILE#: R 81411

ROBERT HABECKER
HABECKER, CAROLYN
33817 GAGE RD
MITCHELL, OR 97750

Dear Reservoir Owner,

You submitted a reservoir application under section 4, chapter 595, Oregon Laws 1993 (House Bill 2153) and were issued a certificate as provided for in ORS 537.407 (HB 2376). HB 2376 also provided an opportunity for the Oregon Department of Fish and Wildlife to comment on how a specific reservoir(s) caused injury to an existing fishery resource. In addition the same law allowed members of the public to comment on how the storage or use of the water caused an injury to an existing water right. This comment period ended on August 1, 1997.

The Department received the attached injury allegation(s) related to your reservoir(s), as provided for in ORS 537.407. If you do not agree with the allegation of injury, please submit detailed information to the Department explaining why or how the allegation is in error. Your response must be postmarked no later than *December 10, 1997*.

The Department will review any submission you may make and determine if a Mitigation Order is required. If the Department finds that the allegation of injury is factual and verifiable, the Department will issue a Mitigation Order requiring that the attached conditions, or other conditions that prove to be necessary after reviewing any information that is submitted, be placed on your water right certificate.

If you receive a Mitigation Order, you may request a Contested Case Hearing to contest the findings of the Department and the allegation of injury. Information on how to request a Contested Case Hearing will be provided in the Mitigation Order, if issued.

If you have any questions, please call the Water Rights Information Group at (503) 378-3739 extension. 499.

Water Right Section

MITIGATION CONDITIONS

Cert # 73477
App # R-81411
Date 11-12-97
LKS

Oregon Department of Fish and Wildlife Conditions

- _____ In accordance with ORS 498.268 and ORS 509.605, install, maintain, and operate bypass devices as required by the Oregon Department of Fish and Wildlife that will provide adequate upstream passage for fish. (SMBS)
- _____ Install, maintain, and operate fish screening devices as required by the Oregon Department of Fish and Wildlife to prevent fish from entering the diversion. (SMSS)
- _____ The reservoir owner is required to by-pass flows from _____ through _____ (BPC)

Water Right Related Conditions

- ✓ _____ The pond may be filled one time only per year. No diversion of water to storage can occur during times all water rights are not met on the John Day river System. (KR1)
- _____ If required by the Watermaster, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Watermaster (Department). (KR2)
- _____ Live stream flow must be passed when required to satisfy existing water rights. In order to substantiate live flow is being passed, measuring devices may be required. (J)
- _____ Live flow must be by-passed all year. (BSD)
- _____ Any secondary use of stored water is limited each year to the capacity of the reservoir. (BSD2)
- ✓ *If required by the Watermaster,*
_____ The water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.

RECEIVED

AUG 01 1997

WATER RESOURCES DEPT.
SALEM, OREGONWATERMASTER COMMENTS FOR
HB 2153 CERTIFICATES
HB 2376 NOTICESWatermaster Name Kelly Riss
Date 8-1-97

Please attach copy of HB 2153 Certificate.

HB 2376 Notice of Exempt Reservoir Application # _____

**Attach additional sheets if necessary.

Please specify which reservoir(s)/ponds(s) the comments pertain to:

Describe by name, number or Township Range Section and 1/4 1/4 if necessary. If comments refer to all reservoir listed please specify. Please provide enough information to accurately describe which reservoir the comment(s) pertains to.

RES. 1 LOCATED IN SW 1/4 SE 1/4, RES. 2 LOCATED IN NE 1/4 NW 1/4, BOTH IN SEC. 19, T. 11 S., R. 21 E., W. 4.

Does the reservoir/pond cause injury to an existing water right? Specify which water right and the evidence which supports that finding. Please describe for each reservoir listed above. If the water right and the supporting evidence are the same please indicate.

THE SOURCE FOR BOTH RESERVOIRS IS WEST BRANCH BRIDGE CREEK. MANY RIGHTS ON WEST BRANCH, A TRIO. TO BRIDGE CREEK, ARE NOT MET DUE TO INSUFFICIENT FLOW. C- 59780 ON BRIDGE CREEK IS NOT ALWAYS MET. PROOF INCLUDES PAST MEASUREMENT AND GAGING STATION DATA.

*****SEE BACK OF PAGE FOR LIST OF CONDITIONS TO MITIGATE INJURY*****

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AUG 01 1997

Which of the following conditions are required to mitigate the described injury?

WATER RESOURCES DEPT.
SALEM, OREGON(1) *If required by the Watermaster*

The water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.

(2)

The following provision for a measuring device shall be effective:

(a) the pump system shall include an access port for measuring the water levels

(b) the pump system shall include an in-line flow meter or other suitable device for measuring the water to which the user is entitled;

(c) the type and plans of the measuring device be approved by the Watermaster before the beginning of construction work and that the measuring device be installed under the general supervision of said Watermaster.

