

7772

7772

WITHDRAWN

Name B&G Resources, Inc.  
 By % Kenneth E. Gustafson  
 Address 18270 SW Boones Ferry Rd  
Portland OR 97227  
~~503-639-6777~~

Change in APOD  
 Date filed 5-19-97  
 Date of hearing \_\_\_\_\_  
 Place of hearing \_\_\_\_\_  
 Date of order 6-15-05 Vol. 65, page 150  
 Date for application of water \_\_\_\_\_  
 Proof mailed \_\_\_\_\_  
 Proof received \_\_\_\_\_  
 Certificate issued \_\_\_\_\_ Vol. \_\_\_\_\_, page \_\_\_\_\_

DESCRIPTION OF WATER RIGHT

Name of stream Umatilla River/McKay Reservoir  
 Trib. of Columbia R County of Umatilla  
 Use Irrigation  
 Quantity of water \_\_\_\_\_ No. of acres \_\_\_\_\_  
 Name of ditch \_\_\_\_\_  
 Date of priority 7-3-1945  
 In name of E F Burlingham & Sons  
 \_\_\_\_\_ Adjudication, Vol. \_\_\_\_\_, page \_\_\_\_\_  
 App. No. 20936 Per. No. 16393 Cert. No. 28484  
 Certificate cancelled \_\_\_\_\_  
 Notation made on record by LDB  
11-13-2000 lhu

FEES PAID

Date	Amount	Receipt No.
<u>5-19-97</u>	<u>885.<sup>00</sup></u>	<u>12363</u>
TOTAL . . .		
	Cert. Fee	

FEES REFUNDED

Date	Amount	Check No.
<u>LDB 6/24/05</u>	<u>35<sup>00</sup></u>	<u>8982925</u>

REMARKS

No ID/Dale G. VanSchoiack CURE#333

PN 5-27-97

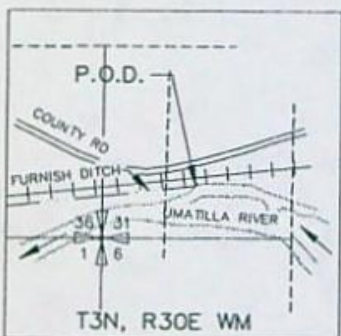
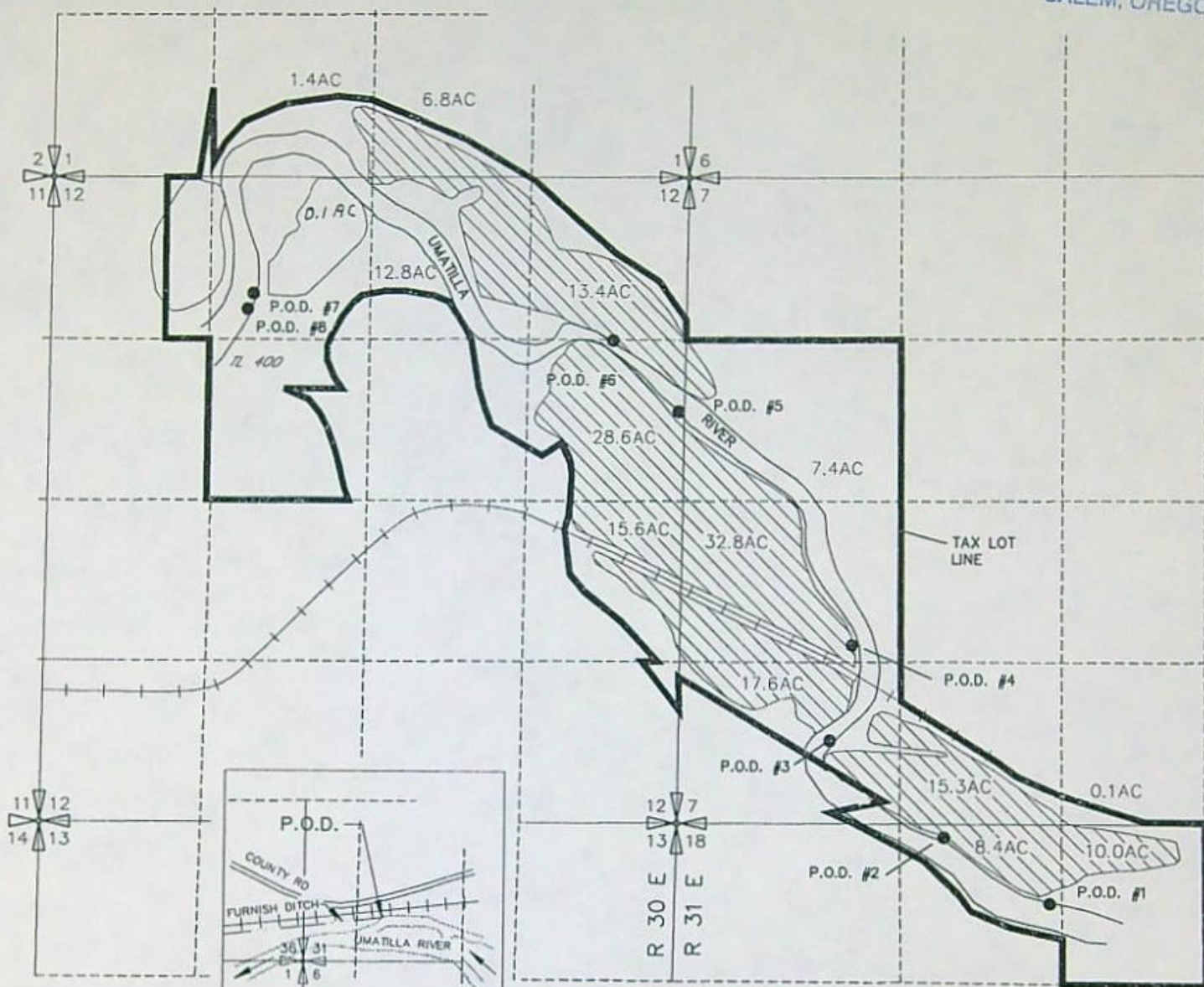
GUSTAFSON ADDITIONAL POINT OF DIVERSION  
TRANSFER T-7772 APPLICATION MAP  
PERMIT 16393 CERTIFICATE 28484

TOWNSHIP 2 NORTH, RANGE 30 AND 31 EAST, WILLAMETTE MERIDIAN

RECEIVED

JUN 13 1997

WATER RESOURCES DEPT.  
SALEM, OREGON



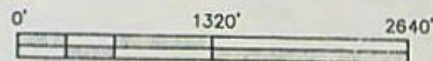
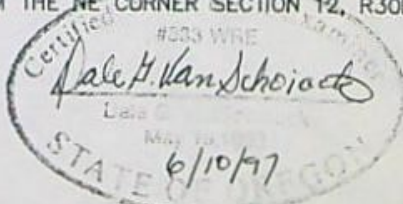
PROPOSED ADDITIONAL  
P.O.D. LOCATED 380' NORTH  
AND 650' EAST FROM SW COR  
SEC 31

- PART OF PERMIT 16398 UNDER DIFFERENT OWNERSHIP
- PART OF PERMIT 16398 INVOLVED IN THIS TRANSFER

AUTHORIZED POINTS OF DIVERSION

- P.O.D. #1 700 FEET SOUTH AND 3100 FEET EAST FROM THE NW CORNER SECTION 18, R31E.WM.
- P.O.D. #2 100 FEET SOUTH AND 2230 FEET EAST FROM THE NW CORNER SECTION 18, R31E. WM.
- P.O.D. #3 680 FEET NORTH AND 1250 FEET EAST FROM THE SW CORNER SECTION 7, R31E. WM.
- P.O.D. #4 1540 FEET NORTH AND 1410 FEET EAST FROM THE SW CORNER SECTION 7, R31E. WM.
- P.O.D. #5 1930 FEET SOUTH AND 60 FEET WEST FROM THE NE CORNER SECTION 12, R30E. WM.
- P.O.D. #6 1330 FEET SOUTH AND 610 FEET WEST FROM THE NE CORNER SECTION 12, R30E. WM.
- P.O.D. #7 960 FEET SOUTH AND 3580 FEET WEST FROM THE NE CORNER SECTION 12, R30E. WM.
- P.O.D. #8 1050 FEET SOUTH AND 3680 FEET WEST FROM THE NE CORNER SECTION 12, R30E. WM.

NOTE: THE PURPOSE OF THIS MAP IS TO IDENTIFY THE APPROXIMATE LOCATION OF THE WATER RIGHT. IT IS NOT INTENDED TO PROVIDE INFORMATION RELATIVE TO THE LOCATION OF PROPERTY OWNERSHIP BOUNDARY LINES.

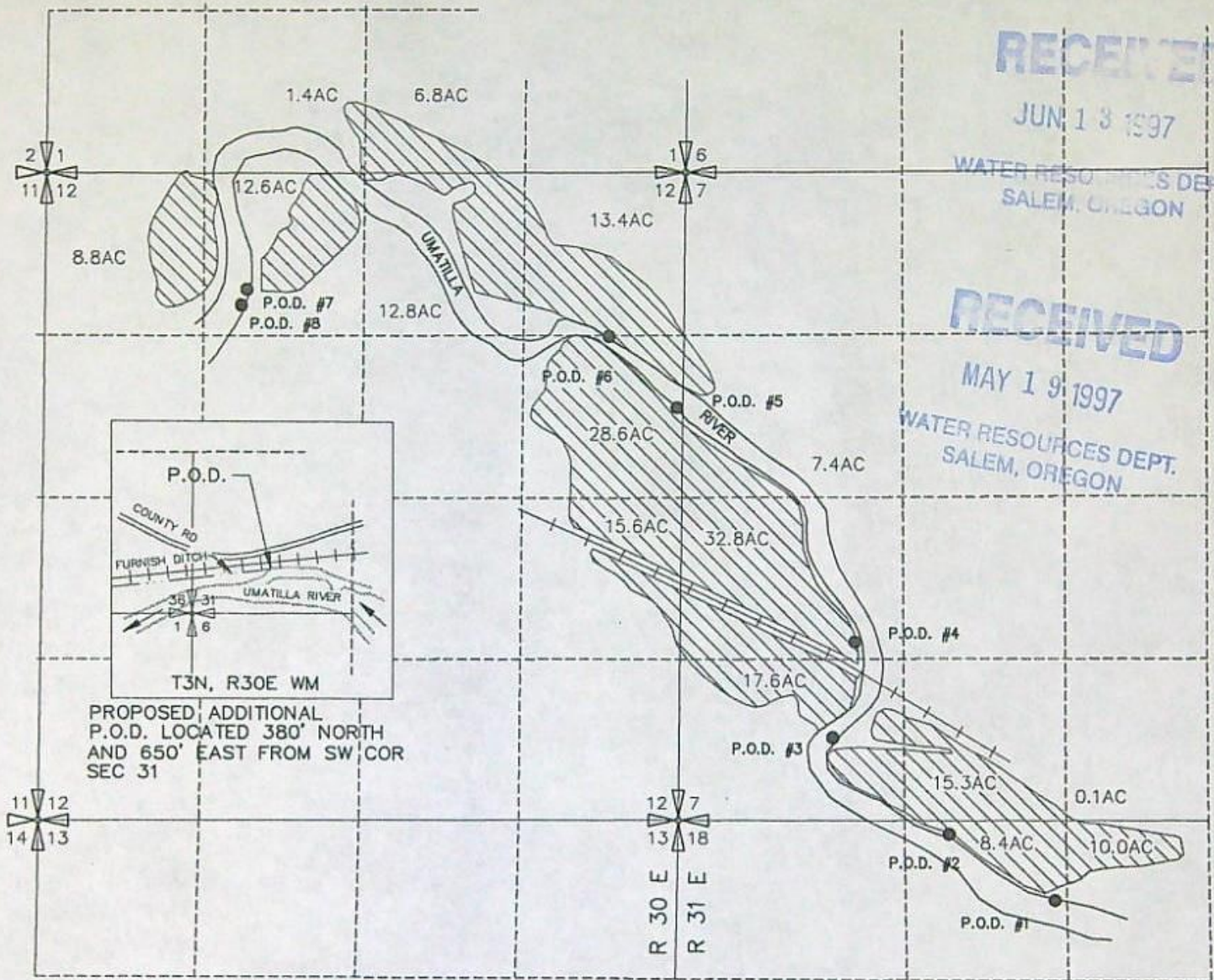


3522.056  
3522GU2.DWG  
6/10/97

**GUSTAFSON ADDITIONAL POINT OF DIVERSION  
TRANSFER APPLICATION MAP  
PERMIT 16393 CERTIFICATE 28484**

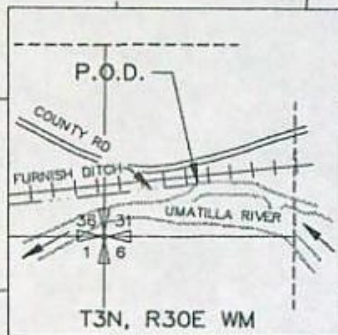
T 7772

TOWNSHIP 2 NORTH, RANGE 30 AND 31 EAST, WILLAMETTE MERIDIAN



**RECEIVED**  
JUN 13 1997  
WATER RESOURCES DEPT.  
SALEM, OREGON

**RECEIVED**  
MAY 19 1997  
WATER RESOURCES DEPT.  
SALEM, OREGON

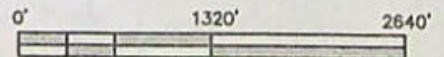
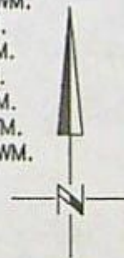


PROPOSED ADDITIONAL  
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Certified Water Right Examiner  
#933 WRE  
*Dale G. Van Schoeck*  
Dale G. Van Schoeck  
May 19, 1997  
5/1/97  
STATE OF OREGON



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3522.058  
3522GU2.DWG  
4/17/97

**ORDER AND CERTIFICATE CHECK LIST**

**RECORD MARKING (Support Staff)**

File Folder ( ) ## \* T-7771 \* T-7772 Permit ( ) ## \_\_\_\_\_  
5-20130

Certificate ( ) ## 28484 Trans App Register ( ) \_\_\_\_\_  
Trans Name Index ( ) \_\_\_\_\_

Sp. OR ( ) \_\_\_\_\_  
Decree ( ) Vol \_\_\_\_\_ Page \_\_\_\_\_ Vol \_\_\_\_\_ Page \_\_\_\_\_

**COPIES MADE** Order ( ) Certificate ( )

File ( ) ( ) Data Center ( ) ( ) Watermaster ( ) ( ) <sup>#5</sup> Applicant ( ) ( )

ISWR Liason ( ) ( ) \_\_\_\_\_ Water Use Reporting ( ) ( ) \_\_\_\_\_

CWRE ( ) ( ) Dale Vanschoick I.District ( ) ( ) \_\_\_\_\_

Other ( ) ( ) \_\_\_\_\_ Other ( ) ( ) \_\_\_\_\_

SEND copy of application map to watermaster \_\_\_\_\_

**LETTER TO:**

Applicant ( ) CWRE ( ) \_\_\_\_\_

ID. ( ) \_\_\_\_\_ Other ( ) \_\_\_\_\_

**EMAIL PROCESSOR**

NWR ( ) NCR ( ) SWR ( ) SCR ( ) BR ( ) Bernie / Mike L.

**ENCLOSURES**

Special Order ( ) Vol 65 Page 150 Certificate ( ) \_\_\_\_\_  
( ) Vol \_\_\_\_\_ Page \_\_\_\_\_ ( ) \_\_\_\_\_  
( ) \_\_\_\_\_

DATE SIGNED: 6-15-05

**FILE SET-UP**

File Number	Set - Up Date	For Whom
_____	_____	_____
_____	_____	_____
_____	_____	_____

**SEND TO:**

Fiscal Section ( ) Other ( ) \_\_\_\_\_

NOTES: \_\_\_\_\_

*Withdrawn*

BEFORE THE WATER RESOURCES DEPARTMENT  
OF THE  
STATE OF OREGON

In the Matter of Transfer Applications            )     ORDER WITHDRAWING  
T-7771 and T-7772, Umatilla County,         )     TRANSFER APPLICATIONS  
Oregon   )

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to temporarily transfer the place of use and, if necessary to convey the water to the temporary place of use, the point of diversion or appropriation authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

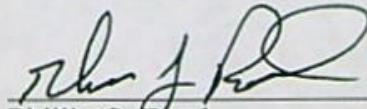
B&G Resources, Inc.  
c/o Kenneth E. Gustafson  
18270 SW Boones Ferry Road  
Portland, Oregon 97227

Transfer Applications 7771 and 7772, both in the name of B&G Resources, Inc., were filed May 19, 1997. On June 14, 2005, Kenneth E. Gustafson requested, in writing, that Transfer Applications 7771 and 7772 be withdrawn.

**Now, therefore, it is ORDERED:**

Transfers 7771 and 7772, in the name of B&G Resources, Inc., are withdrawn and of no further force or effect. Any unearned fees will be refunded.

Dated at Salem, Oregon this 15<sup>th</sup> day of June, 2005.

  
\_\_\_\_\_  
For Phillip C. Ward  
Director

Mailing date:                     JUN 29 2005                    

**NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW**  
This is an order 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 137-004-080 and OAR 690-01-005, 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.

fs  
Oregon

Water Resources Department  
725 Summer St NE Suite A  
Salem, OR 97301-1266

ADDRESS SERVICE REQUESTED



Sarah

RECEIVED

JUL 05 2005

WATER RESOURCES DEPT  
SALEM, OREGON

3132 SE Tindall Cir.  
IA  
for 97202

RETURN TO SENDER  
INSUFFICIENT  
ADDRESS

KENNETH E GUSTAFSON  
B & G RESOURCES INC  
18270 SW BOONES FERRY RD  
PORTLAND OR 97227

RETURN TO SENDER  
INSUFFICIENT  
ADDRESS



# 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

June 28, 2005

KENNETH E GUSTAFSON  
B & G RESOURCES INC  
18270 SW BOONES FERRY RD  
PORTLAND OR 97227

Reference: Transfer 7771 & 7772

The above transfer applications were withdrawn from the record of the Water Resources Department on June 15, 2005, by Special Order Volume 65, Page 150. Enclosed is a copy of the order and a refund check in the amount of \$105.00.

The applications are of no further force or effect.

If you have any questions, please contact the Transfer Section, (503)986-0900.

Sincerely,

*Sarah Henderson*

*DP*  
Doug Parrow  
Natural Resource Specialist

DP:sh

cc: Tony Justus, Watermaster #5  
Dale Van Schoiack, CWRE  
Fiscal

Enclosure

BEFORE THE WATER RESOURCES DEPARTMENT  
OF THE  
STATE OF OREGON

In the Matter of Transfer Applications            )     ORDER WITHDRAWING  
T-7771 and T-7772, Umatilla County,         )     TRANSFER APPLICATIONS  
Oregon   )

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**Applicant**

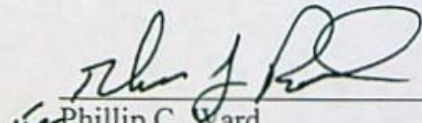
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c/o Kenneth E. Gustafson  
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Dated at Salem, Oregon this 15<sup>th</sup> day of June, 2005.

