

**Records Research Request**

Date Requested: 4/23/2026

Information Requested: Water Right Research  
(Type of Request)

Requested By: /madden88@outlook.com

Mailing Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax: \_\_\_\_\_

Property Location: \_\_\_\_\_

T-R-S 9-26 Taxlot: 3606

Additional Properties: \_\_\_\_\_

\_\_\_\_\_

Mail to: \_\_\_\_\_

Address: \_\_\_\_\_

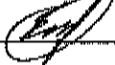
Phone #(s): \_\_\_\_\_ Fax: \_\_\_\_\_

Mail to: \_\_\_\_\_

Address: \_\_\_\_\_

Phone #(s): \_\_\_\_\_ Fax: \_\_\_\_\_

Date Request was Complete: 4/23/26

Research Completed By: 

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Time (hrs / \$): \_\_\_\_\_

Copies (# / \$): \_\_\_\_\_

Total Bill (\$): \_\_\_\_\_

## JULSRUD Eric W \* WRD

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**From:** Lindsey Madden <lmadden88@outlook.com>  
**Sent:** Thursday, April 23, 2026 8:27 AM  
**To:** JULSRUD Eric W \* WRD  
**Subject:** Water Rights 41473 Orchard View Road, Kimberly, OR

Good Morning,

When you have a minute, can you please send me the water rights for 41473 Orchard View Road, Kimberly, OR 97848. 11 acres, 9-26 TL 3606, Maruine Cate & Ronald Jollo.

Thank you!



*Lindsey Madden*

PRINCIPAL BROKER

📞 541-792-0031

✉️ [lmadden88@outlook.com](mailto:lmadden88@outlook.com)