(3)

A totalizing flow meter must be installed at each diversion point. The totalizing flow meter must be installed and maintained as identified in OAR 690-507-645.

(4)

A staff gage that measures the entire range and stage between full reservoir level dead pool storage must be installed in the reservoir. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I. Additionally, if the reservoir is located in channel then weirs or other suitable measuring devices must be installed upstream and downstream of the reservoir, and, a gated valve outlet must be installed.

*Please specify whether the installation of the weir(s) will provide no public benefit.

(5)

Live stream flow must be by-passed between _____ and _____

(6)

The period of use has been limited to _____ through _____

Other (Please specify below)

We need to specify the pond can be filled one time only per year and no diversion of water to storage can occur during times all water rights are not met on WEST BRANCH BRIDGE CREEK AS WELL AS BRIDGE CREEK ITSELF.

STATE OF OREGON
COUNTY OF Wheeler

CERTIFICATE OF WATER RIGHT (HB - 2153)

THIS CERTIFICATE ISSUED TO

ROBERT HABECKER
HABECKER, CAROLYN
33817 GAGE RD
MITCHELL, OR 97750

RECEIVED

AUG 01 1997

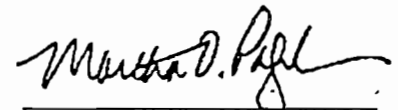
confirms the right to store the waters of
TWO RESERVOIRS AND STORE WATERS OF WEST BRANCH BRIDGE CREEK,
A TRIBUTARY OF JOHN DAY RIVER
for IRRIGATION.WATER RESOURCES DEPT.
SALEM, OREGONThe right to store and use these waters was perfected under Reservoir Application R-81411.
The date of priority is January 1, 1993. The amount of water entitled to be stored and
used each year under this right is not more than 2.23 ACRE-FEET, BEING 0.89 AF
IN RESERVOIR 1 AND 1.35 AF IN RESERVOIR 2

Located as follows:

SW 1/4 SE 1/4 SECTION 19, TOWNSHIP 11 SOUTH, RANGE 21 EAST WM.
NE 1/4 NW 1/4 SECTION 19, TOWNSHIP 11 SOUTH, RANGE 21 EAST WM.The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe, with a minimum diameter of 8", or
the provision of other means to evacuate water when determined necessary for public safety or to satisfy prior downstream rights as
determined by the Water Resources Director.

The right to store and use the water for the above purpose is restricted to beneficial use at the place of use listed above.

WITNESS the signature of the Water Resources Director, affixed JANUARY 6, 1997.



Martha O. Pagel

Recorded in State Record of Water Right Certificates numbered 73477

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I 285

JUL 29 1996

DEC 27 1994

Application No. _____

WATER RESOURCES DEPT.
SALEM, OREGONWATER RESOURCES DEPT.
SALEM, OREGON

State of Oregon

WATER RESOURCES DEPARTMENT

Application for a Permit to Appropriate Surface WaterApplicant(s) Robert and Carolyn Habecker
(Please print or type - use dark ink)Mailing Address: 33817 Gage Rd
Mitchell Oregon 97750 462-3443
City State Zip Daytime Phone No.

I (We) make application for a permit to appropriate the following described waters of the State of Oregon:

1. **SOURCE OF WATER** for the proposed use: West Branch - Bridge Creek
a tributary of _____
2. **TOTAL AMOUNT OF WATER** to be applied to beneficial use: N/A cubic feet per second, **OR** _____ gallons per minute. If water is to be used from more than one source, give the quantity of water from each: N/A

3. **INTENDED USE(s) OF WATER:** Storage - irrigation

If for more than one use, give the quantity of water from each source for each use; less than 8 acres of pastureIf for **DOMESTIC** use, state the number of households to be supplied; _____If for **MUNICIPAL OR QUASI-MUNICIPAL** use, state the present population to be served, and an estimate of the future requirements; (List population projections, water needs, anticipated areas to be provided water.)

_____If for **MINING** use, state the nature (gold, silver, etc.) of the mines to be served; _____If for **IRRIGATION**, or other land area use, state the **TOTAL** number of acres to be developed under each use;

Irrigation

Other (describe)

N/A on lower pond
Irrigate out of upper pond
about 10 acres

4. **DESCRIPTION OF WATER DELIVERY SYSTEM:** Include dimensions and type of construction of diversion works, length and dimensions of supply ditches or pipelines, size and type of pump and motor. If for irrigation, describe the type of system (i.e., flood, wheel line, hand line, drip, other).