  
\_\_\_\_\_  
Phillip C. Ward  
Director

Mailing date:                     JUN 29 2005                    

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Pursuant to ORS 536.075 and OAR 137-004-080 and OAR 690-01-005, 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.



**WATER RESOURCES DEPARTMENT**  
**REQUEST FOR DISTRIBUTION OF FUNDS**

TO: **Fiscal Services Section**

FROM: Bernadette Williams, Transfer Specialist  
Phone: 503-986-0880

SUBJECT: **TRANSFER FILE - Request for Refund**

DATE: June 14, 2005

---

TRANSFER FILE #: 7771 & 7772

RECEIPT #: 12377 & 12363

Please prepare payment in the amount of \$105.00, made payable to:

Name: B&G Resources, Inc.  
c/o Kenneth Gustafson  
Address: 18270 SW Boones Ferry Road  
City: Portland ST: Oregon Zip: 97227

These funds are being paid or refunded as a result of (check one):

- Request for file to be Withdrawn  
 Excess fees were collected for application/PON  
 Payment of PON  
 Protest filing fee  
 Other: \_\_\_\_\_

---

I have reviewed this distribution request and have determined the request to be justified as to the purpose indicated above. Fiscal Services is hereby authorized to process the requested distribution.

Authorized Signature: \_\_\_\_\_

*Bernadette Williams*  
*John J. Paul*

Date: \_\_\_\_\_

*6/14/05*

*6/15/05*

---



# 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

January 26, 1999

Laura Schroeder  
Schroeder Law Offices  
3355 NE Davis  
Portland OR 97232

Dave Jarrett  
Oregon Water Resources Dept.  
158 12<sup>th</sup> St. NE  
Salem OR 97310

RE: Final Order, B & G Resources, PC 97-15

Dear Ms. Schroeder and Mr. Jarrett:

Enclosed please find the Director's final Order in this matter. Thank you for your patience. An explanation of your rights to seek judicial review of the Final Order can be found on the last page. The date of this letter is the date of mailing.

Sincerely,

Weisha Mize, ALJ

encl.

c: Martha O. Pagel, Director  
Geoff Huntington, Deputy

Gary Ball

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the matter of the Proposed Partial Cancellation )  
of the Water Right Evidenced by Certificate 28484 )  
in the name of E. F. Burlingham & Sons for use of )  
Water from the Umatilla River and McKay )  
Reservoir, Umatilla County, Oregon )

FINAL ORDER ON  
CONTESTED CASE HEARING  
PC 97-15

History of Proceedings

This proceeding was initiated by the Department following receipt of affidavits from Tony Justus, Umatilla County Watermaster covering the years 1989 through 1996, and from Dave Williams, previously Umatilla River Coordinator and now Douglas County Watermaster, covering 1993 through 1996, asserting that a portion of the water right evidenced by Certificate 28484 had been forfeited by failure to make beneficial use of the water under the terms of the water right for five and more successive years. The Department initiated this cancellation proceeding proposing to cancel 160 of the 191.6 acres authorized for irrigation under Certificate 28484. The lands in question were further marked for ease of identification as Fields A, B, C and D, except for two small parcels in the south half of the NW¼ Section 12, T2N, R30E which were not assigned any designation.

B & G Resources, the owners of record of real property located in Sections 1 and 12, Township 2 North, Range 30 East, and Sections 7 and 18, Township 2 North, Range 31 East, in Umatilla County, Oregon, were served notice of the proposed cancellation of a portion of the water right for irrigation use appurtenant to said property. Notice was served by certified mail on July 10, 1997 and reserved on September 16, 1997.

The record owner of the property, B&G Resources, filed a protest against the proposed cancellation on September 4, 1997. The basis asserted for the protest was that the water right had been exercised on field D continuously during the period in question, and that it had been beneficially used at least once in the last five years on the remainder of the lands. Protestant further asserted that the legal basis for the proceeding was improper, that either there should have been two affidavits covering five years each, that the affidavits did not provide a factual basis for determining lack of rebuttal, and that the notice of proposed cancellation, which had the certificate attached, was incomplete because it did not recite all lands to which the right is appurtenant, only those which were proposed for cancellation for nonuse.

Notice of hearing and information about parties' rights in contested case hearings was provided with the notice of hearing served November 24, 1997.

A supplemental affidavit was received from Tony Justus with a motion filed by the Department to expand the period of alleged nonuse under to consideration to include 1988. The protestant moved for an extension of time to file witness list and proposed exhibits. Both motions were granted by order issued March 12, 1998.

A contested case hearing in the above-captioned matter was held on April 30, 1998, in the Umatilla County Watermasters Conference Room in Pendleton, Oregon, before Administrative Law Judge (ALJ) Weisha Mize. The hearing was conducted pursuant to the provisions of the Oregon Administrative Procedures Act, ORS 183.310 *et seq*, and the procedural rules found at OAR 690-01-005 and OAR Ch. 690 Div. 2. Jurisdiction is conferred by ORS 540.631. Protestant B & G Resources was represented by Laura Schroeder, attorney at law. The Department was represented by lay representative David Jarrett.

Water right proposed to be cancelled for nonuse

The portion of the water right proposed for cancellation is a portion of the right described by Certificate 28484 State Record of Water Right Certificates in the name of E. F. Burlingham & Sons for the use of water from the Umatilla River and McKay Reservoir, for irrigation of 191.6 acres with a priority date of July 3, 1945.

A description of the acres proposed to be canceled is as follows:

SE $\frac{1}{4}$ SW $\frac{1}{4}$ 1.4 acres	SW $\frac{1}{4}$ NW $\frac{1}{4}$ 7.4 acres
SW $\frac{1}{4}$ SE $\frac{1}{4}$ 0.7 acres	NW $\frac{1}{4}$ SW $\frac{1}{4}$ 32.8 acres
Section 1	SW $\frac{1}{4}$ SW $\frac{1}{4}$ 17.6 acres
NE $\frac{1}{4}$ NE $\frac{1}{4}$ 0.7 acres	SE $\frac{1}{4}$ SW $\frac{1}{4}$ 15.3 acres
NW $\frac{1}{4}$ NE $\frac{1}{4}$ 0.1 acres	SW $\frac{1}{4}$ SE $\frac{1}{4}$ 0.1 acres
SE $\frac{1}{4}$ NE $\frac{1}{4}$ 28.5 acres	Section 7
NE $\frac{1}{4}$ NW $\frac{1}{4}$ 12.6 acres	NW $\frac{1}{4}$ NE $\frac{1}{4}$ 10.0 acres
NW $\frac{1}{4}$ NW $\frac{1}{4}$ 8.8 acres	NE $\frac{1}{4}$ NW $\frac{1}{4}$ 8.4 acres
NE $\frac{1}{4}$ SE $\frac{1}{4}$ 15.6 acres	Section 18
Section 12	Township 2 North, Range 31 East, W.M.
Township 2 North, Range 30 East, W.M.	

The remainder of the right is for for irrigation of the following lands:

SW $\frac{1}{4}$ SE $\frac{1}{4}$ 6.1 acres	NW $\frac{1}{4}$ NE $\frac{1}{4}$ 12.7 acres
Section 1	SE $\frac{1}{4}$ NE $\frac{1}{4}$ 0.1 acres
NE $\frac{1}{4}$ NE $\frac{1}{4}$ 12.7 acres	Section 12
Section 12	

all in Township 2 North, Range 30 East, W.M.. This portion of the water right was not in question in this proceeding and was not included in the notice of proposed cancellation.

### Legal Issues Raised

At the outset, the decision maker and the parties should be clear on which party the burden of coming forward and of persuasion rests, and what level of proof is required. While correctly noting that the burden rests with the Department in this matter, the protestant mistakenly argues that the standard of proof for administrative hearings, and for this hearing in particular, is clear and convincing. Protestant's reliance on *Cook v. Michael*, 214 Or 513 (1958) as defining the standard of proof in administrative hearings, and in cancellation hearings in particular, is misplaced.

The court in *Cook* was ruling on the propriety of the lower court's instruction in a civil assault and battery case. In its opinion, the court compared the various statutory standards of burden of proof in a civil trial. While offering an instructive discussion on the meaning of the various standards, at no point did the court state that the standard of proof in administrative hearings was clear and convincing. Nor did the court hold that "preponderance," the established standard of proof in administrative proceedings, was the equivalent of the "clear and convincing" standard.

Oregon's Administrative Procedures Act (APA) declares in ORS 183.450(5) that the decision in an administrative proceeding should be "supported by, and in accordance with, reliable, probative, and substantial evidence." Oregon's Court of Appeals has held that, absent legislation adopting a different standard, the standard of proof in an administrative proceeding is by a preponderance of the evidence. See *Metcalf Automotive Technology v. Employment Div.*, 97 Or App 320, rev den 309 Or 592 (1989); *OSCI v. BOLI*, 98 Or App 548, rev den 308 Or 660 (1989) (so stating).

The only exception to this standard may be license revocation based solely on allegations of fraud and misrepresentation, where the standard currently is clear and convincing. *Bernard v. Bd. of Dental Examiners*, 2 Or App 22 (1970); *Van Gorden v. Bd. of Dental Examiners*, 52 Or App 749 (1981); *Sobel v. Board of Pharmacy*, 130 Or App 374 (1994). That is not the case here. The applicable standard in this and all other water right cancellation proceedings is a preponderance of the evidence.

Protestant has also asserted that ORS 540.631 and OAR 690-17-0400(2) require two affidavits where a cancellation proceeding is initiated on the basis of watermaster information. ORS 540.631 only refers to "evidence submitted to the commission by any person[;]" it does not address how the evidence must be submitted. OAR 690-17-0400(2) requires that "[w]here the evidence of nonuse submitted to the Department is in the form of affidavits, notarized affidavits from two individuals shall be required." However, under OAR 690-17-0400(3), "[w]here the evidence submitted is solely from Department personnel, such evidence shall be submitted in the form of an affidavit" containing all the information required in affidavits as described in OAR 690-17-0400(2). (Emphasis supplied). OAR 690-17-0400(3) further requires that "the affidavit shall be supported by" the records listed therein. (Emphasis supplied). The use of the indefinite article "an" and the definite article "the" before "affidavit," in the text of OAR 690-17-0400(3), indicates that only one single affidavit is required when the evidence is submitted by a Department

employee, as opposed to the multiple affidavits specifically required when the evidence is submitted by "individuals." An affidavit submitted under OAR 690-17-0400(3) is evidence that an owner of a water right has not used all or part of the water appropriated for a period of five successive years or more. "The failure to use [a water right] shall establish a rebuttable presumption of forfeiture of all or part of the water right. ORS 540.610(1). See also OAR 690-17-0400(1) ("The decision to initiate cancellation proceedings shall be based on evidence submitted to the Department, by any person, that alleges five or more years of nonuse so as to create a presumption of forfeiture.").

Finally, protestant asserts that the proceeding should have been brought under ORS 540.660. ORS 540.660(1) directs a watermaster to submit an affidavit in instances where the "watermaster has reason to believe (rather than know with certainty) that circumstances exist that prevent a water right from being exercised according to the terms and conditions of the water right certificate \* \* \*, such as \* \* \* the diversion mechanism used to appropriate water under a water right is no longer operable[.]" (Emphasis supplied). If the watermaster files such an affidavit each year for 5 consecutive years, those affidavits constitute *prima facie* evidence of forfeiture and the "Water Resources Commission shall initiate proceedings under ORS 540.631 to cancel the water right." ORS 540.660(2).

Protestant argues that Watermaster Tony Justus' statement in his affidavit that there was no pump or power source [or diversion dam and headgate] at the authorized points of diversion for the challenged rights, and thus no way existing at the source to divert water, constitutes an allegation that falls under ORS 540.660. That argument confuses Mr. Justus' statement that there is no diversion structure, an ORS 540.610 situation, with a situation where there is a known and physically-present, albeit apparently inoperable, diversion structure. Unless the watermaster could see the pump or other diversion mechanism at the authorized point of diversion, there would be no "reason to believe" that the mechanism was no longer operable, thereby preventing exercise of the water right. In contrast, the lack of any pump, diversion or other mechanism directly leads to the conclusion that no water has been or is being used.

#### Determination on Exceptions

Protestant has taken a number of exceptions to the proposed order, one of which I will address briefly here. In the exception number three dealing with Finding of Fact 2, protestant refers to an affidavit of Robert Burns, a State-certified appraiser. Protestant has improperly attempted to add this affidavit to the administrative record after the record had been closed, and then to rely on this extra-record affidavit in arguing this exception. No request was made that the record be reopened because of newly-discovered evidence which existed at the time of the hearing. The protestant was granted extensive discovery and had in its possession long before hearing the evidence which it now attempts to refute or explain away through this extra-record affidavit. No offer of this testimony was made at the hearing. It will not be considered now.

Protestants exceptions to the proposed order are DENIED.

### Discussion of Decision

This case hinges on the significance and relevance of challenged evidence, witness credibility, and the weight of the evidence.

One item of contention was the significance and relevance of WRD's exhibit A40, which is a copy of the real property petition filed by Kenneth Lewis in 1994 with the state Board of Equalization. Mr. Lewis was the lessee and then the owner of the property involved in the instant proceeding during the period in which nonuse is asserted. Mr. Lewis purchased the property in 1993. Mr. Lewis notes in his explanation for basis for appeal that the property consists of silt which has settled behind the Coe Dam and continues to wash away.

The petition filed with the Board of Equalization is accompanied by an April, 1992 update appraisal report prepared for Mr. Lewis prior to his purchase of the property from the Union Pacific Railroad Company. The appraisal notes that the weed problem noted 5 years earlier continues to exist, and that the water rights are assumed to be nonexistent, although Bill Dick continues to farm the same portion as he was farming 5 years earlier when another appraisal report had been done on this same property. At the time of the cancellation hearing, Mr. Dick continued to lease and raise irrigated crops on what is referred to as field D of this same property.

The appraiser notes that the 1992 update appraisal report was being done with two additional limiting conditions at Mr. Lewis' direction, the significant condition being that no water rights are appurtenant to the property and therefore it is not farmable. The appraiser also attached his investigation log notes from February 13, 1992. With the exception of one area noted as "still being used," although with the point of diversion possibly in the wrong location, the remainder of the property was described as "large thistles and major weed growth" and "covered by trees" in one portion, "no sign of use, obviously not being used, large, sage brush" in another area, "gullie (sic) but nothing else" and only one area clearly being used.

A related piece of documentary evidence is the Oregon Department of Revenue's determination on protestant B&G Resources' valuation appeal of the subject property found at Opinion and Order 97-3221 through 97-3226, entered into the record here as WRC Exhibit A41. B&G Resources was seeking a substantial reduction in Umatilla County's real market and assessed value of the subject lands purchased in 1996 from Ken Lewis. The summary of the evidence in the hearing record on pages 2-3 of Revenue's Opinion and Order states that only 32 acres of the 455 acres involved are irrigated, the remainder being scrubland not used for any beneficial purpose. B&G was represented at this hearing by its president. Based on the evidence adduced at the hearing, the valuation was reduced as requested by B&G Resources.

Both the petition, including the appraisal report, and the Revenue Department's factual determination based on the record made at the hearing at which B&G Resources was a represented party lend support to the Department's case for forfeiture. On their face, these evidentiary documents illustrate that both Mr. Lewis, the previous owner, and B & G Resources, the current owner, sought to have the majority of the property taxed as non-irrigated land.

The parties also disagreed over the reliability and usefulness of testimony given by Bill Alexander of Bill Alexander Forestry, a consulting firm, and by Robert Bostwick of the local Farm Service Agency, a federal agency. Mr. Alexander was called as a witness by the protestant. He had no personal knowledge of the property and had used photographs taken by Mr. Bostwick to prepare maps and his testimony. Mr. Alexander's experience in interpreting photographs for crop production is limited to the extent agricultural land appeared in or next to forest land on which he was consulting. The only "ground-truthing" done of the maps Mr. Alexander prepared regarding whether and where irrigation had occurred was done by the protestant, Mr. Gustafson. Mr. Alexander emphasized on several occasions that distortion is high with 35 mm lens shots, so that the location of field lines and other landmarks was not of the accuracy one would obtain by using a stereoscope. However, it is sufficient to locate and identify the fields in question and to observe general characteristics like color, vegetation and cultivation marks.

Conversely, Robert Bostwick has been taking and interpreting 35mm aerial photographs (slides) specifically of agricultural crop production for 33 years, and has been doing this work for the Farm Service Agency since 1981. The purpose of the photographs is to determine crop acreage and to describe and interpret what crops are grown as related to the crop reports filed with the Farm Service Agency by the individual producers. The aerial photos are taken annually after the 4th of July of every crop acre in production.

Mr. Bostwick testified that it was usually possible to tell from the slides whether the lands were irrigated but occasionally a site visit was necessary. He further noted that a number of crops in the Pendleton area, including cereal grains, wheat, barley, oats, oil seeds and green peas do not require irrigation. Mr. Bostwick credibly testified from the slides from which Exhibits A22 -- A37 were taken that from 1988 through 1995, fields A, B and C were neither cropped nor irrigated, with the exception of Field A in 1993 which had a crop growing, and that the southeast-most end of field D was also not irrigated during this period.

Based on Mr. Bostwick's substantial experience over the past 33 years in the topic of this testimony, which is interpreting 35 mm aerial photographs to identify acreages, crops, and irrigated and non-irrigated agriculture for the purpose of paying out federal subsidies, in contrast with Mr. Alexander's very limited experience in this field, I find Mr. Bostwick's testimony more credible and reliable on this matter.

Protestants sought to put Department's witness Tony Justus' credibility in question by asserting that he had accepted half a beef from Ken Lewis, previous owner of the property, and suggesting that it was for this reason that a forfeiture action was not initiated in 1991 when the beef was allegedly accepted, or in 1992, the following year. Andy Lewis alluded to a possible gift but ultimately indicated that his father gave a lot of beef away and he could not say that any had actually gone to Mr. Justus. Mr. Gustafson testified that in May, 1991, at Mr. Lewis' instruction, he had placed a half a beef in a frozen food locker, although he did not know who owned the locker, and that the next month he overheard a speaker phone conversation in which Mr. Lewis was speaking to a Tony who thanked him for the beef and talked about water rights.



Mr. Justus denied receiving or accepting any gift from Mr. Lewis, and testified that the reason he had not sought to have the Department initiate a forfeiture proceeding in 1991 or in 1992 was because the nonuse did not rise to a level of concern unless and until there was an attempt to reactivate a forfeited right, which is what prompted him to file the affidavit he submitted in this case in 1997.

I find Mr. Justus' testimony to be more credible. Even assuming Mr. Gustafson's statements to be true, they amount to no more than vague, circumstantial statements speculating about the possibility of Mr. Justus receiving a gift. In contrast, Mr. Justus, who had first-hand knowledge of the alleged events, specifically testified that he did not receive a gift and provided a plausible reason for not filing an affidavit of nonuse until 1997.

The proponents of cancellation together testified that they were at or observing the lands in question each year from 1988 through 1996, occasionally early in the year in January or March but most years not until June and thereafter, when Department staff observed the lands and river several times a month. The primary reason for their close monitoring of usage on the Umatilla River after June involved the Department's oversight of the use of stored water, fish flow releases, and, from 1992 on, reading flow meters which had been required of all users on the Umatilla River. In 1992 the proponents also observed the lands in question early in the season and found that no diversion or evidence of irrigation of fields A, B or C was occurring or had occurred between April 15 and May 18, 1992. However, this was one year when the protestants testified they had not done any irrigation.