📍 237 S. Canyon Blvd  
John Day, OR 97845



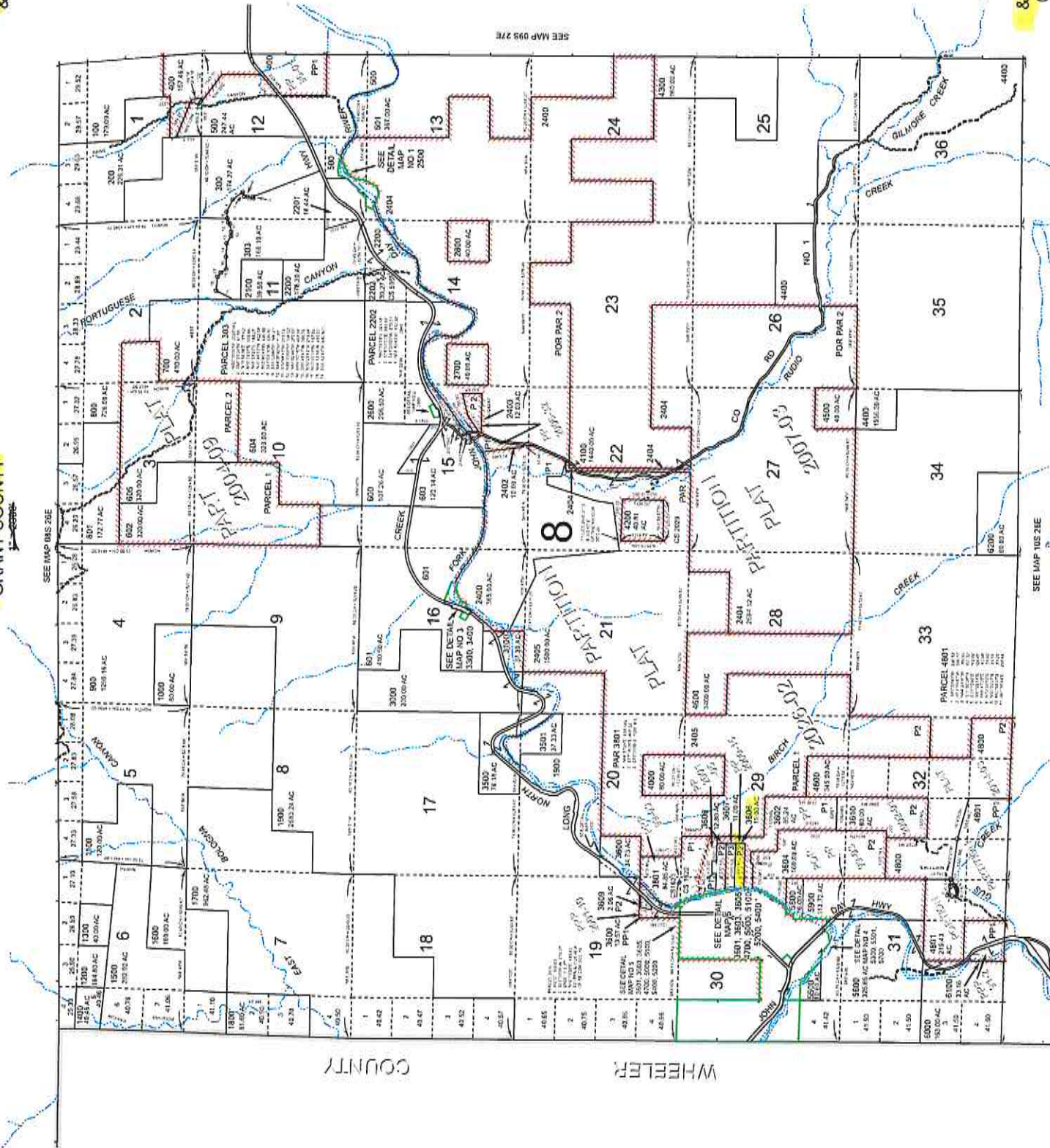
THIS MAP WAS PREPARED FOR  
ASSESSMENT PURPOSE ONLY

0 1,000 2,000 3,000 Feet

T.9S. R.26E. W.M.  
GRANT COUNTY

09S26E  
& INDEX

Cancelled  
301  
302  
1701  
1702  
2000  
2001  
2401  
2801  
3101  
3200  
3900  
4101  
4701  
4800  
5300  
5501  
5700  
5901



SEE MAP 09S 27E

SEE MAP 10S 26E

Revised: MA  
02/26/2026

& INDEX  
09S26E

STATE OF OREGON  
COUNTY OF GRANT  
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

THOMAS ORCHARDS, INC.  
BOX 496  
KIMBERLY, OREGON 97848

confirms the right to use the waters of the JOHN DAY RIVER, a tributary of the COLUMBIA RIVER, for the purpose of FROST PROTECTION FOR 123.6 ACRES.

This right has been perfected under Permit 41184. The date of priority is OCTOBER 20, 1976. This right is limited to 18.0 CUBIC FEET PER SECOND or its equivalent in case of rotation, measured at the point of diversion from the source.

The points of diversion are located as follows:

NE 1/4 NE 1/4, SE 1/4 NE 1/4, NW 1/4 SE 1/4, SECTION 30, SE 1/4 SE 1/4 SECTION 19, T 9 S, R 26 E, W.M.; DIVERSION 1 - 620 FEET SOUTH AND 730 FEET WEST, DIVERSION 2 - 1800 FEET SOUTH AND 750 FEET WEST, DIVERSION 3 - 3510 FEET SOUTH AND 1330 FEET WEST ALL FROM THE NE CORNER OF SECTION 30; DIVERSION 4 - 200 FEET SOUTH AND 700 FEET EAST FROM THE NW CORNER OF THE SE 1/4 SE 1/4, SECTION 19.

This right shall conform to any reasonable rotation system ordered by the proper state officer.

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

SE 1/4 SE 1/4 12.8 ACRES  
SECTION 19

SW 1/4 SW 1/4 3.4 ACRES  
SECTION 20

NW 1/4 NW 1/4 5.8 ACRES  
SW 1/4 NW 1/4 2.4 ACRES  
SECTION 29

NE 1/4 NE 1/4 21.2 ACRES  
SW 1/4 NE 1/4 7.3 ACRES  
SE 1/4 NE 1/4 27.0 ACRES  
NE 1/4 SW 1/4 0.8 ACRE  
NE 1/4 SE 1/4 4.6 ACRES  
NW 1/4 SE 1/4 31.8 ACRES  
SW 1/4 SE 1/4 6.5 ACRES

SECTION 30

TOWNSHIP 9 SOUTH, RANGE 26 EAST, 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. This right is subject to minimum flows established by the Water Resources Commission with an effective date prior to this right.

WITNESS the signature of the Water Resources Director, affixed AUGUST 12, 1991.

