

February 7, 1940

Mr. Tallant Greenough  
Attorney at Law  
First National Bank Building  
Coquille, Oregon

Dear Sir:

This will acknowledge receipt of your letter transmitting check in the amount of \$5, fees in connection with the application of Paris Ward, W. A. Heard, and Lester White for approval of a change in place of use of water from a spring branch tributary of Coquille River. Official Receipt No. 25526, covering this remittance, is enclosed.

It appears that the applicants proposed to change the place of use of water under certificate of water right recorded at Page 7861, Volume 8, State Record of Water Right Certificates, in the name of W. A. Heard, Victor Sell, and Paris Ward wherein the place of use is described as Lot 2, Section 25, Township 28 South, Range 14 West, W. N.

While the certificate describes the place of use as Lot 2, it is evident from the fact that the application and permit contemplated the use of water for domestic purposes for three families the place of use should have been described as Lots 1, 2, and 3, the lands owned by the owners at that time; namely, Paris Ward, W. A. Heard, and Victor Sell. If the water has been used for domestic purposes on Lots 1, 2, and 3, said Section 25, it would appear that the water would be appurtenant to such lots. The proof of appropriation of water filed by Paris Ward, W. A. Heard, and Victor Sell on which the certificate of water right was based also indicates that the water was being used on their premises for domestic purposes. Under these circumstances then, it would appear that a water right is now appurtenant to Lots 1, 2, and 3, and it would not be necessary to transfer any water to Lot 1.

As to the transfer of the water which it appears is appurtenant to Lot 3, formerly owned by Victor Sell, I wish to advise that the application in its present form is not acceptable. Section 47-712, Oregon Code 1935 Supplement, provides in part as follows:

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"All water used in this state for any purpose shall remain appurtenant to the premises upon which it is used and no change in use or place of use of any water for any purpose may be made without compliance with the provisions of this act; provided, that the owner of any water right may, upon compliance with the provisions of this act, change the use and place of use, the point of diversion or the use theretofore made of the water in all cases without losing priority of the right theretofore established."

In other words, the owner of the land to which the water is appurtenant must make the application for a change in place of use. It is my understanding that Mr. White, successor to Mr. Sell, does not own Lot 3, and, consequently, is without authority to transfer any of the water that may be appurtenant to said Lot 3.

It appears to me that it would be advisable for Mr. Ward and Mr. Heard and the owner of Lot 3 to file an affidavit in this office, setting forth the fact that the water has been used by these three families on their premises which at that time were Lots 1, 2, and 3, and request that the State Engineer issue a new certificate describing correctly the place of use of water. After this has been accomplished and Messrs. Ward and Heard desire to transfer part of their water to the S 3/4 S $\frac{1}{2}$  NW $\frac{1}{2}$  SW $\frac{1}{2}$ , Section 25, Township 28 South, Range 14 West, W. M., the present application for change in place of use of water could be amended in this respect.

It may be more expedient to file a petition with the State Engineer for the issuance of a correction certificate covering the actual place of use on Lots 1, 2, and 3, and then have Mr. White file an application for a permit to appropriate additional waters from this spring branch on his lands in the S 3/4 S $\frac{1}{2}$  NW $\frac{1}{2}$  SW $\frac{1}{2}$ , Section 25, Township 28 South, Range 14 West, W. M.

Very truly yours,

CHAS. E. STRICKLIN  
State Engineer

By  
Max F. Rogers, Assistant

MFR:nfw  
Enclosure