Bill Dick, a witness called by the proponents, has a lengthy and more frequent association with the lands in question. He leased field D for the entirety of the period in question through 1996, and was on or by this property frequently, if not daily, both prior to and during each irrigation season. Mr. Dick's residence is situated such that he can observe a portion of field D and all of field C. Mr. Dick's testimony was consistent with the affidavit he prepared for the protestants in this matter when the protest was first filed in September, 1997, which is that he planted but did not irrigate field A in 1993, and that he leased field D for 10 years, from 1986 through 1996. Additionally, he testified, consistent with the proponents, that with the exception of the planting to grain of field A in 1993, there had been no cultivation or irrigation of fields A, B and C for the period in question, and that the condition of the lands was generally poor and filled with thistle and other weeds.

Sandy Cairns worked as an assistant watermaster for Umatilla County in February 1992 under the supervision of Bob DeBow, the watermaster at that time. He directed her to prepare a voluntary affidavit of abandonment of water rights for the owner of the lands in question at that time. As the property was in the process of being purchased by Mr. Lewis, the affidavit was not signed. While inconclusive on its own, the fact that this affidavit was prepared because "the property is no longer being irrigated" is consistent with the testimony of the Department's witnesses that the water rights had been forfeited for nonuse.

Witnesses for protestant included Darrel Mecham, Bill Rahder, Andy Lewis and protestant, Mr. Gustafson.

Mr. Mecham testified that he had primary responsibility for irrigating the lands in question by sprinkler irrigation in 1988, 1989, and 1993, which he did the last two weeks of April and the first week in May. During this time, he worked elsewhere during the day but testified that in the morning he would turn the pump off, drain and move the lines, and in the evening he would return again to the property and turn the pump on, leaving the system to run over night. Irrigation would start in field A, it would take between three and four days to irrigate across the field and back, and then he would move on to field B and then C, going across and back over the course of 3-4 days on 12 hour settings. The purpose for irrigating fields A, B, and C in 1988 and 1989 was to provide a little forage for cows which were stationed there for a maximum of four days the second week in May before being moved to pasture on the Lewis ranch. There was no cultivation or planting done in any of the fields except for the grain planting in 1993 in field A, and the vegetation was thistles, pig weed and pasture grass. In his affidavit filed with the original protest in September 1997, Mr. Mecham indicated that he had irrigated in 1994. However, Mr. Mecham testified on the stand that he did nothing on the lands in question in 1994, 1995, 1996 and 1997.

Mr. Rahder testified that he observed irrigation of fields A, B and C in 1993 and 1994. At one point he testified that the irrigation lasted from April to mid-June, while in response to other questions he indicated that it was only through May.

The protestant and Andy Lewis testified that they had come from Portland in 1988, 1989 and 1993 to move pipe to and in fields A, B and C the last weekend in April and the first two weekends in May. They testified that they would also move the pipes off the fields for use on other ranch lands on their third weekend trip. According to their testimony, they did not observe the diversion points nor have any involvement with the pumps, leaving that to Mr. Mecham. Mr. Gustafson also testified that he irrigated fields B and C in 1994, a point that he failed to mention in the affidavit accompanying his protest, while Andy Lewis was not sure about 1994, and Mr. Mecham testified that no irrigation occurred in 1994. Mr. Gustafson said nothing about irrigation in either 1993 or 1994 in the affidavit filed with his protest against the proposed cancellation action.

In addition to the noted inconsistencies regarding irrigation in 1994, all of the above testimony is inconsistent as to when the land was irrigated. Mr. Mecham testified that the land was irrigated from the last two weeks of April through the first week of May in 1988, 1989, and 1993. Mr. Rahder testified that the land was irrigated in 1993 and 1994, from April to mid-June, or, alternatively, from April through May. Andy Lewis and Mr. Gustafson testified that the fields were irrigated from the last week of April through the first two weeks of May in 1988, 1989, and 1993.

Furthermore, protestant's and Andy Lewis' testimony contradicted that of Mr. Mecham on some vital points. The protestant and Mr. Lewis' testimony was that the pipes would be at the opposite end of the field from where they started the previous weekend, and that they then would move the

pipes to the next field and set them. On the other hand, Mr. Mecham testified that it would take 3-4 days to cross the field twice, which would put the pipes back at the point of beginning, and that he would then move them to the next field and start again. This is inconsistent with Mr. Gustafson's and Mr. Lewis's testimony. By protestant and Lewis' testimony, the pipes would be in the same field they had moved them into the weekend before, whereas by Mecham's testimony, the pipes would be in a different field.

It is also difficult to believe that Mr. Gustafson and Mr. Lewis would drive from Portland to Pendleton for 3 weekends in a row to move pipes one time each weekend, when Mr. Mecham already resided nearby and allegedly moved these pipes daily, as well as continuing to turn the pump on and off after Mr. Gustafson and Mr. Lewis had moved the pipes one time on the weekends. It is notable that Mr. Mecham made no mention in his testimony of these alleged weekend visits.

Mr. Rahder testified that most pasture lands in the vicinity were generally green through April and would begin browning up as May progressed. Mr. Lewis did not know what the fields looked like after the second weekend in May. Mr. Justus, Mr. Williams and Mr. Dick all testified that the fields did not change in vegetation or character, that the vegetation was predominantly thistles and pig weed and a little pasture grass, and the fields were brown and dry. It does not appear, in fact, that there was a need to apply water in late April or the first week in May. The lands in question did not appear to be green much past April, as it would be naturally.

Taken together, the testimony presented by protestant is of little weight. Mr. Mecham's testimony, while credible on its face, is discounted by the testimony of the other witnesses. Mr. Rahder's testimony conflicts with that of Mr. Mecham and of Andy Lewis and Mr. Gustafson. The testimony of Andy Lewis and Mr. Gustafson, two primary witnesses, lacks credibility because it contradicts Mr. Mecham's on the specifics of how and when the land was irrigated. In sum, the testimony from protestant and his witnesses was contradictory, internally inconsistent, and unpersuasive. In contrast, the Department's testimony is internally consistent, credible and cumulative. The testamentary, photographic and documentary evidence presented by the Department supports the conclusion that the rights in question have been forfeited by 5 years of nonuse. I find that the lands were not irrigated during the period in question.

Considering the record as a whole, in particular the testimony of the department's witnesses, including Mr. Dick, Mr. Justus, Mr. Bostwick, and Ms. Cairns, and the entirety of the two valuation appeals in Exhibits A-40 and A-41, I conclude that the preponderance of the evidence supports a determination that the portion of the water right in question has been forfeited for 5 and more years of nonuse between 1988 and 1996. See *Riley Hill General Contractor, Inc. v. Tandy Corp.*, 303 Or 390, 394 (1987) (preponderance is generally accepted to mean the greater weight of the evidence).

## FINDINGS OF FACT

1. The lands in question were predominantly covered in thistle, pigweed and other weeds and had large sage brush in at least one area. This condition changed for field A in 1993 when it was planted to grain, but otherwise the lands were in poor condition and no irrigation or evidence of irrigation was observed by the proponents or proponents' witnesses, either through in person visits or through expert review of aerial photographs, between 1988 through 1996.
2. The previous owner and the current owner both have sought a reduction in the valuation of this property for tax purposes, on the basis that the appurtenant water right had not been exercised with the exception of approximately 32 acres.
3. The grain crop planted in field A in 1993 was planted in the 6<sup>th</sup> year of the period of nonuse, which began in 1988.
4. The portion of the water right in question in this proceeding has not been exercised to beneficial use between 1988 and 1996.
5. That portion of the water right not in question which is appurtenant to 31.5 acres on Field D, constituting 6.1 acres in the SW $\frac{1}{4}$  SE  $\frac{1}{4}$  Section 1, 12.7 acres in the NE $\frac{1}{4}$  NE $\frac{1}{4}$  and 12.7 acres in the NE $\frac{1}{4}$  NE $\frac{1}{4}$  Section 12, has been exercised by lessee Bill Dick each year from 1988 through 1996, inclusive.

## CONCLUSIONS OF LAW

1. The portion of the water right in question has been forfeited for 5 years of nonuse.
2. The standard of proof in administrative hearings, including those concerning the alleged forfeiture and proposed cancellation of water rights, is a preponderance of the evidence.
3. This proceeding was properly initiated under the provisions of ORS 540.610, ORS 540.631, and OAR 690-17-0400(1)-(3).

NOW, THEREFORE, it is ORDERED that the portion of the water right evidenced by Certificate 28484 for irrigation of the following lands, and that Certificate 28484, be and the same is hereby CANCELLED:

SE $\frac{1}{4}$  SW $\frac{1}{4}$  1.4 acres

SW $\frac{1}{4}$  SE $\frac{1}{4}$  0.7 acres

Section 1

Township 2 North, Range 30 East, W.M.

NW $\frac{1}{4}$  NE $\frac{1}{4}$  10.0 acres

NE $\frac{1}{4}$  NW $\frac{1}{4}$  8.4 acres

Section 18

Township 2 North, Range 31 East, W.M.

NE $\frac{1}{4}$  NE $\frac{1}{4}$  0.7 acres  
NW $\frac{1}{4}$  NE $\frac{1}{4}$  0.1 acres  
SE $\frac{1}{4}$  NE $\frac{1}{4}$  28.5 acres  
NE $\frac{1}{4}$  NW $\frac{1}{4}$  12.6 acres  
NW $\frac{1}{4}$  NW $\frac{1}{4}$  8.8 acres  
NE $\frac{1}{4}$  SE $\frac{1}{4}$  15.6 acres

Section 12

Township 2 North, Range 30 East, W.M.

SW $\frac{1}{4}$  NW $\frac{1}{4}$  7.4 acres  
NW $\frac{1}{4}$  SW $\frac{1}{4}$  32.8 acres  
SW $\frac{1}{4}$  SW $\frac{1}{4}$  17.6 acres  
SE $\frac{1}{4}$  SW $\frac{1}{4}$  15.3 acres  
SW $\frac{1}{4}$  SE $\frac{1}{4}$  0.1 acres

Section 7

Township 2 North, Range 31 East, W.M.

It is FURTHER ORDERED that a new Certificate be issued confirming the portion of the right remaining for irrigation of the lands set out below:

SW $\frac{1}{4}$  SE $\frac{1}{4}$  6.1 acres

Section 1

NE $\frac{1}{4}$  NE $\frac{1}{4}$  12.7 acres

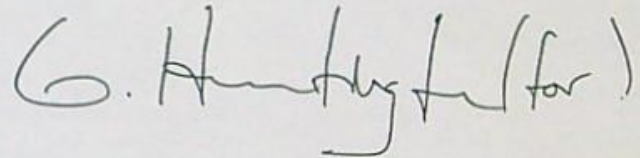
NW $\frac{1}{4}$  NE $\frac{1}{4}$  12.7 acres

SE $\frac{1}{4}$  NE $\frac{1}{4}$  0.1 acres

Section 12

all in Township 2 North, Range 30 East, W.M.

This Final Order in Case No. PC 97-15 is issued this 26<sup>th</sup> day of January, 1999.



Martha O. Pagel, Director

**NOTICE:** You are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for review with the Oregon Court of Appeals within 60 days from the date of service (date of mailing) of this Order. Judicial review is pursuant to the provisions of ORS 536.075.

July 9, 1997

B & G Resources, Inc.  
c/o Kenneth E. Gustafson  
3132 SE Tindall Circle  
Portland, OR 97202

CERTIFIED MAIL  
RETURN RECEIPT  
REQUESTED

REFERENCE: Temporary Transfer 7771, Transfer 7772,  
Proposed Partial Cancellation of Certificate 28484

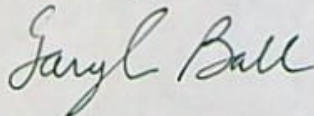
Dear Mr. Gustafson:

Enclosed you will find a notice of proposed partial cancellation of a water right appurtenant to property in the ownership of B & G Resources, Inc.

In addition, I have enclosed a copy of the water right certificate, a copy of a map indicating which lands are involved, and copies of applicable statutes and rules.

Feel free to contact me with any questions you have regarding this matter.

Yours truly,



Gary L. Ball  
Water Right Specialist

cc: Tony Justus, Watermaster, District 5  
Larry Nunn, Transfer Coordinator  
Leann Rea, Schroeder Law Offices



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

In the matter of the Alleged Forfeiture by Nonuse )  
and the Proposed Partial Cancellation of the )  
Water Right Evidenced by Certificate 28484 )

NOTICE OF  
PROPOSED CANCELLATION

As owner of record of certain real property located in Sections 7, 12, and 18, Township 2 North, Range 30 East, Umatilla County, Oregon, you are receiving this notice of the proposed cancellation of the water right for use of water on your property.

**Basis for initiation of proposed cancellation action**

It is asserted in affidavits filed with the Water Resources Department by Tony Justus, Watermaster of District 5, and David Williams, Umatilla River Coordinator, that the water right evidenced by Certificate 28484 has been forfeited in part, for 5 or more consecutive years of nonuse, as described in more detail below. Furthermore, it appears the presumption of forfeiture would not likely be rebutted under OAR 690-17-800(2)(a), (d), or (e).

Based on the information in these affidavits, the Department proposes to cancel the water right evidenced by this certificate, as described in more detail below and shown on the attached map. Copies of the affidavits on which this proceeding is initiated are available for review and copying at the offices of the Water Resources Department.

**Water right proposed to be canceled for nonuse**

A description of the water right to be canceled is a portion of the right described by Certificate 28484 State Record of Water Right Certificates in the name of E. F. Burlingham & Sons. The portion proposed to be canceled is for the use of not to exceed 4.0 cubic feet per second of water from the Umatilla River and McKay Reservoir constructed under Permit No. R-584, tributary of the Columbia River, for the purpose of irrigation of 160 acres with a priority date of July 3, 1945.

A description of the place of use to be canceled is as follows:

SE $\frac{1}{4}$ SW $\frac{1}{4}$ 1.4 acres	SW $\frac{1}{4}$ NW $\frac{1}{4}$ 7.4 acres
SW $\frac{1}{4}$ SE $\frac{1}{4}$ 0.7 acres	NW $\frac{1}{4}$ SW $\frac{1}{4}$ 32.8 acres
Section 1	SW $\frac{1}{4}$ SW $\frac{1}{4}$ 17.6 acres
NE $\frac{1}{4}$ NE $\frac{1}{4}$ 0.7 acres	SE $\frac{1}{4}$ SW $\frac{1}{4}$ 15.3 acres
NW $\frac{1}{4}$ NE $\frac{1}{4}$ 0.1 acres	SW $\frac{1}{4}$ SE $\frac{1}{4}$ 0.1 acres
SE $\frac{1}{4}$ NE $\frac{1}{4}$ 28.5 acres	Section 7
NE $\frac{1}{4}$ NW $\frac{1}{4}$ 12.6 acres	NW $\frac{1}{4}$ NE $\frac{1}{4}$ 10.0 acres
NW $\frac{1}{4}$ NW $\frac{1}{4}$ 8.8 acres	NE $\frac{1}{4}$ NW $\frac{1}{4}$ 8.4 acres
NE $\frac{1}{4}$ SE $\frac{1}{4}$ 15.6 acres	Section 18
Section 12	Township 2 North, Range 31 East, W.M.
Township 2 North, Range 30 East, W.M.	

### Applicable law

Oregon water law (ORS 540.610 to 540.650), as further defined by the Oregon Supreme Court, provides that if any portion of a water right undergoes five or more successive years of nonuse, that nonuse creates a rebuttable presumption of forfeiture. Use made after a period of five successive years of nonuse will not make the forfeited right valid again.

Use on lands other than those allowed in the water right does not constitute exercise of the right and will not avoid a finding of forfeiture where the right has not been exercised on the authorized lands for 5 consecutive years.

Cancellation of a forfeited water right is not automatic. The Water Resources Department must initiate an administrative proceeding to make a legal record of the matter. This notice initiates such a proceeding.

The administrative rules governing water right cancellation, the grounds for rebuttal set out in ORS 540.610(2)(a-k) and OAR 690-17-800, and information about contested case hearings and rights of parties in such hearings are enclosed with this notice.

### Your options if you don't agree with the proposed cancellation

The information before the Water Resources Director creates a **rebuttable presumption of forfeiture**. This means that you, as the water right holder, have an opportunity to show that one or more statutorily established reasons excusing nonuse apply to you. The grounds for rebuttal are established by law in ORS 540.610(2)(a-k) and OAR 690-17-800.

**If you do not agree with the proposed cancellation of your water right on the basis of 5 years of nonuse, you may file a protest against the proposed action. In the protest, you may also indicate that one or more of the grounds for rebuttal set out in ORS 540.610(2)(a-k) and OAR 690-17-800 apply in your case.**

In making protest, you must include a statement explaining the reasons you believe the portions of the water rights in question have not been forfeited by 5 consecutive years of nonuse.

In making rebuttal, you must state with specificity which ground or grounds apply, and provide documentation to support your claim.

**Any protest and/or rebuttal must be prepared in writing and filed with a \$25.00 protest filing fee in the office of the Water Resources Department, 158 12th St. NE, Salem, OR, 97310, within 60 days from the date of mailing of this notice, or by September 10, 1997.**

If no protest is filed against the proposed cancellation, the entirety of the Department's file in this matter will be designated as the record and a Final Order will be entered canceling that portion of the right in question.



If a protest is filed, the matter will be set for contested case hearing at a time and place reasonably convenient to all parties, for the purpose of taking testimony and evidence from the parties and their witnesses on the question of fact of the occurrence of five or more successive years of nonuse of that portion of the water right in question.

Holders of a water right may also voluntarily relinquish their water right by filing a notarized authorization to cancel with the Water Resources Department, Water Rights Section. In the event you determine to authorize voluntary cancellation of the portion of the water right appurtenant to your land, you do not need to file a protest. You should contact the Department or your local watermaster for the proper form.

  
GARY L. BALL  
Water Right Specialist

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

STATE OF OREGON  
COUNTY OF UMATILLA  
CERTIFICATE OF WATER RIGHT

**This Is to Certify, That** E. F. BURLINGHAM & SONS

of Forest Grove, State of Oregon <sup>97116</sup>, has made proof to the satisfaction of the STATE ENGINEER of Oregon, of a right to the use of the waters of Umatilla River and McKay Reservoir constructed under Application No. R-7526, Permit No. R-584, a tributary of Columbia River for the purpose of irrigation of 191.6 acres

under Permit No. 16393 of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Oregon; that the priority of the right hereby confirmed dates from July 3, 1945

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 4.79 cubic feet 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 SE $\frac{1}{4}$  NE $\frac{1}{4}$ , NE $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 12, T. 2 N., R. 30 E., W.M.; NW $\frac{1}{4}$  SW $\frac{1}{4}$ , SW $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 7; NE $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 18; T. 2 N., R. 31 E., W.M.