/s/ WILLIAM H. YOUNG

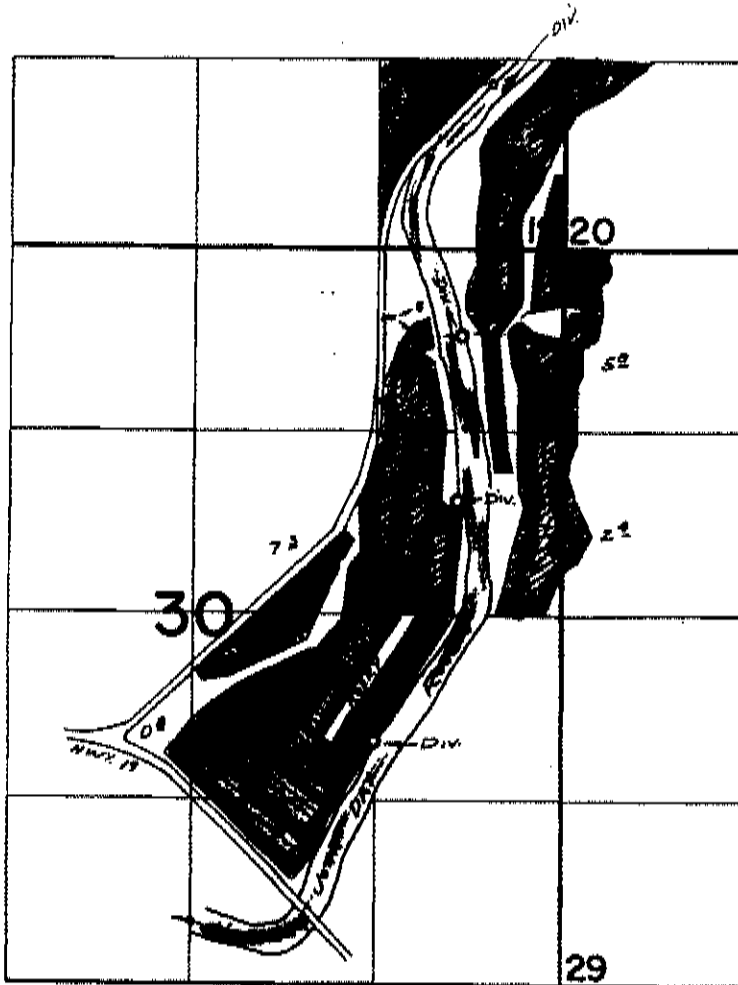
William H. Young

Recorded in State Record of Water Right Certificates numbered 66577.  
54897.TES

*Approx 3.3 ac +/-  
on Tax lot 3606 of  
95-26E  
4/23/26  
Euf*

Application No. 54897  
Permit No. 41184

T.9S.R.26E.W.M.



APPL. 38224    APPL. 43440    APPL. 49123 (not surveyed 12/9/76) *See*  
DIV. PTS. 448: 620'S x 730'W; 1800'S x 1750'W; 3310'S x 1330'W, 1170'N x 510'S  
ALL FROM ME' COR. SEC. 30

*for frost protection*  
**FINAL PROOF SURVEY**  
UNDER

Application No. ~~42140~~ <sup>38224</sup> Permit No. ~~32475~~ <sup>28480</sup>  
IN NAME OF

THOMAS ORCHARDS, INC.

Surveyed July 17, 1971, by R. MURKIN

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.

In addition, under ORS 537.260 any person with an application, permit or water right certificate subsequent in priority may jointly or severally contest the issuance of the certificate at any time before it has issued, and after the time has expired for the completion of the appropriation under the permit, or within three months after issuance of the certificate.

STATE OF OREGON

COUNTY OF GRANT

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

THOMAS ORCHARDS, INCORPORATED  
PO BOX 496  
KIMBERLY, OREGON 97848

JACK CAVENDER  
PO BOX 407  
MONUMENT, OREGON 97864

GORDON SMITH  
1950 NE THIRD STREET  
BEND, OREGON 97701

confirms the right to use the waters of PINE HOLLOW CREEK AND STORAGE FROM A RESERVOIR CONSTRUCTED UNDER PERMIT R-8654, tributaries of the NORTH FORK JOHN DAY RIVER, for IRRIGATION OF 13.5 ACRES AND SUPPLEMENTAL IRRIGATION OF 218.2 ACRES.

This right was perfected under Permit 47562. The date of priority is APRIL 11, 1983. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.34 CUBIC FOOT PER SECOND FROM PINE HOLLOW CREEK, with any deficiency to be made up by diversion from storage and 175.0 ACRE-FEET STORED WATER ONLY for supplemental irrigation and any deficiency in the available supply for lands listed as primary, or its equivalent in case of rotation, measured at the points of diversion from the sources.

65014.LHN

Certificate Number 83576

The points of diversion (POD) are located as follows:

POD 8 - SW $\frac{1}{4}$  NE $\frac{1}{4}$ , SECTION 36, T 8 S, R 27 E, WM; 230 FEET NORTH AND 1770 FEET WEST FROM THE E $\frac{1}{4}$  CORNER, SECTION 36.

POD 9 - LOT 1 (NE $\frac{1}{4}$  NE $\frac{1}{4}$ ), SECTION 2, T 9 S, R 27 E, W.M.; 300 FEET SOUTH AND 220 FEET EAST FROM THE SW CORNER, SECTION 31, T 8 S, R 28 E, WM.