Storage and irrigation system
no 1 pond upper pond 53 x 95 7" deep
no 2 pond lower pond 78 x 124 6" deep
excavated but pond bentonite bottoms
Ditches hand dug (1930) entire length of
pasture (not more than 8 acres)
Unable to use at low water period

TOTAL
2.23 AF

5. **PROJECT SCHEDULE:** (List month and year)

Proposed date construction work will begin _____

Proposed date construction work will be completed _____

Proposed date water use will be completed _____

NOTE: A map prepared by a Certified Water Right Examiner (CWRE) and a complete legal description of the subject property are required under ORS 537.140 and OAR 690 as a part of your application. The legal description may be copied from your deed, title insurance policy, or land sales contract.

6. a) In the event any deficiencies are noted involving the application map enclosed herein, please return the map with instructions for correction to (check one):

_____ Applicant _____ CWRE _____ Other (Identify in REMARKS section)

- b) In the event any deficiencies are noted involving the application, please return the application with instructions for correction to (check one):

_____ Applicant _____ CWRE _____ Other (Identify in REMARKS section)

7. Are all lands involved (including the proposed diversion site, place of use, and access for conveying the water) under your ownership? no. If not, list in the REMARKS section below, or on an attached sheet, the names and mailing addresses of the legal owners of all property involved in the proposed development.

REMARKS: Total diversion works supply ditches
pond and pond was in place on before the purchased
1st property. Est 1930 construction
Cu ca: Cu ca:

Water source for ditches & ponds begins on property
owned by Rudolph & Elaine Ritschard
33615 Gup Rd 2 1/2 acre feet of storage
Mitchell, Or 97750

I/We certify that the information I have provided in this application is an accurate representation of the proposed water use and is true and correct to the best of my knowledge:

Carolyn Salas
Signature of Applicant

July 22, 1996
Date

Robert Jack Hoberger
Signature of Co Applicant, if any

7/22/96
Date

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DEC 27 1994

**WATER RESOURCES DEP.
SALEM, OREGON**

FOR WATER RESOURCES DEPARTMENT USE ONLY

Dear Applicant:

I certify that I have examined the foregoing application, together with the accompanying information, and am returning it to you for:

In order to retain its tentative priority, this application must be returned with the requested corrections or additions on or before:

_____, 19____.

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

Water Resources Director

By: _____

This instrument was first received in the office of the Water Resources Director at _____,
Oregon, on the 1ST day of January, 1993, at _____ o'clock, ____ M.

APPLICATION NO: _____

PERMIT NO: _____

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DEC 2 1994
EX-111
SALEM, OREGON

1994
WATER
SALEM, OREGON DEP

WATER RESOURCES
SALEM, OREGON

REFLECTION

WATER RESOURCES
SALEM, OREGON

JUL 29 1996

REFLECTION

REFLECTION

REFLECTION

REFLECTION

- REFLECTION**

- REFLECTION**

(over)

(over)

(over)

(over)

(over)

(over)

(over)

(For Local Use Continued)

b) Please provide printed name and written signature.

Name: Barbara S. Sutton
Title: Planner

Date: 7/24/96
Phone: 541-763-2126

Signature: Dorinda Sutton

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

Additional Comments:

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JUL 29 1996

WATER RESOURCES DEPT.
SALEM, OREGON

EXHIBIT A

Brooks Resources Corporation to Robert Habecker
and Beverly Habecker

RECEIVED

DEC 27 1994

WATER RESOURCES DEPT.
SALEM, OREGON

That portion of Section 19, Township 11 South, Range 21 East of the Willamette Meridian, Wheeler County, Oregon, lying south of the Ochoco Highway No. 26.

EXCEPT the following:

- A. That part of S $\frac{1}{4}$ SW $\frac{1}{4}$ North of old State Highway and South of relocated Ochoco Highway, U.S. No. 26. No. M-34-854, Deeds.
- B. There is a deed of record from R. R. Keys and Emma Keys, his wife, to Hudspeth Sawmill Company, dated March 12, 1943, and recorded April 3, 1943, in Deed book 23, page 530. It conveys to Hudspeth Sawmill Company a parcel described as follows: Commencing at a point at the Southwest corner of an ancient fence which is North 88° 50' East 4885 ft. distant from the Southwest corner of section, running thence along the line of said ancient fence North 2° 30' West 486 ft., thence North 19° 5' West 150 ft., thence North 27° East 82 ft., thence North 15° 29' East 215 ft., thence North 6° 50' West 287 ft., thence North 5° 5' West 95 ft., thence North 51° 48' West 230 ft., thence North 33° 20' West 148 ft., thence North 5° 10' East 135 ft., thence North 47° 24' West 82 ft., thence North 62 ft. East 538 ft., thence South 2° 10' East 1910 ft., thence West 296 ft. to the place of beginning. ALTHOUGH there is a deed from Hudspeth Land & Livestock Company to Sutton Investment Company with subsequent deed to Circle Bar, we cannot find a deed from Hudspeth Sawmill Company which would have conveyed title to this tract. This tract does not show on the assessor's records.

06.2160.1280.0130

1. *Phragmites australis* (Cav.) Trin. ex Steud.