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-fourtieth 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  $\frac{1}{4}$  acre feet per acre for each acre irrigated during the irrigation season of each year, and shall be subject to contract No. 14-06-100-1336 with the Bureau of Reclamation, a copy of which is on file in the office of the State Engineer,

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:

1.4 acres SE $\frac{1}{4}$ SW $\frac{1}{4}$	7.4 acres SW $\frac{1}{4}$ NW $\frac{1}{4}$
6.8 acres SW $\frac{1}{4}$ SE $\frac{1}{4}$	32.8 acres NW $\frac{1}{4}$ SW $\frac{1}{4}$
Section 1	17.6 acres SW $\frac{1}{4}$ SW $\frac{1}{4}$
13.4 acres NE $\frac{1}{4}$ NE $\frac{1}{4}$	15.3 acres SE $\frac{1}{4}$ SW $\frac{1}{4}$
12.8 acres NW $\frac{1}{4}$ NE $\frac{1}{4}$	0.1 acre SW $\frac{1}{4}$ SE $\frac{1}{4}$
28.6 acres SE $\frac{1}{4}$ NE $\frac{1}{4}$	Section 7
12.6 acres NE $\frac{1}{4}$ NW $\frac{1}{4}$	10.0 acres NW $\frac{1}{4}$ NE $\frac{1}{4}$
8.8 acres NW $\frac{1}{4}$ NW $\frac{1}{4}$	8.4 acres NE $\frac{1}{4}$ NW $\frac{1}{4}$
15.6 acres NE $\frac{1}{4}$ SE $\frac{1}{4}$	Section 18
Section 12	T. 2 N., R. 31 E., W.M.
T. 2 N., R. 30 E., W.M.	

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. APRIL 5 1961

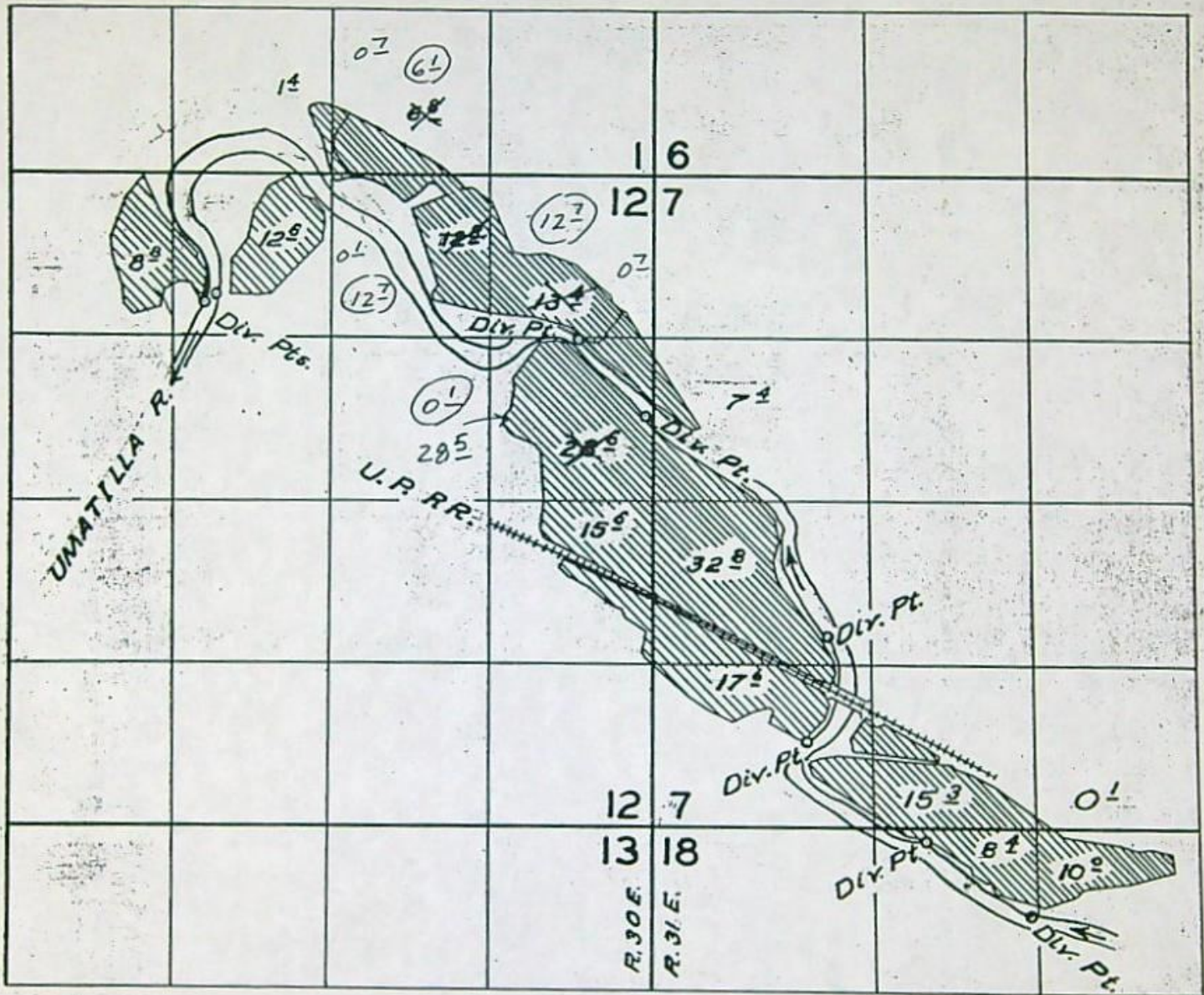
LEWIS A. STANLEY

State Engineer

Recorded in State Record of Water Right Certificates, Volume 20, page 28484

T7771 T7772

T. 2N. R. 30 & 31 E. W. M.



**FINAL PROOF SURVEY**  
UNDER

○ Remaining Right  
Uncircled Acreages to be Canceled.  
Application No. 20,836. Permit No. 16,393.  
IN NAME OF

*E. F. Burlingham & Sons*

Surveyed May 30, 1958, by C. O. Bartels  
July 16, 1960, by R. H. Jackson

June 26, 1997

B & G Resources, Inc.  
c/o Kenneth E. Gustafson  
18270 SW Boones Ferry Rd  
Portland, OR 97227

REFERENCE: Temporary Transfer 7771 and Transfer 7772

We have received affidavits from the Watermaster and Assistant Watermaster alleging non-use on the lands involved in these transfer applications.

Because of the nature of the allegations, we are withholding further action on Temporary Transfer Application 7771 and Transfer Application 7772, pending the outcome of the cancellation proceeding.

If you have any questions, please call me at (503) 378-8455, extension 275, or (in-state only) (800) 624-3199.

Sincerely,

LARRY H. NUNN  
Transfer Coordinator

cc: Schroeder Law Offices  
Dale VanSchoiack, CWRE  
Tony Justus, Watermaster  
H. Richard (Dick) Snow  
Stanfield Irrigation District  
Gail Achterman, Stoel Rives



May 23, 1997

**B & G Resources, Inc.**  
**18270 SW Boones Ferry Rd.**  
**Portland, OR 97227**

WATER  
RESOURCES  
DEPARTMENT

REFERENCE: Transfer 7772

We received your water right transfer application requesting (a change in APOD) for use of water from Umatilla River and McKay Reservoir. The application was accompanied by \$ 85. Our receipt 12363 is enclosed.

By copy of this letter, we are asking the Watermaster for his usual report regarding the potential for injury to existing water rights which may be caused by the change.

Your application will be examined to determine if additional information is needed. You will be contacted following this examination. If you have a specific reason why your application should be examined ahead of other applications, please send us a letter describing your reason. We may be able to examine your application ahead of others.

You may not use water from the new point of diversion until the transfer application has been approved. In order to avoid any possible forfeiture of the water right, you should continue to use the water as described by your existing water right.

We will notify you if additional information or corrections to the application or map are required.

If you have any questions, please call the Transfer Section, (800) 624-3199 or (503) 378-3739.

Sincerely,

*Larry H. Nunn*  
for LARRY H. NUNN  
Water Rights Specialist

LHN:gjt

cc: Tony Justus, Watermaster  
Dale G. VanSchoiack, CWRE #333

enclosure



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

3355 N.E. DAVIS  
PORTLAND, OR 97232  
TELEPHONE (503) 232-7110  
FAX (503) 238-4076



SCHROEDER  
LAW OFFICES

*Legal Support for People Feeding the World*

P.O. BOX 1392  
115 W. HERMISTON AVE., STE. 140  
HERMISTON, OR 97838  
TELEPHONE (541) 564-9290  
FAX (541) 564-0158

**RECEIVED**

JUN - 5 1997

WATER RESOURCES DEPT.  
SALEM, OREGON

June 2, 1997

Larry Nunn  
Transfer Coordinator  
Oregon Water Resources Department  
158 12th Street NE  
Salem, OR 97310-0210

**RE: Transfer 7772**

Dear Mr. Nunn:

In your letter of May 23, 1997 to B & G Resources, Inc. regarding the above referenced transfer you asked if for specific reasons why this application should be examined ahead of other applications. This application and the temporary transfer application (T-7771) require the immediate processing of additional point of diversion to enable the use of the temporary transfer.

Since the irrigation season has started we are requesting that you process this application as soon as possible. Should you have any questions regarding this request please contact the undersigned at the Hermiston office.

Sincerely,

Leann Rea  
Paralegal

State of Oregon  
 WATER RESOURCES DEPARTMENT  
 APPLICATION FOR TRANSFER OF WATER RIGHT  
 Amended June 1997

**RECEIVED**

JUN 13 1997

WATER RESOURCES DEPT.  
 SALEM, OREGON

Applicant: B & G Resources, Inc. In care of Kenneth E. Gustafson

Mailing Address: 18270 SW Boones Ferry Road

Portland OR 97227 (503) 639-6777  
City or Town State Zip Phone

Type of Change: Additional Point of Diversion

(In point of diversion: place of use; use heretofore made of the water)

**1. WATER RIGHT**

A) Is the water right in your name? No If not, list name below:  
(Yes, No)

E. F. Burlingham & sons

B) Was the water right determined by a court decree? No  
(Yes, No)

1. If yes, list the title of the proceedings: \_\_\_\_\_  
 2. Certificate No: \_\_\_\_\_

C) Was the water right acquired by a water permit? Yes  
(Yes, No)

1. If yes, list the Permit No: 16393  
 2. Certificate No: 28484

D) Date of priority right: July 3, 1945

E) What are your reasons for the proposed changes? This request for an additional point of diversion is to facilitate a temporary transfer of water rights for the 1997 irrigation season and for the permanent transfer of water rights in the future.

F) The water will be completely applied to the proposed use on or before: August 15, 1997

**2. LOCATION OF AUTHORIZED USE**

A) What is the source of water (river, stream, well)? Umatilla River and McKay Reservoir constructed under Application No. R - 7526, Permit No. R - 584, a tributary of the Columbia River

B) Describe the authorized points of diversion:

Location in Reference to Survey Corner	1/4, 1/4 of Section	Section	Township	Range
700' S + 3100' E From the NW corner Section 18	NE 1/4 NE 1/4	18	2 N	31 E
100' S + 2230' E From the NW corner Section 18	NE 1/4 NW 1/4	18	2 N	31 E
680' N + 1250' E From the SW corner Section 7	SW 1/4 SW 1/4	7	2 N	31 E
1540' N + 1410' E From the SW corner Section 7	NW 1/4 SW 1/4	7	2 N	31 E
1930' S + 60' W From the NE corner Section 12	SE 1/4 NE 1/4	12	2 N	30 E
1330' S + 610' W From the NE corner Section 12	SE 1/4 NE 1/4	12	2 N	30 E
960' S + 3580' W From the NE corner Section 12	NE 1/4 NW 1/4	12	2 N	30 E
1050' S + 3680' W From the NE corner Section 12	NE 1/4 NW 1/4	12	2 N	30 E

C) What is the name of the ditch used? N/A

D) What is the use to which the water is applied? Irrigation of crops

E) Give the location of the authorized area irrigated or place of use other than for irrigation?

Township	Range	Section	1/4, 1/4 of Section	No. of acres irrigated
See attachment A				

F) Is the land within an irrigation district? Yes \_\_\_\_\_ No X

If yes, which district? \_\_\_\_\_

G) County Umatilla

**3. LOCATION OF PROPOSED USE:**

NOTE: Answer question A only if the application is for a change in the point of diversion.

A) Describe the proposed point of diversion:

Location in Reference to Survey Corner	1/4, 1/4 of Section	Section	Township	Range
See attachment A				

JUN 13 1997

WATER RESOURCES DEP  
SALEM, OREGON

NOTE: Answer questions B, C, D, and E only if the application is for a change in use or place of use.

B) Are the lands from which you propose to transfer your water right free of all encumbrances? N/A  
(Yes, No)

C) If no, give the description below of existing encumbrances:

Encumbrance	Held By	Amount

D) What is the use to which the water will be applied? N/A

E) Give the proposed location of the area irrigated, or place of use if other than for irrigation:

Township	Range	Section	1/4, 1/4 of Section	No. of acres irrigated

4. EXHIBITS

The following exhibits shall be attached to and made part of the application:

- A) A map prepared by a Certified Water Right Examiner showing the location of the present and proposed points of diversion, the authorized and proposed places of use and, if any, lands from the existing right that would not be subject to transfer.
- B) A copy of the current recorded deed to the subject lands.
- C) Affidavits from any other landowners or encumbrance holders with interest in the original water right stating that they have no objection to the proposed transfer.
- D) Evidence that the water has been used within the last five years.

5. NAME AND ADDRESS OF RECEIVING LANDOWNER(S) IF OTHER THAN APPLICANT:

H. Richard (Dick) Snow  
33263 Oregon Trail Road Echo, OR 97826

6. REMARKS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I(we) Kenneth E. Gustafson, applicant(s), hereby swear that I(we) have read the above application for transfer of water right and that the statements made are true and correct. Dated and signed this \_\_\_\_\_ day of \_\_\_\_\_, 19 97.

*See original application*  
(Signature)

\_\_\_\_\_  
(Signature)

Subscribed and sworn to before me

(Notarial Seal)

\_\_\_\_\_  
Notary Public for Oregon

My commission expires: \_\_\_\_\_



JUN 13 1997

## ATTACHMENT A

WATER RESOURCES DEPT.  
SALEM, OREGON

2. E) Give the location of the authorized area irrigated or place of use other than for irrigation?

Township	Range	Section	1/4, 1/4 of Section	Acres
2N	30E	1	SE SW	1.4
2N	30E	1	SW SE	6.8
2N	30E	12	NE NE	13.4
2N	30E	12	NW NE	12.8
2N	30E	12	SE NE	28.6
2N	30E	12	NE NW	0.1
2N	30E	12	NE SE	15.6
2N	31E	7	SW NW	7.4
2N	31E	7	NW SW	32.8
2N	31E	7	SW SW	17.6
2N	31E	7	SE SW	15.3
2N	31E	7	SW SE	0.1
2N	31E	18	NW NE	10.0
2N	31E	18	NE NW	8.4

3. A) Describe the proposed points of diversion:

Location in Reference to Survey Corner	1/4, 1/4 of Section	Sec	Twmsp	Range
700' S + 3100' E From the NW corner Section 18	NW 1/4 NE 1/4	18	2 N	31 E
100' S + 2230' E From the NW corner Section 18	NE 1/4 NW1/4	18	2 N	31 E
680' N + 1250' E From the SW corner Section 7	SW 1/4 SW 1/4	7	2 N	31 E
1540' N + 1410' E From the SW corner Section 7	NW 1/4 SW 1/4	7	2 N	31 E
1930' S + 60' W From the NE corner Section 12	SE 1/4 NE 1/4	12	2 N	30 E
1330' S + 610' W From the NE corner Section 12	SE 1/4 NE 1/4	12	2 N	30 E
960' S + 3580' W From the NE corner Section 12	NE 1/4 NW 1/4	12	2 N	30 E
1050' S + 3680' W From the NE corner Section 12	NE 1/4 NW 1/4	12	2 N	30 E
380' N + 650' E From the SW corner Section 31	SW 1/4 SW 1/4	31	3 N	30 E

T 7772

RECEIVED

MAY 19 1997

State of Oregon  
WATER RESOURCES DEPARTMENT  
APPLICATION FOR TRANSFER OF WATER RIGHT

WATER RESOURCES DEPT.  
SALEM, OREGON

Applicant: B & G Resources, Inc. In care of Kenneth E. Gustafson

Mailing Address: 18270 SW Boones Ferry Road

Portland OR 97227 (503) 639-6777  
City or Town State Zip Phone

Type of Change: Additional Point of Diversion  
(In point of diversion: place of use, use heretofore made of the water)

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WATER RESOURCES DEPT.  
SALEM, OREGON

1. WATER RIGHT

A) Is the water right in your name? No If not, list name below:  
(Yes, No) E. F. Burlingham & sons

B) Was the water right determined by a court decree? No  
(Yes, No)  
1. If yes, list the title of the proceedings: \_\_\_\_\_  
2. Certificate No: \_\_\_\_\_

C) Was the water right acquired by a water permit? Yes  
(Yes, No)  
1. If yes, list the Permit No: 16393  
2. Certificate No: 28484

D) Date of priority right: July 3, 1945

E) What are your reasons for the proposed changes? This request for an additional point of diversion is to facilitate a temporary transfer of water rights for the 1997 irrigation season and for the permanent transfer of water rights in the future.

F) The water will be completely applied to the proposed use on or before: August 15, 1997

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MAY 19 1997

WATER RESOURCES DEPT.  
SALEM, OREGON

2. LOCATION OF AUTHORIZED USE

A) What is the source of water (river, stream, well)? Umatilla River and McKay Reservoir constructed under Application No. R - 7526, Permit No. R - 584, a tributary of the Columbia River

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1930' S + 60' W From the NE corner Section 12	SE 1/4 NE 1/4	12	2 N	30 E
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C) What is the name of the ditch used? N/A

D) What is the use to which the water is applied? Irrigation of crops

E) Give the location of the authorized area irrigated or place of use other than for irrigation?

Township	Range	Section	1/4, 1/4 of Section	No. of acres irrigated
See attachment A				

F) Is the land within an irrigation district? Yes \_\_\_\_\_ No X  
If yes, which district? \_\_\_\_\_

G) County Umatilla

3. LOCATION OF PROPOSED USE:

NOTE: Answer question A only if the application is for a change in the point of diversion.

A) Describe the proposed point of diversion:

Location in Reference to Survey Corner	1/4, 1/4 of Section	Section	Township	Range
See attachment A				

NOTE: Answer questions B, C, D, and E only if the application is for a change in use or place of use.

T 7772

B) Are the lands from which you propose to transfer your water right free of all encumbrances? N/A (Yes, No)

C) If no, give the description below of existing encumbrances:

Encumbrance	Held By	Amount

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WATER RESOURCES DEPT.  
SALEM, OREGON

D) What is the use to which the water will be applied? N/A

E) Give the proposed location of the area irrigated, or place of use if other than for irrigation:

Township	Range	Section	1/4, 1/4 of Section	No. of acres irrigated

4. EXHIBITS

The following exhibits shall be attached to and made part of the application:

- A) A map prepared by a Certified Water Right Examiner showing the location of the present and proposed points of diversion, the authorized and proposed places of use and, if any, lands from the existing right that would not be subject to transfer.
- B) A copy of the current recorded deed to the subject lands.
- C) Affidavits from any other landowners or encumbrance holders with interest in the original water right stating that they have no objection to the proposed transfer.
- D) Evidence that the water has been used within the last five years.