The points of re-diversion are located as follows:

POD 1 - SE $\frac{1}{4}$  SE $\frac{1}{4}$ , SECTION 19, T 9 S, R 26 E, WM; 1100 FEET NORTH AND 580 FEET WEST FROM THE SE CORNER, SECTION 19.

POD 2 - NE $\frac{1}{4}$  NE $\frac{1}{4}$ , SECTION 30, T 9 S, R 26 E, WM; 620 FEET SOUTH AND 730 FEET WEST FROM THE NE CORNER, SECTION 30.

POD 2A - NE $\frac{1}{4}$  NE $\frac{1}{4}$ , SECTION 30, T 9 S, R 26 E, WM; 680 FEET SOUTH AND 830 FEET WEST FROM THE NE CORNER, SECTION 30.

POD 3 - SE $\frac{1}{4}$  NE $\frac{1}{4}$ , SECTION 30, T 9 S, R 26 E, WM; 3450 FEET NORTH AND 580 FEET WEST FROM THE SE CORNER, SECTION 30.

POD 4 - NE $\frac{1}{4}$  SE $\frac{1}{4}$ , SECTION 30, T 9 S, R 26 E, WM; 1700 FEET NORTH AND 1210 FEET WEST FROM THE SE CORNER, SECTION 30.

POD 7 - NE $\frac{1}{4}$  SE $\frac{1}{4}$ , SECTION 2, T 9 S, R 27 E, WM; 1000 FEET SOUTH AND 20 FEET WEST FROM THE E $\frac{1}{4}$  CORNER, SECTION 2.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 5.0 acre-feet per acre for each acre irrigated during the irrigation season of each year from direct flow and storage from the reservoir constructed under Permit R-8654, provided further the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein.

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

PRIMARY WITH DEFICIENCY FROM STORAGE

SW<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub> 2.7 ACRES  
 NW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> 10.8 ACRES  
 SECTION 1  
 TOWNSHIP 9 SOUTH, RANGE 27 EAST, W.M.

SUPPLEMENTAL

NE<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub> 1.0 ACRE  
 SW<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub> 0.6 ACRE  
 SE<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub> 21.2 ACRES  
 SECTION 19

SW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> 10.7 ACRES  
 SECTION 20

NW<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub> 5.8 ACRES  
 SW<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub> 2.4 ACRES  
 NW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> 0.2 ACRE  
 SECTION 29

NE<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub> 22.2 ACRES  
 SW<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub> 9.1 ACRES  
 SE<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub> 27.0 ACRES  
 NE<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> 0.8 ACRE  
 NE<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub> 10.1 ACRES  
 NW<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub> 31.8 ACRES  
 SW<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub> 6.5 ACRES

SECTION 30

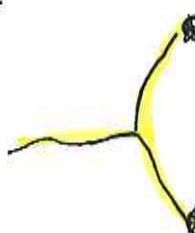
TOWNSHIP 9 SOUTH RANGE 26 EAST W.M.

LOT 3 (NE<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub>) 4.2 ACRES  
 LOT 4 (NW<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub>) 3.4 ACRES  
 SW<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub> 18.0 ACRES  
 SE<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub> 6.3 ACRES  
 NE<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> 24.8 ACRES  
 NW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> 9.2 ACRES  
 SW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> 0.4 ACRE  
 SE<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> 2.5 ACRES

SECTION 1

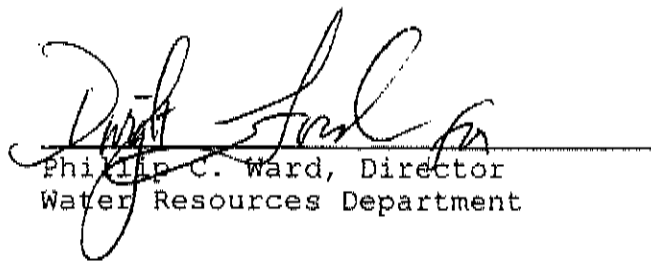
TOWNSHIP 9 SOUTH, RANGE 27 EAST, W.M.

*Approx 3.0 ac +/- on  
 Tax lot 3606 of  
 95-26E  
 4-23-26*










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.

Issued DEC 26 2007.