5. NAME AND ADDRESS OF RECEIVING LANDOWNER(S) IF OTHER THAN APPLICANT:

H. Richard (Dick) Snow  
33263 Oregon Trail Road Echo, OR 97826

6. REMARKS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I(we) Kenneth E. Gustafson, applicant(s), hereby swear that I(we) have read the above application for transfer of water right and that the statements made are true and correct. Dated and signed this \_\_\_\_\_ day of \_\_\_\_\_, 19 97.

Laura A. Schroeder / L. R.  
(Signature)  
atty for  
B & G Resources, Inc.  
(Signature)

Subscribed and sworn to before me

(Notarial Seal)

Maureen E Redenbaugh  
Notary Public for Oregon

My commission expires: 10/12/1998



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MAY 19 1997  
WATER RESOURCES DEPT.  
SALEM, OREGON

ATTACHMENT A

2. E) Give the location of the authorized area irrigated or place of use other than for irrigation?

Township	Range	Section	Q/Q	Acres
2N	30E	1	SE SW	1.4
2N	30E	1	SW SE	6.8
2N	30E	12	NE NE	13.4
2N	30E	12	NW NE	12.8
2N	30E	12	SE NE	28.6
2N	30E	12	NE NW	12.6
2N	30E	12	NW NW	8.8
2N	30E	12	NE SE	15.6
2N	31E	7	SW NW	7.4
2N	31E	7	NW SW	32.8
2N	31E	7	SW SW	17.6
2N	31E	7	SE SW	15.3
2N	31E	7	SW SE	0.1
2N	31E	18	NW NE	10.0
2N	31E	18	NE NW	8.4

T 7772

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JUN 13 1997

WATER RESOURCES DEPT.  
SALEM, OREGON

3. A) Describe the proposed points of diversion:

Location in Reference to Survey Corner	1/4, 1/4 of Section	Section	Township	Range
700' S + 3100' E From the NW corner Section 18	NW 1/4 NE 1/4	18	2 N	31 E
100' S + 2230' E From the NW corner Section 18	NE 1/4 NW 1/4	18	2 N	31 E
680' N + 1250' E From the SW corner Section 7	SW 1/4 SW 1/4	7	2 N	31 E
1540' N + 1410' E From the SW corner Section 7	NW 1/4 SW 1/4	7	2 N	31 E
1930' S + 60' W From the NE corner Section 12	SE 1/4 NE 1/4	12	2 N	30 E
1330' S + 610' W From the NE corner Section 12	SE 1/4 NE 1/4	12	2 N	30 E
960' S + 3580' W From the NE corner Section 12	NE 1/4 NW 1/4	12	2 N	30 E
1050' S + 3680' W From the NE corner Section 12	NE 1/4 NW 1/4	12	2 N	30 E
380' N + 650' E From the SW corner Section 31	SW 1/4 SW 1/4	31	3 N	30 E

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MAY 19 1997

WATER RESOURCES DEPT.  
SALEM, OREGON

INTEROFFICE MEMO

WATER  
RESOURCES  
DEPARTMENT

TO: TRANSFER SECTION DATE: 5/30/97

FROM: WATERMASTER, DISTRICT # 5  
GROUNDWATER SECTION  
(SIGNATURE) [Signature]

SUBJECT: WATER RIGHT TRANSFER # 7772

A change in: POU APOD POA USE of water.

In the name(s) of B & G Resources, Inc.

In my opinion (assuming the right is valid), the proposed change

MAY BE MADE WITHOUT INJURY WOULD RESULT IN INJURY\* to an existing water right.

\*The approval of this transfer application would result in injury to other water rights because CANNOT serve these lands from the proposed additional p.o.d. proposed p.o.d. is several miles downstream.

The existing right may not be valid because ACRES (most) have gone 5 or more years of non-use.

Headgate notices HAVE HAVE NOT Been issued for diversion from the source(s) which serve(s) this right.

If for change in point of diversion, is there any intervening point(s) for diversion between the authorized and proposed points of diversion? (Yes or No) Yes

In my opinion, the order approving the subject transfer application should include the following in regard to the appropriator installing suitable measuring devices in the diversion works:

X (1) PRIOR Exists already to the diverting of water at the new point of diversion . . .

(2) WHEN IN the judgement of the watermaster it becomes necessary . . .

The enclosed copy of the transfer application and map(s) is for your records.

RECEIVED  
JUN - 2 1997  
WATER RESOURCES DEPT.  
SALEM, OREGON

South of River  
Two fields on  
Bend



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

T 7772

AFFIDAVIT OF USE

STATE OF OREGON )  
 )  
County of Umatilla ) SS

I, Kenneth E. Gustafson  
being duly sworn, depose and say:

(1) I am the Owner of lands to which the water rights described in the attached transfer application and alternate acre petition are perfected or appurtenant; and

(2) I, and/or my lessee, have used these water rights at least once in the last five years; and

(3) I have never intended to abandon or forfeit these water rights.

(4) The land from which the water right is removed will receive no water under the appurtenant rights during the time authorized in the order allowing this transfer.

Kenneth E. Gustafson  
Kenneth E. Gustafson, Owner

SUBSCRIBED AND SWORN to me this 7<sup>th</sup> day of May, 1997.

Katherine J. Schroeder  
expires: 12/5/97

Notary Public of Oregon  
My commission

**RECEIVED**  
MAY 19 1997  
WATER RESOURCES DEPT.  
SALEM, OREGON



T 7772

ASSIGNMENT

We, Gloria Lewis and Nomad Alfalfa, Inc., water rights certificate holders and owners of land which may be appurtenant to Certificate #28484 held in the name of E.F. Burlingham & Sons, hereby assign any and all interest we might have in the aforementioned certificate as filed in the office of the Water Resources Director, to:

B & G Resources, Inc.  
(Name of New Owner)

3132 S.E. Tindall Circle    Portland    Multnomah    Oregon    97202  
(Mailing Address)    (City)    (County)    (State)    (Zip)    (Phone)

This water right is assigned to the new owner and includes any right to transfer all or a portion of the water right identified in the aforementioned water right even though the undersigned may hold a trust deed on the appurtenant property.

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

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MAY 19 1997

WATER RESOURCES DEPT.  
SALEM, OREGON

Witness my hand this 28 day of August, 1996

Certificate Holder Gloria Lewis  
Gloria Lewis

Certificate Holder Gloria Lewis, President  
Nomad Alfalfa, Inc.  
By Gloria Lewis, President

The completed assignment must be submitted to the Water Resources Department, together with a recording fee of \$10. Additional pages will cost \$5 per page.

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

3355 N.E. DAVIS  
PORTLAND, OR 97232  
TELEPHONE (503) 232-7110  
FAX (503) 238-4076



SCHROEDER  
LAW OFFICES

*Legal Support for People Feeding the World*

P.O. BOX 1392  
115 W. HERMISTON AVE., STE. 140  
HERMISTON, OR 97838  
TELEPHONE (541) 564-9290  
FAX (541) 564-0158

**RECEIVED**

**JUN 26 1997**

**WATER RESOURCES DEPT.  
SALEM, OREGON**

June 20, 1997

Larry Nunn  
Transfer Coordinator  
Oregon Water Resources Department  
158 12th Street NE  
Salem, OR 97310-0210

**RE: Transfer 7772**

Dear Mr. Nunn:

Please find enclosed the affidavit of publication provided by the Hermiston Herald for the above referenced transfer application. Please note the last date of publication of this notice was June 17, 1997.

Should you have any questions, please contact the undersigned at the Hermiston office.

Sincerely,

Leann Rea  
Paralegal

Enclosure



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JUN 26 1997

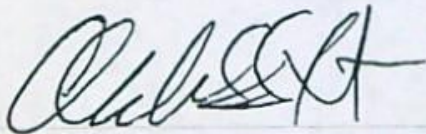
WATER RESOURCES DEPT.  
SALEM, OREGON

AFFIDAVIT OF PUBLICATION

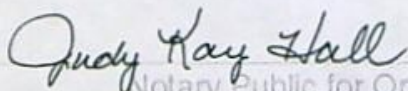
State of Oregon )  
 ) ss.  
County of Umatilla )

I, Claudia Stewart, being first duly sworn depose and say that I am the publisher of The Hermiston Herald, a newspaper of general circulation, as defined by sections ORS 193.010 and 193.020, printed and published at Hermiston in the aforesaid county and state; that the

Legal # 1991, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper for three successive and consecutive weeks in following issues:  
June 3, 10, 17, 1997



Subscribed and sworn to before me this 3rd day of June, 1997

  
Notary Public for Oregon

My commission expires 6-24-98



NOTICE OF  
WATER RIGHT  
TRANSFER 7772

B & G Resources, Inc. filed an application with the Water Resources Department for an additional point of diversion of water as provided by ORS 540.510 to 540.530.

Certificate 28184, in the name of E.F. Burlingham & Sons, includes a right limited to 4.79 cubic foot per second from the Umatilla River and McKay Reservoir, with a priority date of July 3, 1945 for irrigation of 191.6 acres.

The points of diversion for this right are in the SE1/4 NE1/4, NE1/4 NW1/4, Section 12, T 2 N, R 30 E, WM; NW 1/4 SW1/4, SW1/4 SW1/4, Section 7; NE1/4 NW1/4, Section 18; T 2 N, R 31 E, WM.

The applicant proposes to add a point of diversion, the Furnish Canal, in the SW1/4 SW1/4, Section 31, T 3 N, R 30 E, WM; 380' North and 650' East from the SW corner, Section 31.

Protests may be filed by persons who think their water right may be injured by this change. Additional information or forms and rules for filing protests are available from the Water Resources Department by calling (800) 624-3199. If a protest is filed a hearing may be held.

The last date of publication is June 17, 1997. IF NO PROTEST IS FILED WITHIN 30 DAYS, THE CHANGE MAY BE APPROVED WITHOUT A HEARING.

Published: June 3, 10, 17, 1997.  
#1991.

3355 N.E. DAVIS  
PORTLAND, OR 97232  
TELEPHONE (503) 232-7110  
FAX (503) 238-4076



SCHROEDER  
LAW OFFICES

*Legal Support for People Feeding the World*

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RECEIVED

JUN 13 1997

WATER RESOURCES DEPT.  
SALEM, OREGON

June 11, 1997

Larry Nunn  
Transfer Coordinator  
Oregon Water Resources Department  
158 12th Street NE  
Salem, OR 97310-0210

**RE: Temporary Transfer 7771 and Transfer 7772**

Dear Mr. Nunn:

Enclosed please find the above reference applications. As requested in your letter of May 28, 1997 our consultant and the Water Rights Examiner plotted the property lines on the maps. We agree that a portion of the water right in the NW1/4 NW1/4, Section 12 does not belong to B & G Resources, and we have therefore removed that portion from our map.

The manager of the Stanfield Irrigation District submitted the District's approval for the use of the Stanfield Irrigation District's facilities. Unless we hear otherwise, we will assume that this letter satisfied your request for a statement from the Irrigation District.

The public notice for the transfer application was submitted to the local newspaper for publication. The affidavit of publication from the newspaper has not been received. Upon receipt, the affidavit will be forwarded as requested.

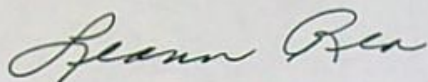
Your letter of June 3, 1997 represents that the report from the Watermaster indicates that the lands at the SE end of the northerly field, NE of the river, and beyond the fence were not irrigated within the past five years. And, that the lands SW of the river and the most westerly field were not irrigated for more than five years. Our client does not agree. Our client informs us that at the time of purchase, they were lead to believe that all the water rights appurtenant to these lands were valid.

For the purpose of expediting the processing of these transfer applications, we have amended the applications. In the submitting of these amended transfer applications, we not admit that the statements made by the Watermaster in his report are accurate. We suggest that a cancellation proceeding be initiated by Watermaster's affidavit if the Department wishes to pursue the Watermaster's claims.

Larry Nunn  
Page 2  
June 11, 1997

Should you have any further questions concerning any portion of these amended transfer application please contact the undersigned at the Hermiston office.

Sincerely,



Leann Rea  
Paralegal

Enclosure

cc: B & G Resources, %Ken Gustafson  
Dick Snow

RECEIVED

JUN 13 1997

WATER RESOURCES DEPT.  
SALEM, OREGON

T7772

RECEIVED

MAY 19 1997

State of Oregon  
WATER RESOURCES DEPARTMENT  
APPLICATION FOR TRANSFER OF WATER RIGHT

WATER RESOURCES DEPT.  
SALEM, OREGON

COPY

Applicant: B & G Resources, Inc. In care of Kenneth E. Gustafson

Mailing Address: 18270 SW Boones Ferry Road

Portland OR 97227 (503) 639-6777  
City or Town State Zip Phone

Type of Change: Additional Point of Diversion  
(In point of diversion: place of use; use heretofore made of the water)

1. WATER RIGHT

A) Is the water right in your name? No If not, list name below:  
(Yes, No)  
E. F. Burlingham & sons

B) Was the water right determined by a court decree? No  
(Yes, No)  
1. If yes, list the title of the proceedings: \_\_\_\_\_  
2. Certificate No: \_\_\_\_\_

C) Was the water right acquired by a water permit? Yes  
(Yes, No)  
1. If yes, list the Permit No: 16393  
2. Certificate No: 28484

D) Date of priority right: July 3, 1945

E) What are your reasons for the proposed changes? This request for an additional point of diversion is to facilitate a temporary transfer of water rights for the 1997 irrigation season and for the permanent transfer of water rights in the future.

F) The water will be completely applied to the proposed use on or before: August 15, 1997

2. LOCATION OF AUTHORIZED USE

A) What is the source of water (river, stream, well)? Umatilla River and McKay Reservoir constructed under Application No. R - 7526, Permit No. R - 584, a tributary of the Columbia River

B) Describe the authorized points of diversion:

Location in Reference to Survey Corner	1/4, 1/4 of Section	Section	Township	Range
700' S + 3100' E From the NW corner Section 18	NE 1/4 NE 1/4	18	2 N	31 E
100' S + 2230' E From the NW corner Section 18	NE 1/4 NW 1/4	18	2 N	31 E
680' N + 1250' E From the SW corner Section 7	SW 1/4 SW 1/4	7	2 N	31 E
1540' N + 1410' E From the SW corner Section 7	NW 1/4 SW 1/4	7	2 N	31 E
1930' S + 60' W From the NE corner Section 12	SE 1/4 NE 1/4	12	2 N	30 E
1330' S + 610' W From the NE corner Section 12	SE 1/4 NE 1/4	12	2 N	30 E
960' S + 3580' W From the NE corner Section 12	NE 1/4 NW 1/4	12	2 N	30 E
1050' S + 3680' W From the NE corner Section 12	NE 1/4 NW 1/4	12	2 N	30 E

C) What is the name of the ditch used? N/A

D) What is the use to which the water is applied? Irrigation of crops

E) Give the location of the authorized area irrigated or place of use other than for irrigation?

Township	Range	Section	1/4, 1/4 of Section	No. of acres irrigated
See attachment A				

F) Is the land within an irrigation district? Yes \_\_\_\_\_ No X  
If yes, which district? \_\_\_\_\_

G) County Umatilla

3. LOCATION OF PROPOSED USE:

NOTE: Answer question A only if the application is for a change in the point of diversion.

A) Describe the proposed point of diversion:

Location in Reference to Survey Corner	1/4, 1/4 of Section	Section	Township	Range
See attachment A				

T 7772

NOTE: Answer questions B, C, D, and E only if the application is for a change in use or place of use.

B) Are the lands from which you propose to transfer your water right free of all encumbrances? N/A (Yes, No)

C) If no, give the description below of existing encumbrances:

Encumbrance	Held By	Amount

D) What is the use to which the water will be applied? N/A

E) Give the proposed location of the area irrigated, or place of use if other than for irrigation:

Township	Range	Section	1/4, 1/4 of Section	No. of acres irrigated

4. EXHIBITS

The following exhibits shall be attached to and made part of the application:

- A) A map prepared by a Certified Water Right Examiner showing the location of the present and proposed points of diversion, the authorized and proposed places of use and, if any, lands from the existing right that would not be subject to transfer.
- B) A copy of the current recorded deed to the subject lands.
- C) Affidavits from any other landowners or encumbrance holders with interest in the original water right stating that they have no objection to the proposed transfer.
- D) Evidence that the water has been used within the last five years.

5. NAME AND ADDRESS OF RECEIVING LANDOWNER(S) IF OTHER THAN APPLICANT:

H. Richard (Dick) Snow  
33263 Oregon Trail Road Echo, OR 97826

6. REMARKS: \_\_\_\_\_  
\_\_\_\_\_

I (we) Kenneth E. Gustafson, applicant(s), hereby

swear that I (we) have read the above application for transfer of water right and that the statements made are true

and correct. Dated and signed this \_\_\_\_\_ day of \_\_\_\_\_, 19 97.

Laura A. Schroeder / L.R.  
(Signature)  
Atty for  
B & G Resources, Inc.  
(Signature)

Subscribed and sworn to before me

(Notarial Seal)

Maureen E. Redenbaugh  
Notary Public for Oregon

My commission expires: 10/12/1998



RECEIVED

MAY 19 1997

WATER RESOURCES DEPT.  
SALEM, OREGON

Need property line

June 3, 1997

B & G Resources, Inc  
c/o Schroeder Law Offices  
P.O. Box 1392  
Hermiston, OR 97838

REFERENCE: Temporary Transfer 7771 and Transfer 7772

We received a report from the Watermaster concerning the temporary transfer application. He says a portion of the land proposed to be moved has not been irrigated for more than five years. These are the lands at the SE end of the northerly field, NE of the river, beyond the fence. The Watermaster said the lands up the fence have been watered, but the sprinklers did not go beyond the fence.

If you agree, these lands need to be removed from the application. If you do not agree with the Watermaster, please submit a statement describing when the lands beyond the fence were irrigated and the crop grown.

We also received a report from the Watermaster concerning the transfer application requesting an additional point of diversion. He says the lands SW of the river and the most westerly field have not been irrigated for more than five years. He says only the fields NE of the river, except that described above, have been watered.

If you agree with the Watermaster, you should remove the non-irrigated lands from the applications. If you do not agree with the Watermaster, please submit a statement describing when the lands were irrigated and the crops grown.

If, as the Watermaster says, the lands have not been irrigated for over five years, those portions of the water right are forfeited and should be cancelled and removed from the water right record.

We recently returned the applications and maps for correction. Please make the appropriate corrections described in this letter within the time limit defined in our May 28, 1997 letter.



---

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

B & G Resources, Inc  
c/o Schroeder Law Offices

Page 2

REFERENCE: Temporary Transfer 7771 and Transfer 7772  
June 3, 1997

If you have any questions, please call me at (503) 378-8455,  
extension 275, or (in-state only) (800) 624-3199.

Sincerely,

LARRY H. NUNN  
Transfer Coordinator

cc: B & G Resources, Inc.  
Tony Justus, Watermaster  
Dale VanSchoiack, CWRE

May 28, 1997

B & G Resources, Inc.  
c/o Schroeder Law Offices  
P.O. Box 1392  
Hermiston, OR 97838

REFERENCE: Temporary Transfer 7771 and Transfer 7772

We are examining the B & G Resources Inc. applications. There are some problems which need to be resolved.

I attempted to plot the legal description in the deed which accompanied the applications. The legal description described the boundary to the center of the Umatilla River. The point described is on an old channel of the river. Also part of the legal description I could plot, in the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 12, appears to go through the field shown. This means B & G Resources may not own the entire water right.

Please have your certified Water Right Examiner and consultant plot the property lines on the maps. This will make it possible for us to follow the legal descriptions and insure that, indeed, B & G Resources is the water right holder, as we are required to do.

We would like a statement from Stanfield Irrigation District saying that they approve the use of their canal for the delivery of this water. We would also like this statement to say they approve the temporary placement of this right within their boundary.

Notice of the transfer application must be published in a local newspaper having general circulation in the area of the water right. Enclosed is the notice which must be published. It must be published once a week, for three consecutive weeks. Following the last publication, please submit the affidavit of publication supplied by the newspaper. Please have the newspaper insert the last date of publication in the appropriate place in the notice.





NOTICE OF WATER RIGHT TRANSFER 7772

B & G Resources, Inc filed an application with the Water Resources Department for an additional point of diversion of water as provided by ORS 540.510 to 540.530.

Certificate 28184, in the name of E.F. Burlingham & Sons, includes a right limited to 4.79 cubic foot per second from the Umatilla River and McKay Reservoir, with a priority date of July 3, 1945 for irrigation of 191.6 acres.

The points of diversion for this right are in the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , NE $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 12, T 2 N, R 30 E, WM; NW $\frac{1}{4}$  SW $\frac{1}{4}$ , SW $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 7; NE $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 18; T 2 N, R 31 E, WM.

The applicant proposes to add a point of diversion, the Furnish Canal, in the SW $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 31, T 3 N, R 30 E, WM; 380' North and 650' East from the SW corner, Section 31.

Protests may be filed by persons who think their water right may be injured by this change. Additional information or forms and rules for filing protests are available from the Water Resources Department by calling (800) 624-3199. If a protest is filed a hearing may be held.

The last date of publication is [LAST DATE OF PUBLICATION]. IF NO PROTEST IS FILED WITHIN 30 DAYS, THE CHANGE MAY BE APPROVED WITHOUT A HEARING.

COPY

T 7772

2. E) Give the location of the authorized area irrigated or place of use other than for irrigation?

Township	Range	Section	Q/Q	Acres
2N	30E	1	SE SW	1.4
2N	30E	1	SW SE	6.8
2N	30E	12	NE NE	13.4
2N	30E	12	NW NE	12.8
2N	30E	12	SE NE	28.6
2N	30E	12	NE NW	12.6
2N	30E	12	NW NW	8.8
2N	30E	12	NE SE	15.6
2N	31E	7	SW NW	7.4
2N	31E	7	NW SW	32.8
2N	31E	7	SW SW	17.6
2N	31E	7	SE SW	15.3
2N	31E	7	SW SE	0.1
2N	31E	18	NW NE	10.0
2N	31E	18	NE NW	8.4

3. A) Describe the proposed points of diversion:

Location in Reference to Survey Corner	1/4, 1/4 of Section	Section	Township	Range
700' S + 3100' E From the NW corner Section 18	NW 1/4 NE 1/4	18	2 N	31 E
100' S + 2230' E From the NW corner Section 18	NE 1/4 NW 1/4	18	2 N	31 E
680' N + 1250' E From the SW corner Section 7	SW 1/4 SW 1/4	7	2 N	31 E
1540' N + 1410' E From the SW corner Section 7	NW 1/4 SW 1/4	7	2 N	31 E
1930' S + 60' W From the NE corner Section 12	SE 1/4 NE 1/4	12	2 N	30 E
1330' S + 610' W From the NE corner Section 12	SE 1/4 NE 1/4	12	2 N	30 E
960' S + 3580' W From the NE corner Section 12	NE 1/4 NW 1/4	12	2 N	30 E
1050' S + 3680' W From the NE corner Section 12	NE 1/4 NW 1/4	12	2 N	30 E
380' N + 650' E From the SW corner Section 31	SW 1/4 SW 1/4	31	3 N	30 E

RECEIVED

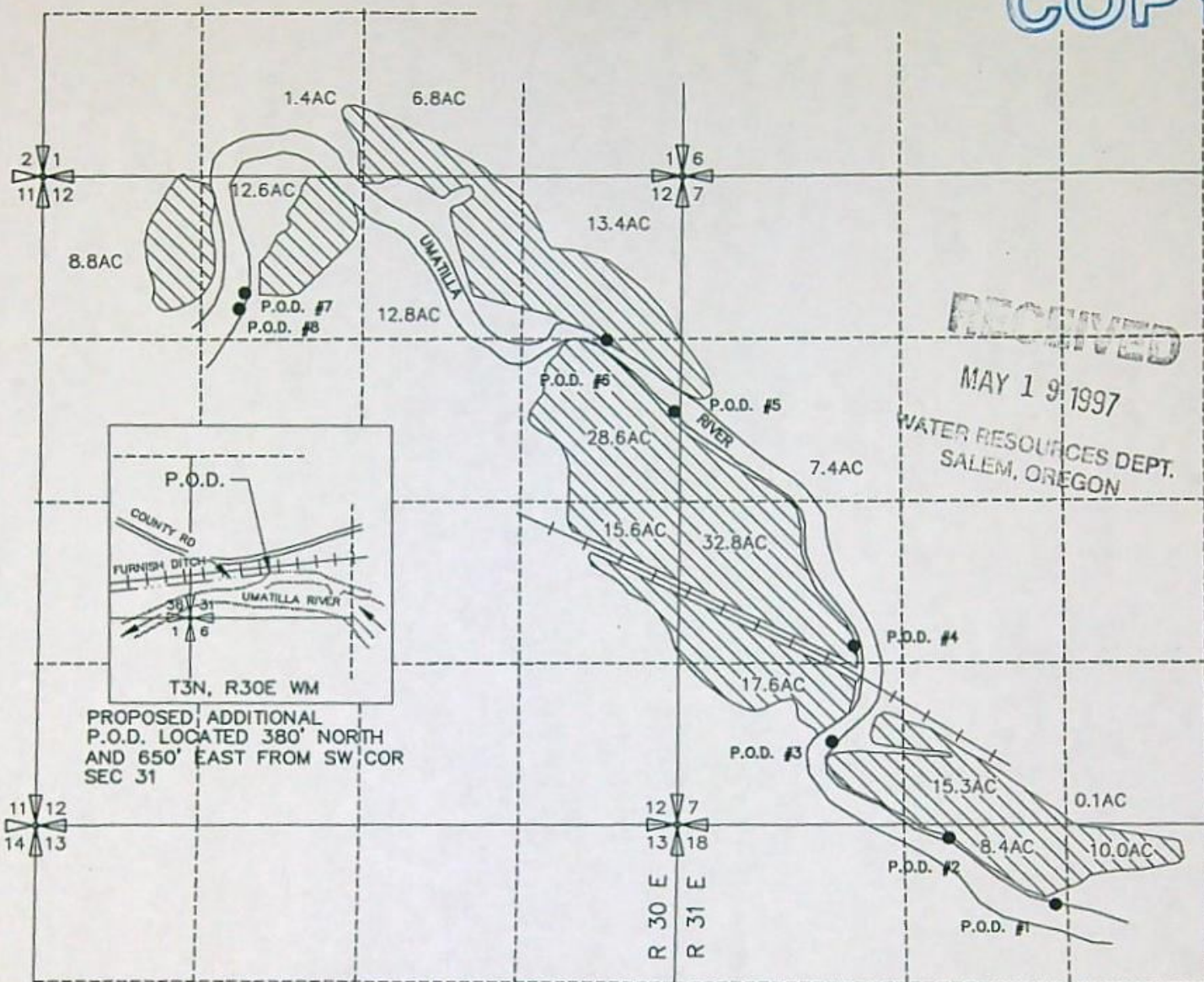
MAY 19 1997

WATER RESOURCES DEPT.  
SALEM, OREGON

TRANSFER APPLICATION MAP  
 PERMIT 16393 CERTIFICATE 28484

TOWNSHIP 2 NORTH, RANGE 30 AND 31 EAST, WILLAMETTE MERIDIAN

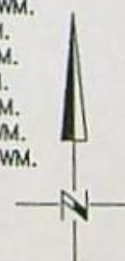
T 7772  
 COPY



AUTHORIZED POINTS OF DIVERSION

- P.O.D. #1 700 FEET SOUTH AND 3100 FEET EAST FROM THE NW CORNER SECTION 18, R31E.WM.
- P.O.D. #2 100 FEET SOUTH AND 2230 FEET EAST FROM THE NW CORNER SECTION 18, R31E. WM.
- P.O.D. #3 680 FEET NORTH AND 1250 FEET EAST FROM THE SW CORNER SECTION 7, R31E. WM.
- P.O.D. #4 1540 FEET NORTH AND 1410 FEET EAST FROM THE SW CORNER SECTION 7, R31E. WM.
- P.O.D. #5 1930 FEET SOUTH AND 60 FEET WEST FROM THE NE CORNER SECTION 12, R30E. WM.
- P.O.D. #6 1330 FEET SOUTH AND 610 FEET WEST FROM THE NE CORNER SECTION 12, R30E. WM.
- P.O.D. #7 960 FEET SOUTH AND 3580 FEET WEST FROM THE NE CORNER SECTION 12, R30E. WM.
- P.O.D. #8 1050 FEET SOUTH AND 3680 FEET WEST FROM THE NE CORNER SECTION 12, R30E. WM.

Examined and Approved  
 Dale H. Van Schwart  
 5/11/97  
 STATE OF OREGON



NOTE: THE PURPOSE OF THIS MAP IS TO IDENTIFY THE APPROXIMATE LOCATION OF THE WATER RIGHT. IT IS NOT INTENDED TO PROVIDE INFORMATION RELATIVE TO THE LOCATION OF PROPERTY OWNERSHIP BOUNDARY LINES.

3522.056  
 3522GU2.DWG  
 4/17/97

TRANSFER CHECK OFF LIST

TRANSFER FILE # 7772  
 DATE RECEIVED 5-20-97  
 DATE MONEY SLIPPED 5-20-97  
 DATE RECEIPTED 5-20-97  
 VALID WATER RIGHT?  Yes  No  
 TEMP ALT AC \_\_\_(Bill or New) IRR DIST \_\_\_(Bill or New) PERM AMEND \_\_\_(Kelly) DIV 15 \_\_\_or Temp Div 15(Larry)  
 ENTERED IN DB 5-20-97  
 CONTENTS MARKED 5-20-97  
 3 COPIES MADE & STAMPED 5-21-97  
 CERTIFICATE MARKED 5-21-97  
 CERTIFICATE COPIED 5-21-97  
 FINAL PROOF MAP COPIED 5-21-97  
 PERMIT MARKED       
 PERMIT COPIED       
 PERMIT MAP COPIED       
 DECREE MARKED       
 DECREE COPIED       
 ADJUDICATION MAP COPIED       
 PULL APPLICATIONS 5-21-97  
 FOLDER FILLED OUT\* 5-20-97  
 COLOR CODED      Yes  
 APP FOLDER MARKED 5-20-97  
 TYPE BLACK BOOK 5-21-97 (And color code)  
 ENTRIES CHECKED 5-22-97 CHECKED BY Larry INIT FOLDER \_\_\_\_\_  
 LETTER SENT 5-23-97 ID(copy of app & map) \_\_\_\_\_ CWRE \_\_\_\_\_  
 PUBLIC NOTICE DATE 5-27-97  
 COPY TO WM 5-23-97  
 BLUE FORM TO WM 5-23-97  
 COPY TO GW      POA, APOA, SW TO GW ONLY  
 BLUE FORM TO GW       
 COPY TO CWRE 5-23-97  
 INDEX CARD 5-22-97  
 CALENDAR CARD 5-22-97

\*SHRINK DATA IF THERE ARE MANY FILES INVOLVED AND TAPE TO FOLDER

**STATE OF OREGON  
WATER RESOURCES DEPARTMENT**

RECEIPT # **12363**

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

INVOICE # \_\_\_\_\_

RECEIVED FROM: <u>B + G Resources</u>	APPLICATION
BY: <u>Inc.</u>	PERMIT
	TRANSFER <u>7772</u>

CASH:  CHECK: # 24-22 OTHER: (IDENTIFY)

TOTAL REC'D \$ 85.9

**0417 WRD MISC CASH ACCT**

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

**REDUCTION OF EXPENSE**

CASH ACCT.	\$
VOUCHER #	

PCA AND OBJECT CLASS

**0427 WRD OPERATING ACCT**

PCA 66111

0407 MISCELLANEOUS	\$	
0410 COPY & TAPE FEES	\$	
0408 RESEARCH FEES	\$	
0408 MISC REVENUE: (IDENTIFY)	\$	
TC165 DEPOSIT LIAB. (IDENTIFY)	\$	
<b>WATER RIGHTS:</b>	<b>EXAM FEE</b>	<b>RECORD FEE</b>
0201 SURFACE WATER	\$	0202 \$
0203 GROUND WATER	\$	0204 \$
0205 TRANSFER	\$ <u>50.00</u>	0206 \$ <u>35</u>
<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 # **12363**

DATED: 5-19-97

BY: D. Bushnell

County: UMATILLA  
Transfer: 7772  
Certificate: 28484  
Priority Date: 7/3/1945  
Name: B & G RESROUCES, INC  
Address: 18270 SW BOONES FERRY RD, PORTLAND  
Change: APOD  
Source: UMATILLA RIVER/McKAY RESERVOIR  
Authorized POD: 2N 31E 7,18/2N 30E 12  
Proposed POD: 3N 30E 31

STATE OF OREGON  
COUNTY OF UMATILLA  
**CERTIFICATE OF WATER RIGHT**

**This Is to Certify, That** E. F. BURLINGHAM & SONS

of Forest Grove, 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 Umatilla River and McKay Reservoir constructed under Application No. R-7526, Permit No. R-584, a tributary of Columbia River for the purpose of irrigation of 191.6 acres

under Permit No. 16393 of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Oregon; that the priority of the right hereby confirmed dates from July 3, 1945

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 4.79 cubic feet 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 SE $\frac{1}{4}$  NE $\frac{1}{4}$ , NE $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 12, T. 2 N., R. 30 E., W.M.; NW $\frac{1}{4}$  SW $\frac{1}{4}$ , SW $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 7; NE $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 18; T. 2 N., R. 31 E., W.M.

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-fourtieth 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  $\frac{1}{2}$  acre feet per acre for each acre irrigated during the irrigation season of each year, and shall be subject to contract No. 14-06-100-1336 with the Bureau of Reclamation, a copy of which is on file in the office of the State Engineer,

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:

1.4 acres SE $\frac{1}{4}$ SW $\frac{1}{4}$	7.4 acres SW $\frac{1}{4}$ NW $\frac{1}{4}$
6.8 acres SW $\frac{1}{4}$ SE $\frac{1}{4}$	32.8 acres NW $\frac{1}{4}$ SW $\frac{1}{4}$
Section 1	17.6 acres SW $\frac{1}{4}$ SW $\frac{1}{4}$
13.4 acres NE $\frac{1}{4}$ NE $\frac{1}{4}$	15.3 acres SE $\frac{1}{4}$ SW $\frac{1}{4}$
12.8 acres NW $\frac{1}{4}$ NE $\frac{1}{4}$	0.1 acre SW $\frac{1}{4}$ SE $\frac{1}{4}$
28.6 acres SE $\frac{1}{4}$ NE $\frac{1}{4}$	Section 7
12.6 acres NE $\frac{1}{4}$ NW $\frac{1}{4}$	10.0 acres NW $\frac{1}{4}$ NE $\frac{1}{4}$
8.8 acres NW $\frac{1}{4}$ NW $\frac{1}{4}$	8.4 acres NE $\frac{1}{4}$ NW $\frac{1}{4}$
15.6 acres NE $\frac{1}{4}$ SE $\frac{1}{4}$	Section 18
Section 12	T. 2 N., R. 31 E., W.M.
T. 2 N., R. 30 E., W.M.	

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. APRIL 5 1961

LEWIS A. STANLEY

State Engineer

Recorded in State Record of Water Right Certificates, Volume 20, page 28484

T7771 T7772

Land Use Information Form: Permits, Hydroelectric Licenses,  
Water Uses in Addition to Classified Uses

T 7772

This information is needed to determine compatibility with local comprehensive plans as required by ORS 197.180. The Water Resources Department will use this and other information to evaluate the water use application. DO NOT FILL OUT THIS FORM IF water is to be diverted, conveyed, and/or used only on federal lands.

Applicant's Name: Kenneth E. Gustafson  
 Address: 18270 SW Boones Ferry Road  
 City: Portland State: OR Zip: 97227 Day Phone: (503)639-6777

Please provide information as requested below for all tax lots on or through which water will be diverted or used. (Attach extra sheets as necessary.) Applicants for municipal use, or irrigation uses within irrigation districts, may substitute existing and proposed service area boundaries for the tax lot information requested below.

(CHECK ALL THAT APPLY)

TAX LOT LOCAL ID #	PLAN DESIGNATION / ZONING (e.g., Rural Residential / RR-5)	WATER DIVERTED	WATER CONVEYED	WATER USE
<del>T4N31</del> <del>TL 1100 370</del> <del>T4N30</del> <del>12 TL 400</del>	EFU (Exclusive Farm Use)	X		
T4N29 4001	EFU-40 (Exclusive Farm Use)		X	X

Please list all counties and cities within which water is proposed to be diverted, conveyed, and/or used.

Umatilla

The following section must be completed by a planning official from each county and city listed unless your project will be located entirely within the city limits. In this case, only the city planning agency must complete this form. Please request additional forms as needed.

=====  
**For Local Government Use Only**

Local planning officials are to complete the remainder of this form. If it cannot be completed while the applicant waits, sign and detach the receipt as instructed below. You will receive notice when the applicant's water right request is filed with the Water Resources Department (WRD). You will have 30 days from the notice date to return this completed land use form to WRD. If no land use information is received from you within that period, WRD may presume the land use associated with the proposed water right is compatible with your comprehensive plan.

a) Check the appropriate box below and provide requested information.

Land uses to be served by proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan.

Cite applicable ordinance section(s): 152.056. Go to section b) on reverse side.

Land uses to be served by proposed water uses (including proposed construction) involve discretionary land use approvals as listed in the table on the reverse of this form. Note: Please attach documentation of applicable local land use approvals which have already been obtained. (Record of Action plus accompanying findings is sufficient.)

RECEIVED

=====  
 Receipt for Request for Land Use Information

MAY 19 1997

WRD Applicant Name: \_\_\_\_\_ WATER RESOURCES DEPT.  
SALEM, OREGON

This receipt must be signed by a local government representative and returned to the applicant for inclusion in the WRD application IF the local government cannot provide the above requested land use information while the applicant waits.

City or County: \_\_\_\_\_

Staff Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

Signature: \_\_\_\_\_ Date of Information Request: \_\_\_\_\_



(for Local Use Continued)

(CHECK THE BOX THAT APPLIES)

Type of Land Use Approval Needed (e.g., plan amendments, rezones, conditional use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	Already Obtained	Already Denied	Being Pursued Satisfactorily

b) Please provide printed name and written signature.

Name: PATTY Perry Date: 4-3-97  
Title: Zoning Aide Phone: 541-278-6252  
Signature: Patty Perry

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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T 1772  
Description of Water Use

Planning Official Initials RP

Note to Applicant: This sheet will provide local planning staff with a basic description of your proposed water use. Please fill out this sheet before bringing the attached land use form to your local planning office. It will help local planning offices complete your land use information form quickly.