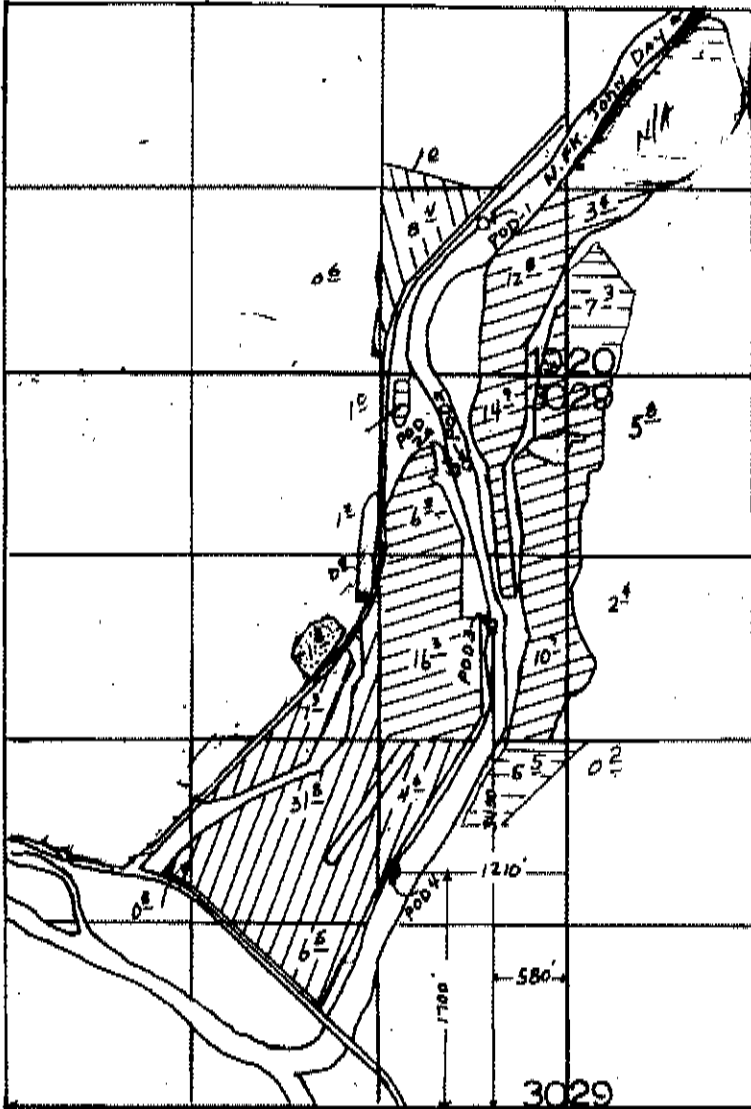
  
Philip C. Ward, Director  
Water Resources Department

Recorded in State Record of Water Right Certificates Number 83576.

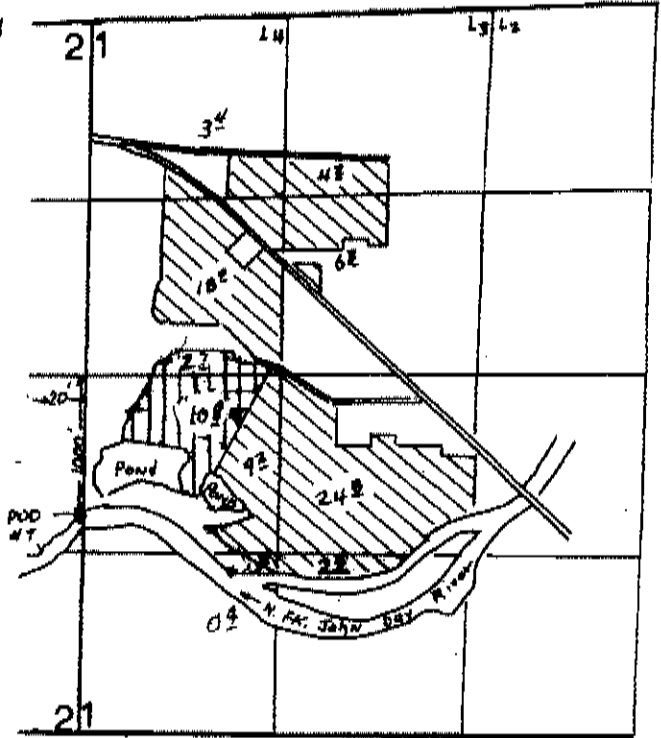
65014.LHN

-  SUPP'L TO C-51440
-  SUPP'L TO C-57551
-  SUPP'L TO C-38695
-  PPIM, PINE HALLOW SUPP'L STORAGE 7-P47562
-  SUPP'L TO C-38696
-  SUPP'L TO T-5721
-  SUPP'L TO C-54420