Note to Local Planning Officials: Please initial this sheet. Do not separate it from the land use information form. If needed, please make a separate copy for your records.

Applicant Name: Kenneth E. Gustafson  
 Address: 18270 SW Boones Ferry Road  
Portland, OR 97227  
 Phone: (503) 639-6777

**Temporary transfer of Water Right**

Please indicate what you will use the water for. Check all boxes that apply and fill in the blanks with key characteristics of the project.

- Irrigation (crop type, golf course, nursery or greenhouse): alfalfa, grain, potatoes
- Livestock (type of livestock, feedlot, slaughterhouse): \_\_\_\_\_
- Residential (# units, single or multi-family, # lots if partition or subdivision): \_\_\_\_\_
- Commercial (i.e., retail, office, restaurant, gas station, hotel, service, etc.): \_\_\_\_\_
- Industrial (i.e., factory, pulp mill, research and development, processing, etc.): \_\_\_\_\_
- Institutional (i.e., school library, etc.): \_\_\_\_\_
- Mining (aggregate, metal, open pit, placer, etc.): \_\_\_\_\_
- Recreation (park, campsite, pond, etc.): \_\_\_\_\_
- Fish and wildlife (pond, hatchery, etc.): \_\_\_\_\_
- Hydropower (dam, reservoir, power generating or transmitting facilities): \_\_\_\_\_
- Other (Name and list key characteristics): \_\_\_\_\_

Indicate sources for the proposed water use below:	Indicate the estimated quantity of water the use will require.
<input checked="" type="checkbox"/> Surface Water Name Sources <u>Umatilla River</u> <u>McKay Reservoir</u> _____ <input type="checkbox"/> Reservoir or pond <input type="checkbox"/> Ground Water	<u>.63</u> Cubic feet per second. _____ Gallons per minute. _____ Acre-Feet

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222533

AFTER RECORDING RETURN TO:

UNTIL A CHANGE IS REQUESTED, ALL TAX STATEMENTS SHALL BE SENT TO:

B&G Resources, Inc.  
3132 SE Tindall Circle  
Portland, OR 97202

B&G Resources, Inc.  
3132 SE Tindall Circle  
Portland, OR 97202

**STATUTORY BARGAIN AND SALE DEED**

Nomad Alfalfa, Inc., an Oregon corporation, and Gloria M. Lewis, an individual, jointly Grantor, conveys to B&G Resources, Inc., an Oregon corporation, Grantee, the following described real property:

The real property described in Exhibit "A" attached hereto, together with all appurtenances thereto, except this deed does not convey any mineral rights relating to the real property which is the subject of this deed.

The true consideration for this conveyance is \$20,000.

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.

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Executed this 28 day of August, 1996.

AUG 30 1996

UMATILLA COUNTY RECORDS

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**GRANTOR:**

Nomad Alfalfa, Inc.  
an Oregon corporation

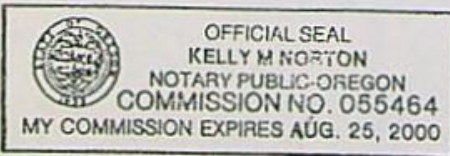
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SALEM, OREGON

Gloria M. Lewis, President  
Gloria M. Lewis, President

President  
Gloria M. Lewis

STATE OF OREGON }  
County of Multnomah } ss.

This instrument was acknowledged before me this 28th day of August, 1996, by Gloria Lewis, President of Nomad Alfalfa, Inc., on behalf of the corporation.



Kelly M. Norton  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 08/25/00

(Acknowledgments continued on next page)

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(Acknowledgments continued from next page)

STATE OF OREGON }  
County of Multnomah } ss.

This instrument was acknowledged before me this 28<sup>th</sup> day of August, 1996, by Gloria Lewis.



Kelly M. Norton  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 08/25/00

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SALEM, OREGON

## EXHIBIT A

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All of those certain parcels of land heretofore acquired by Oregon-Washington Railroad and Navigation Company by Warranty Deed dated December 20, 1933, filed for record February 5, 1934, in Volume 147 of Deeds at Page 144 of the Records of Umatilla County, Oregon, being more particularly described in said deed as follows:

"Parcel One: An irregular shaped tract of land comprising a part of Sections One (1) and Twelve (12), of Township Two (2) North, Range Thirty (30) East of the Willamette Meridian, and a part of Section Seven (7), of Township Two (2) North, Range Thirty-One (31) East of the Willamette Meridian, being more particularly described as follows, to-wit:

Beginning at the southeast corner of said Section One (1); thence north along the east line of said Section One (1), to the northeast corner of the southeast quarter of the southeast quarter ( $SE\frac{1}{4} SE\frac{1}{4}$ ) thereof; thence west along the north line of the south half of the southeast quarter ( $S\frac{1}{2} SE\frac{1}{4}$ ) and the southeast quarter of the southwest quarter ( $SE\frac{1}{4} SW\frac{1}{4}$ ) of said Section One (1), to the northwest corner of the said southeast quarter of the southwest quarter ( $SE\frac{1}{4} SW\frac{1}{4}$ ); thence south along the west line of the said southeast quarter of the southwest quarter ( $SE\frac{1}{4} SW\frac{1}{4}$ ), to an iron monument at a point six hundred eighty-nine (689) feet, more or less, north of the southwest corner thereof; thence south  $19^{\circ}57'$  west, seven hundred thirty-three (733) feet, more or less, to an iron monument at a point in the north line of said Section Twelve (12), two hundred fifty (250) feet, more or less, west of the northeast corner of the northwest quarter of the northwest quarter ( $NW\frac{1}{4} NW\frac{1}{4}$ ) of said Section Twelve (12); thence west along the north line of said Section Twelve (12), to a point nine hundred forty (940) feet east of the northwest corner of said Section Twelve (12); thence south thirteen hundred twenty-four and five tenths (1324.5) feet, to a point in the south line of the northwest quarter of the northwest quarter ( $NW\frac{1}{4} NW\frac{1}{4}$ ) of said Section Twelve (12), nine hundred forty (940) feet east of the southwest corner of said northwest quarter of the northwest quarter ( $NW\frac{1}{4} NW\frac{1}{4}$ ); thence east along the south line of said northwest quarter of the northwest quarter ( $NW\frac{1}{4} NW\frac{1}{4}$ ) to the northwest corner of the southeast quarter of the northwest quarter ( $SE\frac{1}{4} NW\frac{1}{4}$ ) of said Section Twelve (12); thence south along the west line of said southeast quarter of the northwest quarter ( $SE\frac{1}{4} NW\frac{1}{4}$ ) to the southwest corner thereof; thence east along the south line of said southeast quarter of the northwest quarter ( $SE\frac{1}{4} NW\frac{1}{4}$ ) to a

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point in the center of the channel of the Umatilla River; thence northwesterly along the said center of the channel of the Umatilla River, to a point which is four hundred sixty-two (462) feet north and three hundred ninety-six (396) feet west of the center of said Section Twelve (12); thence northwesterly in a direct line six hundred twenty (620) feet; to a point on the left bank of said Umatilla River; thence east six hundred (600) feet to a point fifty (50) feet east of the center of the old railroad grade of Oregon-Washington Railroad & Navigation Company; thence along a circular curve to the right, with a radius of five hundred twenty-three and seven tenths (523.7) feet along the old right of way of said Oregon-Washington Railroad & Navigation Company to a point one hundred sixty-five (165) feet south of the south line of the northwest quarter of the northeast quarter (NW $\frac{1}{4}$  NE $\frac{1}{4}$ ) of said Section Twelve (12); thence southeasterly on the southwest side of and along said old right-of-way and terminating at a point forty (40) feet from the high water mark of The Furnish Ditch Company's reservoir, which point bears north five hundred sixty (560) feet from the south-east corner of the southwest quarter of the northeast quarter (SW $\frac{1}{4}$  NE $\frac{1}{4}$ ) of said Section Twelve (12); thence south 62°16' east fifty-two (52) feet; thence north 33°15' east one hundred forty (140) feet; thence south 59°23' east three hundred ninety-eight (398) feet; thence south 9°48' east three hundred sixty-three (363) feet; thence south 10°30' west three hundred seventeen (317) feet, more or less, to a point on the north boundary line of Oregon-Washington Railroad & Navigation Company's right of way as now located in the northeast quarter of the southeast quarter (NE $\frac{1}{4}$  SE $\frac{1}{4}$ ) of said Section Twelve (12); said point being three hundred ninety-three (393) feet, more or less, distant southeasterly, measured along said north boundary line of Oregon-Washington Railroad & Navigation Company's right of way, from the west boundary line of said northeast quarter of the southeast quarter (NE $\frac{1}{4}$  SE $\frac{1}{4}$ ); thence southeasterly along the northerly right of way boundary line of said Oregon-Washington Railroad & Navigation Company as the same is now located through the northeast quarter of the southeast quarter (NE $\frac{1}{4}$  SE $\frac{1}{4}$ ) of said Section Twelve (12) of Township Two (2) North, Range Thirty (30) East of the Willamette Meridian, and through the southwest quarter (SW $\frac{1}{4}$ ) and the southwest quarter of the southeast quarter (SW $\frac{1}{4}$  SE $\frac{1}{4}$ ) of Section Seven (7), Township 2 North, Range 31 East, Willamette Meridian, to a point on the east boundary line of said southwest quarter of the southeast quarter (SW $\frac{1}{4}$  SE $\frac{1}{4}$ ) of said Section Seven (7); thence north along the east boundary line of said southwest quarter of the southeast quarter (SW $\frac{1}{4}$  SE $\frac{1}{4}$ ) of said Section Seven (7), to the northeast corner thereof; thence west along the north boundary line of said southwest quarter of the southeast quarter (SW $\frac{1}{4}$  SE $\frac{1}{4}$ ) and the southeast quarter of the southwest quarter (SE $\frac{1}{4}$  SW $\frac{1}{4}$ ) of said Section Seven (7), to the southeast corner of the northwest quarter of the southwest quarter (NW $\frac{1}{4}$  SW $\frac{1}{4}$ ) of said Section Seven (7); thence north along the east boundary line of said northwest quarter of the southwest quarter (NW $\frac{1}{4}$  SW $\frac{1}{4}$ ) and the southwest quarter of the northwest quarter (SW $\frac{1}{4}$  NW $\frac{1}{4}$ ) of said Section Seven (7), to the

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northeast corner of said southwest quarter of the northwest quarter (SW $\frac{1}{4}$  NW $\frac{1}{4}$ ) of said Section Seven (7); thence West along the north boundary line of said southwest quarter of the northwest quarter (SW $\frac{1}{4}$  NW $\frac{1}{4}$ ) of said Section Seven (7), to the section line common to said Section Seven (7) and said Section Twelve (12); thence north along said section line to the southeast corner of said section one (1), the place of beginning; excepting therefrom all that part of the northeast quarter of the northeast quarter (NE $\frac{1}{4}$  NE $\frac{1}{4}$ ) of said Section Twelve (12) and the Southeast quarter of the Southwest quarter (SE $\frac{1}{4}$  SW $\frac{1}{4}$ ) and the South Half of the Southeast quarter (S $\frac{1}{2}$  SE $\frac{1}{4}$ ) of Section One (1), that lies outside of the highwater boundary line of The Furnish Ditch Company's Reservoir; also except a piece or parcel of land, containing thirty-five (35) acres, more or less, being all that part of the southwest quarter of the southeast quarter (SW $\frac{1}{4}$  SE $\frac{1}{4}$ ) and the southeast quarter of the southwest quarter (SE $\frac{1}{4}$  SW $\frac{1}{4}$ ) of said Section Seven (7), that lies north of Oregon-Washington Railroad & Navigation Company's right of way and east of a line parallel to and forty (40) feet above the highwater line of The Furnish Ditch Company's Reservoir.

Parcel Two: A tract of land, containing two (2) acres, more or less, being all that part of the northeast quarter of the southwest quarter (NE $\frac{1}{4}$  SW $\frac{1}{4}$ ) of Section Seven (7), Township 2 North, Range 31 East, Willamette Meridian, lying within The Furnish Ditch Company's Reservoir and extending back from said reservoir a distance of forty (40) feet above the highwater level in said reservoir.

Parcel Three: An irregular shaped tract of land comprising a part of the east half of the southeast quarter (E $\frac{1}{2}$  SE $\frac{1}{4}$ ) of Section Twelve (12) of Township Two (2) North, Range Thirty (30) East, of the Willamette Meridian, and a part of Sections Seven (7) and Eighteen (18) of Township Two (2) North, Range Thirty-One (31) East of the Willamette Meridian, being more particularly described as follows, to-wit:

Beginning at the southeast corner of the northwest quarter of the northeast quarter (NW $\frac{1}{4}$  NE $\frac{1}{4}$ ) of said Section Eighteen (18); thence north along the east line of said northwest quarter of the northeast quarter (NW $\frac{1}{4}$  NE $\frac{1}{4}$ ) of said Section Eighteen (18), to the southerly boundary line of Oregon-Washington Railroad & Navigation Company's right of way as now located in the said northwest quarter of the northeast quarter (NW $\frac{1}{4}$  NE $\frac{1}{4}$ ) of said Section Eighteen (18); thence northwesterly along the southerly right of way boundary line of said Oregon-Washington Railroad & Navigation Company as same is now located through the northwest quarter of the northeast quarter (NW $\frac{1}{4}$  NE $\frac{1}{4}$ ) of said Section Eighteen (18), the southwest quarter of the southeast quarter (SW $\frac{1}{4}$  SE $\frac{1}{4}$ ) and the southeast quarter of the southwest quarter (SE $\frac{1}{4}$  SW $\frac{1}{4}$ ) and the west half of the southwest quarter (W $\frac{1}{2}$  SW $\frac{1}{4}$ ) of said Section Seven (7), and the northeast quarter of the southeast quarter (NE $\frac{1}{4}$  SE $\frac{1}{4}$ ) of said Section Twelve (12), to a point on the southwesterly boundary line of

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the old right of way of said Oregon-Washington Railroad & Navigation Company in the northeast quarter of the southeast quarter (NE $\frac{1}{4}$  SE $\frac{1}{4}$ ) of said Section Twelve (12), distant fifty (50) feet southwesterly from, measured at right angles to, the center line of the old main track of said Oregon-Washington Railroad & Navigation Company as said old main track was formerly constructed and operated over and across the east half of the southeast quarter (E $\frac{1}{2}$  SE $\frac{1}{4}$ ) of said Section Twelve (12) and the southwest quarter of the southwest quarter (SW $\frac{1}{4}$  SW $\frac{1}{4}$ ) of said Section Seven (7); thence southeasterly along said southwesterly boundary line of the old right of way, parallel with the center line of said old main track, to a point on the north boundary line of the southeast quarter of the southeast quarter (SE $\frac{1}{4}$  SE $\frac{1}{4}$ ) of said Section Twelve (12); thence west along the north boundary line of said southeast quarter of the southeast quarter (SE $\frac{1}{4}$  SE $\frac{1}{4}$ ) of said Section Twelve (12), following said southwesterly boundary line of the old right of way, to a point, distant one hundred (100) feet southwesterly from, measured at right angles to, the center line of said old main track; thence southeasterly, along said southwesterly boundary line of the old right of way, parallel with the center line of said old main track, to a point on the section line common to said Section Twelve (12), Township 2 North, Range 30 East, Willamette Meridian, and said Section Seven (7), Township 2 North, Range 31 East, Willamette Meridian; thence south along the section line common to said Section Twelve (12) and said Section Seven (7) to the southwest corner of said Section Seven (7); thence east along the section line common to said Section Seven (7) and said Section Eighteen (18) to an iron monument at a point five hundred thirty-eight (538) feet, more or less, west of the northeast corner of the northwest quarter of the northwest quarter (NW $\frac{1}{4}$  NW $\frac{1}{4}$ ) of said Section Eighteen (18); thence south 65°21' east five hundred ninety-two (592) feet, more or less, to an iron monument at a point on the east line of the northwest quarter of the northwest quarter (NW $\frac{1}{4}$  NW $\frac{1}{4}$ ) of said Section Eighteen (18), distant two hundred forty-seven (247) feet, more or less, south of the northeast corner thereof; thence continuing south 65°21' east, seven hundred ninety-seven and five tenths (797.5) feet; thence south 40°29' east, one hundred eighty-five (185) feet; thence south 52°17' east, five hundred (500) feet; thence south 79°35' east, eighty and nine tenths (80.9) feet, more or less, to a point in the west line of the northwest quarter of the northeast quarter (NW $\frac{1}{4}$  NE $\frac{1}{4}$ ) of said Section Eighteen (18), distant ten hundred forty (1040) feet, more or less, south of the quarter section corner common to said Sections Seven (7) and Eighteen (18); thence south along the west line of said northwest quarter of the northeast quarter (NW $\frac{1}{4}$  NE $\frac{1}{4}$ ) of said Section Eighteen (18), - to the southwest corner thereof; thence east along the south line of said northwest quarter of the northeast quarter (NW $\frac{1}{4}$  NE $\frac{1}{4}$ ) of said Section Eighteen (18), to the southeast corner thereof, the place of beginning; excepting therefrom, a piece or parcel of land, containing twenty-six (26) acres, more or less, being all that part of the southwest quarter of the southwest quarter (SW $\frac{1}{4}$  SW $\frac{1}{4}$ ) of said Section Seven (7), Township 2 North,

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Range 31 East, Willamette Meridian, that lies outside of the highwater boundary line of The Furnish Ditch Company's Reservoir as said Reservoir now exists.