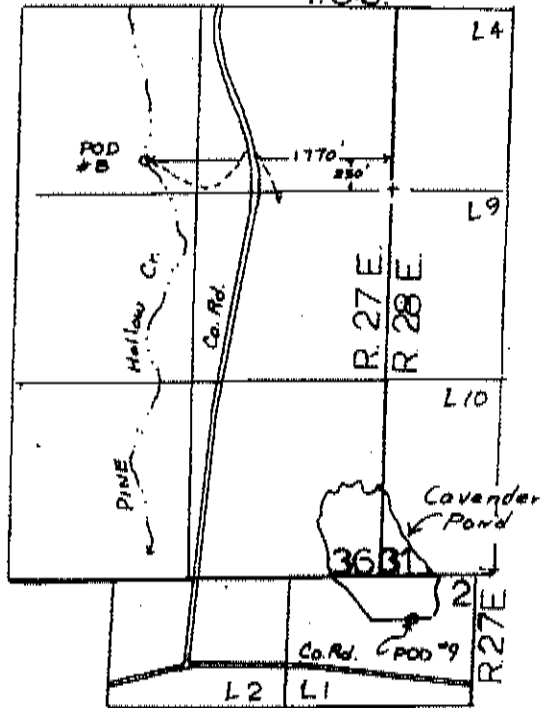
T. 9 S., R. 26 E., W.M,



T. 9 S., R. 27 E., W.M.



T. 8 S.



**FINAL PROOF SURVEY**

UNDER  
TRANSFER 5721

Application R-61610 PERMIT R-8654  
65014 47562

IN THE NAME OF

THOMAS ORCHARDS, INC. & JACK CAVENDER

Surveyed 3-31-2000, By J. MILLER

- POD-1, 1100' N. & 580' W. FROM SE COR. SEC. 19.
- POD-2, 620' S. & 730' W. FROM NE COR. SEC. 30.
- POD-2A, 680' S. & 830' W. FROM NE COR. SEC. 30.
- POD-7, 1000' S. & 20' W. FROM E 1/4 COR. SEC. 2.
- POD-8, 230' N. & 1770' W. FROM E 1/4 COR. SEC. 36.
- POD-9, 300' S. & 220' E. FROM SW COR. SEC. 31.

SCALE 1"=1320'

LHN 2/5/07

STATE OF OREGON  
COUNTY OF GRANT  
CERTIFICATE OF WATER RIGHT

This Is to Certify, That THOMAS ORCHARD, INC.

of Kimberly, State of Oregon, has made proof to the satisfaction of the STATE ENGINEER of Oregon, of a right to the use of the waters of North Fork John Day River

a tributary of John Day River for the purpose of irrigation of 72.6 acres

under Permit No. 28480 of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Oregon; that the priority of the right hereby confirmed dates from November 7, 1962

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1.82 cubic foot per second

or its equivalent in case of rotation, measured at the point of diversion from the stream. The point of diversion is located in the NE 1/4 NE 1/4, SE 1/4 NE 1/4, Section 30, T. 9 S., R. 26 E., W. M., 620 feet South and 730 feet West; 1800 feet South and 750 feet West; both from NE Corner, Section 30.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to one-fortieth of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 5 acre feet per acre for each acre irrigated during the irrigation season of each year; provided further that the right to use of water is limited to the period when the flow of the John Day River is more than 30 cubic feet per second at USGS Gage No. 14-0465 and more than 20 cubic feet per second at USGS Gage No. 14-0480,

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

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

- 12.8 acres SE 1/4, SE 1/4  
Section 19
  - 3.4 acres SW 1/4 SW 1/4  
Section 20
  - 5.8 acres NW 1/4 NW 1/4  
2.4 acres SW 1/4 NW 1/4  
Section 29
  - 21.2 acres NE 1/4 NE 1/4  
27.0 acres SE 1/4 NE 1/4  
Section 30
- T. 9 S., R. 26 E., W. M.

Approx 3.3 ac +/- on  
Tax lot 3606 of  
9-26  
4/23/26

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

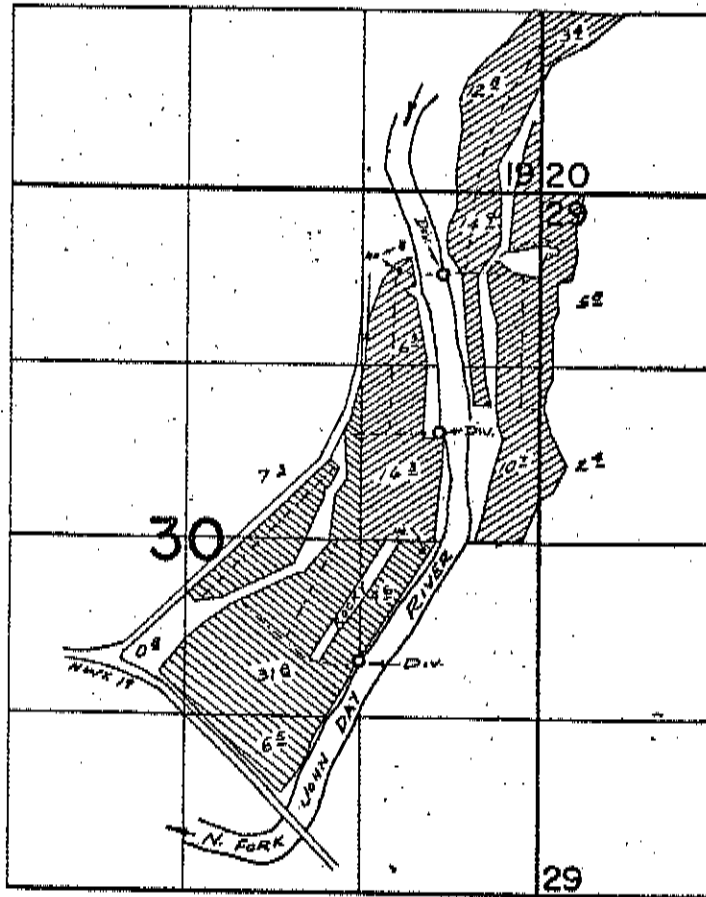
WITNESS the signature of the State Engineer, affixed  
this date. December 14, 1972

CHRIS L. WHEELER  
State Engineer

P-28480  
38695

6

# T.9S.R.26E.W.M.



APPL. 38224    
  APPL. 43440  
 DIV. PTS. ARE: 620'S. & 730'W.; 1800'S. & 750'W.; 3810'S. & 1330'W.;  
 ALL FROM N.E. COR. SEC. 30

## FINAL PROOF SURVEY UNDER

Application No. ~~47440~~ <sup>38224</sup> Permit No. ~~32275~~ <sup>28480</sup>  
 IN NAME OF

THOMAS ORCHARDS, INC.

Surveyed July 6, 1971, by R. MUGGEN

## Important Disclaimer

This water rights research was conducted by staff at the Watermaster's office located in Canyon City, Oregon. Although every effort has been made to ensure an accurate search, the following discrepancies may occur:

- Acreage shown with a +/- symbol are approximations of the amount of water right on a tax lot. This could mean that a water right does not lie entirely within the tax lot requested or there is some other doubt as to the actual acreage indicated.
- If the recipient of the research wishes to know more accurately the amount of water rights appurtenant to their property they may want to consider hiring a surveyor who offers services to assemble a complete "water right portfolio". Individuals or businesses who perform this type of work can provide more detailed information on the amount of water right acreages on their property and better determine totals of legal flow or rate for each tax lot in question.
- Although a property may have water rights of record, if they have undergone five successive years of non-use they may be subject to cancellation under ORS 540.610. For a copy of this statute or more information, please contact the Watermaster's office.
- Some research may indicate water rights appurtenant to the property may be in "permit" form or may be in "transfer" form. These forms of a water right are a valid water right of record but are in an "Inchoate status". This means the water right is subject to variations, alterations or changes as the water right is processed to completion into a water right certificate. For more information contact the Watermaster Office.
- It is critical that the person requesting the research carefully check any research conducted by staff from this office to be sure that the water right is appurtenant to the property they are interested in. Any listings as a result of a manual search of the Watermaster's records are not based on the official water right of record. The official water right records are kept in the Salem office.



Oregon  
Tina Kotick, Governor

Oregon Water Resources Department  
Field Services Division  
725 Summer St NE Ste A  
Salem, Oregon 97301  
(503) 906-0900  
[www.Oregon.gov/owrd](http://www.Oregon.gov/owrd)

# MEMO

Monday, August 14, 2023

Subject: Irrigation season for water rights in the John Day Basin

***“The Irrigation season of the John Day River and its tributaries is hereby fixed as the period from April 1st to September 30th of each year.”***

*John Day Basin Decree, Paragraph 106, Page 80*

Irrigation that is authorized outside of the dates of April 1st through September 30th of each year is only allowed if the individual water right specifies a different period of time. If the certificate of water right in question does not list a time frame for an authorized irrigation season the default season is set by the John Day Basin Decree as April 1st through September 30th of each year. Please read your certificate of water right for clarification of your allowed irrigation season.

Violation of Oregon Water Law or Oregon Water Resources Department Administrative Rules may be subject to enforcement action and may include fines and or civil penalties as allowed under law.

If you have any questions concerning your water rights please do not hesitate to contact the local Watermaster Office for assistance.

Thank You

Eric W. Julsrud

Watermaster District 4

Oregon Water Resources Dept.

## FORFEITURE OF WATER RIGHTS

### **540.610 Use as measure of water right; presumption of forfeiture of right for nonuse; basis for rebutting presumption; confirmation of rights of municipalities.**

(1) Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state. Whenever the owner of a perfected and developed 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.

(2) Upon a showing of failure to use beneficially for five successive years, the appropriator has the burden of rebutting the presumption of forfeiture by showing one or more of the following:

(a) The water right is for use of water, or rights of use, acquired by cities and towns in this state, by appropriation or by purchase, for all reasonable and usual municipal purposes.

(b) A finding of forfeiture would impair the rights of such cities and towns to the use of water, whether acquired by appropriation or purchase, or heretofore recognized by act of the legislature, or which may hereafter be acquired.

(c) The use of water, or rights of use, are appurtenant to property obtained by the Department of Veterans' Affairs under ORS 407.135 or 407.145 for three years after the expiration of redemptions as provided in ORS 18.568 to 18.598 while the land is held by the Director of Veterans' Affairs, even if during such time the water is not used for a period of more than five successive years.

(d) The use of water, or rights of use, under a water right, if the owner of the property to which the right is appurtenant is unable to use the water due to economic hardship as defined by rule by the Water Resources Commission.

(e) The period of nonuse occurred during a period of time within which land was withdrawn from use in accordance with the Act of Congress of May 28, 1956, chapter 327 (7 U.S.C. 1801-1814; 1821-1824; 1831-1837), or the Federal Conservation Reserve Program, Act of Congress of December 23, 1985, chapter 198 (16 U.S.C. 3831-3836, 3841-3845). If necessary, in a cancellation proceeding under this section, the water right holder rebutting the presumption under this paragraph shall provide documentation that the water right holder's land was withdrawn from use under a federal reserve program.

(f) The end of the alleged period of nonuse occurred more than 15 years before the date upon which evidence of nonuse was submitted to the commission or the commission initiated cancellation proceedings under ORS 540.631, whichever occurs first.

(g) The owner of the property to which the water right was appurtenant is unable to use the water because the use of water under the right is discontinued under an order of the commission under ORS 537.775.

(h) The nonuse occurred during a period of time within which the water right holder was using reclaimed water in lieu of using water under an existing water right.

(i) The nonuse occurred during a period of time within which the water right holder was reusing water through land application as authorized by ORS 537.141 (1)(i) or 537.545 (1)(g) in lieu of using water under an existing water right.

(j) The owner or occupant of the property to which the water right is appurtenant was unable to make full beneficial use of the water because water was not available. A water right holder rebutting the presumption under this paragraph shall provide evidence that the water right holder was ready, willing and able to use the water had it been available.

(k) The holder of a water right is prohibited by law from using the water. If the prohibition is subject to remedial action that would allow the use of the water, the water right holder shall provide evidence that the water right holder is conducting the remedial action with reasonable diligence.

(l) The nonuse occurred during a period of time within which the exercise of all or part of the water right was not necessary due to climatic conditions, so long as the water right holder had a facility capable of handling the full allowed rate and duty, and was otherwise ready, willing and able to use the entire amount of water allowed under the water right.

(m) The nonuse occurred during a period of time within which the water was included in a transfer application pending before the Water Resources Department.

(3) Notwithstanding subsection (1) of this section, if the owner of a perfected and developed water right uses less water to accomplish the beneficial use allowed by the right, the right is not subject to forfeiture so long as:

(a) The user has a facility capable of handling the entire rate and duty authorized under the right; and

(b) The user is otherwise ready, willing and able to make full use of the right.

(4) The right of all cities and towns in this state to acquire rights to the use of the water of natural streams and lakes, not otherwise appropriated, and subject to existing rights, for all reasonable and usual municipal purposes, and for such future reasonable and usual municipal purposes as may reasonably be anticipated by reason of growth of population, or to secure sufficient water supply in cases of emergency, is expressly confirmed.

(5) After a water right is forfeited under subsection (1) of this section, the water that was the subject of use shall revert to the public and become again the subject of appropriation in the manner provided by law, subject to existing priorities. [Amended by 1986 c.689 §5; 1987 c.339 §4; 1989 c.699 §1; 1989 c.833 §61a; 1991 c.370 §6; 1995 c.356 §2; 1995 c.366 §1; 1997 c.42 §5; 1997 c.244 §5; 1997 c.283 §1; 1999 c.335 §3; 1999 c.804 §§3.4]