Alternative Description of all Property Above Described

The tracts of land hereinbefore described are hereby further described for greater certainty as follows:

Parcel A: All that property in Section One (1), Township 2 North, Range 30 East, Willamette Meridian, Umatilla County, Oregon, conveyed by Samuel Smith, an unmarried man, to The Furnish Ditch Company, by deed dated February 25, 1909, and recorded in Vol. 58 on page 385 of Deed Records of said Umatilla County; also, all that property in said Section One (1) conveyed by Lee Hummell and Mary L. Hummell, his wife, to The Furnish Ditch Co. by deed dated April 21, 1913 and recorded in Book 82 at page 558 Deed Records of said County; also

All that property in Section Twelve (12), Township 2 North, Range 30 East, Willamette Meridian, Umatilla County, Oregon, as conveyed by Matt Saari, an unmarried man, to The Furnish Ditch Company, by deed dated February 25, 1909, and recorded in Vol. 59 at page 96 of Deed Records of said County; also all that property in said Section Twelve (12) as conveyed by Oregon-Washington Railroad & Navigation Company to Furnish Ditch Company by deed dated February 20, 1912, and recorded in Vol. 78 at page 74 of Deed Records of said County; also all that property in said Section Twelve (12) conveyed by Herman Holverson, husband of Anna Holverson, to The Furnish Ditch Company by deed dated February 27, 1909 and recorded in Book 59 at page 88, Deed Records of said County; also all that property in said Section Twelve (12) conveyed by Anna Holverson, wife of Herman Holverson, to The furnish Ditch Company by deed dated February 27, 1909, recorded in Book 59 at page 91, Deed Records of said County; also

All that property in said Section Twelve (12) conveyed by American National Bank of Pendleton to Furnish Ditch Company by deed dated October 20, 1915, recorded in Book 94 at page 4, Deed Records of said County; also

All that property in said Section Twelve (12) conveyed by James L. Smith and Hattie Smith, his wife, to The Furnish Ditch Company by deed dated December \_\_\_\_, 1913, filed for record on January 3, 1914 and recorded in Book 61 at page 406, Deed Records of said County; excepting therefrom the areas in said Section Twelve (12) conveyed by The Furnish Ditch Co. to Lee Hummell by deed dated May 12, 1915, and recorded in Book 91 at page 211, Deed Records of said County; also except the areas in said Section Twelve (12) conveyed by Furnish Ditch Company to J. A. Turnbow by deed dated August 31, 1912, and recorded in Book 81 at page 192, Deed Records of said County; also except the areas in said Section Twelve (12) conveyed by The Furnish

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Ditch Co. to J. A. Turnbow by deed dated December 8, 1914, and recorded in Book 90 at page 90, Deed Records of said County; also except in the area in said Section Twelve (12) and said Section One (1) conveyed by The Furnish Ditch Company to Christopher Stanull by deed dated June 21, 1916, and recorded in Book 95 at page 232, Deed Records of said County; and also except the areas in said Section Twelve (12) conveyed by The Furnish Ditch Company to Oregon-Washington Railroad & Navigation Company by deed dated December 5, 1911, and recorded in Vol. 78 at page 268 of Deed Records of said County;

Parcel B: All that property in Section Seven (7), Township 2 North, Range 31 East, Willamette Meridian, Umatilla County, Oregon, conveyed by Oregon-Washington Railroad & Navigation Company to Furnish Ditch Company by deed dated February 20, 1912, and recorded in Vol. 78 at page 74 of Deed Records of said County; also

All that property in said Section Seven (7) conveyed by Herman Holverson, husband of Anna Holverson, to The Furnish Ditch Company by deed dated February 27, 1909, and recorded in Book 59 at page 88 of Deed Records of said County; also

All that property in said Section Seven (7) conveyed by Anna Holverson, wife of Herman Holverson, to The Furnish Ditch Company by deed dated February 27, 1909, and recorded in Book 59 at page 91 of Deed Records of said County; also

All that property in said Section Seven (7) conveyed by W. M. Smith and Katie Smith, husband and wife, to The Furnish Ditch Company by deed dated February 25, 1909 and recorded in Book 59 on page 89 of Deed Records of said County; also

All that property in said Section Seven (7) conveyed by J. L. Smith and Hattie Smith, husband and wife, to The Furnish Ditch Company by deed dated February 25, 1909, and recorded in Book 59 on page 90 of Deed Records of said County; also

All that property in said Section Seven (7) conveyed by J. E. Perigo and Mollie E. Perigo, his wife, to The Furnish Ditch Company by deed dated September 2, 1919, and recorded in Book 106 at page 240 of Deed Records of said County; also

All that property in said Section Seven (7) conveyed by American National Bank of Pendleton to Furnish Ditch Company by deed dated October 20, 1915 and recorded in Book 94 on page 4, Deed Records of said County; also

All that property in said Section Seven (7) conveyed by Inland Irrigation Co., Inc., to The Furnish Ditch Co. by deed dated August 15, 1919, and recorded in Book 106 at page 239 of Deed Records of said County; excepting therefrom the areas in said Section Seven (7) conveyed by The Furnish Ditch Company to

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J. E. Perigo by deed dated May 16, 1919 and recorded in Book 106 at page 247, Deed Records of said County; also except the areas in said Section Seven (7) conveyed by The Furnish Ditch Company to Oregon-Washington Railroad & Navigation Company by deed dated December 5, 1911, and recorded in Vol. 78 at page 268, Deed Records of said County; also except the area in said Section Seven (7) conveyed by Furnish Ditch Company to Domatilla Gross by deed dated December 8, 1915, and recorded in Book 94 on page 583, Deed Records of said County.

Parcel C: All that property in Section Eighteen (18), Township 2 North, Range 31 East, Willamette Meridian, Umatilla County, Oregon, conveyed by Inland Irrigation Co., Inc. to The Furnish Ditch Co. by deed dated August 15, 1919, and recorded in Book 106 at page 239, Deed Records of said County; also

All that property in said Section Eighteen (18) conveyed by J. E. Smith Livestock Company to Furnish Ditch Company by deed dated November 14, 1913, and recorded at page 27 in Book 89, Deed Records of said County."

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State of Oregon )  
 )  
County of Umatilla)  
This instrument was received and recorded on  
08-30-96 at 12:35  
in the record of document code type DE-B&S  
  
Location R296-0886  
Document number 1996-222533  
Fee 75.00

Office of County Records  
Received by [Signature]  
Records Officer

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State of Oregon  
WATER RESOURCES DEPARTMENT  
APPLICATION FOR TRANSFER OF WATER RIGHT

WATER RESOURCES DEPT.  
SALEM, OREGON

COPY

Applicant: B & G Resources, Inc. In care of Kenneth E. Gustafson

Mailing Address: 18270 SW Boones Ferry Road

Portland OR 97227 (503) 639-6777  
City or Town State Zip Phone

Type of Change: Additional Point of Diversion  
(In point of diversion, place of use, use heretofore made of the water)

1. WATER RIGHT

A) Is the water right in your name? No If not, list name below:  
(Yes, No) E. F. Burlingham & sons

B) Was the water right determined by a court decree? No  
(Yes, No)  
1. If yes, list the title of the proceedings: \_\_\_\_\_  
2. Certificate No: \_\_\_\_\_

C) Was the water right acquired by a water permit? Yes  
(Yes, No)  
1. If yes, list the Permit No: 16393  
2. Certificate No: 28484

D) Date of priority right: July 3, 1945

E) What are your reasons for the proposed changes? This request for an additional point of diversion is to facilitate a temporary transfer of water rights for the 1997 irrigation season and for the permanent transfer of water rights in the future.

F) The water will be completely applied to the proposed use on or before: August 15, 1997

2. LOCATION OF AUTHORIZED USE

A) What is the source of water (river, stream, well)? Umatilla River and McKay Reservoir constructed under Application No. R - 7526, Permit No. R - 584, a tributary of the Columbia River

B) Describe the authorized points of diversion:

Location in Reference to Survey Corner	1/4, 1/4 of Section	Section	Township	Range
700' S + 3100' E From the NW corner Section 18	NE 1/4 NE 1/4	18	2 N	31 E
100' S + 2230' E From the NW corner Section 18	NE 1/4 NW 1/4	18	2 N	31 E
680' N + 1250' E From the SW corner Section 7	SW 1/4 SW 1/4	7	2 N	31 E
1540' N + 1410' E From the SW corner Section 7	NW 1/4 SW 1/4	7	2 N	31 E
1930' S + 60' W From the NE corner Section 12	SE 1/4 NE 1/4	12	2 N	30 E
1330' S + 610' W From the NE corner Section 12	SE 1/4 NE 1/4	12	2 N	30 E
960' S + 3580' W From the NE corner Section 12	NE 1/4 NW 1/4	12	2 N	30 E
1050' S + 3680' W From the NE corner Section 12	NE 1/4 NW 1/4	12	2 N	30 E

C) What is the name of the ditch used? N/A

D) What is the use to which the water is applied? Irrigation of crops

E) Give the location of the authorized area irrigated or place of use other than for irrigation?

Township	Range	Section	1/4, 1/4 of Section	No. of acres irrigated
See attachment A				

F) Is the land within an irrigation district? Yes \_\_\_ No X  
If yes, which district? \_\_\_\_\_

G) County Umatilla

3. LOCATION OF PROPOSED USE:

NOTE: Answer question A only if the application is for a change in the point of diversion.

A) Describe the proposed point of diversion:

Location in Reference to Survey Corner	1/4, 1/4 of Section	Section	Township	Range
See attachment A				

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NOTE: Answer questions B, C, D, and E only if the application is for a change in use or place of use.

B) Are the lands from which you propose to transfer your water right free of all encumbrances? N/A (Yes, No)

C) If no, give the description below of existing encumbrances:

Encumbrance	Held By	Amount

D) What is the use to which the water will be applied? N/A

E) Give the proposed location of the area irrigated, or place of use if other than for irrigation:

Township	Range	Section	1/4, 1/4 of Section	No. of acres irrigated

4. EXHIBITS

The following exhibits shall be attached to and made part of the application:

- A) A map prepared by a Certified Water Right Examiner showing the location of the present and proposed points of diversion, the authorized and proposed places of use and, if any, lands from the existing right that would not be subject to transfer.
- B) A copy of the current recorded deed to the subject lands.
- C) Affidavits from any other landowners or encumbrance holders with interest in the original water right stating that they have no objection to the proposed transfer.
- D) Evidence that the water has been used within the last five years.

5. NAME AND ADDRESS OF RECEIVING LANDOWNER(S) IF OTHER THAN APPLICANT:

H. Richard (Dick) Snow  
33263 Oregon Trail Road Echo, OR 97826

6. REMARKS:

I (we) Kenneth E. Gustafson, applicant(s), hereby

swear that I (we) have read the above application for transfer of water right and that the statements made are true

and correct. Dated and signed this \_\_\_\_\_ day of \_\_\_\_\_, 19 97.

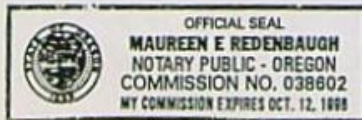
Laura A. Schroeder / K. R.  
 (Signature)  
 Atty for  
B & G Resources, Inc.  
 (Signature)

Subscribed and sworn to before me

(Notarial Seal)

Maureen E. Redenbaugh  
 Notary Public for Oregon

My commission expires: 10/12/1998



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MAY 19 1997

WATER RESOURCES DEPT.  
SALEM, OREGON

ATTACHMENT A

COPY

T 7772

2. E) Give the location of the authorized area irrigated or place of use other than for irrigation?

Township	Range	Section	Q/Q	Acres
2N	30E	1	SE SW	1.4
2N	30E	1	SW SE	6.8
2N	30E	12	NE NE	13.4
2N	30E	12	NW NE	12.8
2N	30E	12	SE NE	28.6
2N	30E	12	NE NW	12.6
2N	30E	12	NW NW	8.8
2N	30E	12	NE SE	15.6
2N	31E	7	SW NW	7.4
2N	31E	7	NW SW	32.8
2N	31E	7	SW SW	17.6
2N	31E	7	SE SW	15.3
2N	31E	7	SW SE	0.1
2N	31E	18	NW NE	10.0
2N	31E	18	NE NW	8.4

3. A) Describe the proposed points of diversion:

Location in Reference to Survey Corner	1/4, 1/4 of Section	Section	Township	Range
700' S + 3100' E From the NW corner Section 18	NW 1/4 NE 1/4	18	2 N	31 E
100' S + 2230' E From the NW corner Section 18	NE 1/4 NW 1/4	18	2 N	31 E
680' N + 1250' E From the SW corner Section 7	SW 1/4 SW 1/4	7	2 N	31 E
1540' N + 1410' E From the SW corner Section 7	NW 1/4 SW 1/4	7	2 N	31 E
1930' S + 60' W From the NE corner Section 12	SE 1/4 NE 1/4	12	2 N	30 E
1330' S + 610' W From the NE corner Section 12	SE 1/4 NE 1/4	12	2 N	30 E
960' S + 3580' W From the NE corner Section 12	NE 1/4 NW 1/4	12	2 N	30 E
1050' S + 3680' W From the NE corner Section 12	NE 1/4 NW 1/4	12	2 N	30 E
380' N + 650' E From the SW corner Section 31	SW 1/4 SW 1/4	31	3 N	30 E

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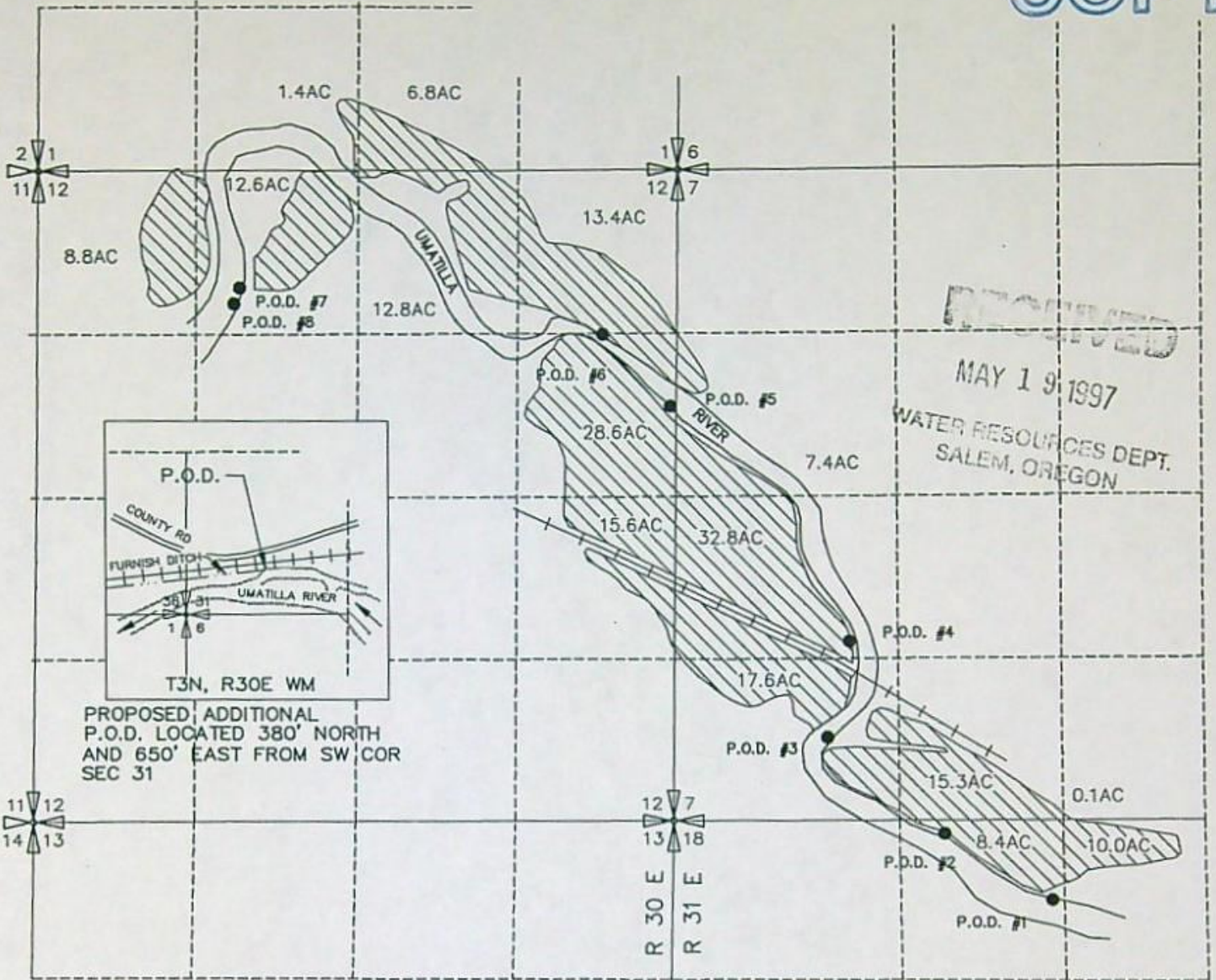
MAY 19 1997

WATER RESOURCES DEPT.  
SALEM, OREGON

TRANSFER APPLICATION MAP  
 PERMIT 16393 CERTIFICATE 28484

TOWNSHIP 2 NORTH, RANGE 30 AND 31 EAST, WILLAMETTE MERIDIAN

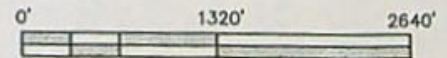
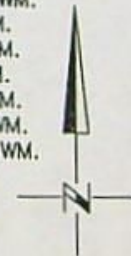
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AUTHORIZED POINTS OF DIVERSION

- P.O.D. #1 700 FEET SOUTH AND 3100 FEET EAST FROM THE NW CORNER SECTION 18, R31E.WM.
- P.O.D. #2 100 FEET SOUTH AND 2230 FEET EAST FROM THE NW CORNER SECTION 18, R31E. WM.
- P.O.D. #3 680 FEET NORTH AND 1250 FEET EAST FROM THE SW CORNER SECTION 7, R31E. WM.
- P.O.D. #4 1540 FEET NORTH AND 1410 FEET EAST FROM THE SW CORNER SECTION 7, R31E. WM.
- P.O.D. #5 1930 FEET SOUTH AND 60 FEET WEST FROM THE NE CORNER SECTION 12, R30E. WM.
- P.O.D. #6 1330 FEET SOUTH AND 610 FEET WEST FROM THE NE CORNER SECTION 12, R30E. WM.
- P.O.D. #7 960 FEET SOUTH AND 3580 FEET WEST FROM THE NE CORNER SECTION 12, R30E. WM.
- P.O.D. #8 1050 FEET SOUTH AND 3680 FEET WEST FROM THE NE CORNER SECTION 12, R30E. WM.

*Dale K. Van Schwach*  
 5/1/97



NOTE: THE PURPOSE OF THIS MAP IS TO IDENTIFY THE APPROXIMATE LOCATION OF THE WATER RIGHT. IT IS NOT INTENDED TO PROVIDE INFORMATION RELATIVE TO THE LOCATION OF PROPERTY OWNERSHIP BOUNDARY LINES.

3522.056  
 3522GU2.DWG  
 4/17/97

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COPY

State of Oregon  
WATER RESOURCES DEPARTMENT  
APPLICATION FOR TRANSFER OF WATER RIGHT

WATER RESOURCES DEPT.  
SALEM, OREGON

Applicant: B & G Resources, Inc. In care of Kenneth E. Gustafson

Mailing Address: 18270 SW Boones Ferry Road

Portland OR 97227 (503) 639-6777  
City or Town State Zip Phone

Type of Change: Additional Point of Diversion  
(In point of diversion: place of use; use heretofore made of the water)

1. WATER RIGHT
- A) Is the water right in your name? No If not, list name below:  
E. F. Burlingham & sons  
(Yes, No)
- B) Was the water right determined by a court decree? No  
1. If yes, list the title of the proceedings: \_\_\_\_\_  
2. Certificate No: \_\_\_\_\_  
(Yes, No)
- C) Was the water right acquired by a water permit? Yes  
1. If yes, list the Permit No: 16393  
2. Certificate No: 28484  
(Yes, No)
- D) Date of priority right: July 3, 1945
- E) What are your reasons for the proposed changes? This request for an additional point of diversion is to facilitate a temporary transfer of water rights for the 1997 irrigation season and for the permanent transfer of water rights in the future.
- F) The water will be completely applied to the proposed use on or before: August 15, 1997

MAY 19 1997  
WATER RESOURCES DEPT.  
SALEM, OREGON

2. LOCATION OF AUTHORIZED USE
- A) What is the source of water (river, stream, well)? Umatilla River and McKay Reservoir constructed under Application No. R - 7526, Permit No. R - 584, a tributary of the Columbia River

B) Describe the authorized points of diversion:

Location in Reference to Survey Corner	1/4, 1/4 of Section	Section	Township	Range
700' S + 3100' E From the NW corner Section 18	NE 1/4 NE 1/4	18	2 N	31 E
100' S + 2230' E From the NW corner Section 18	NE 1/4 NW 1/4	18	2 N	31 E
680' N + 1250' E From the SW corner Section 7	SW 1/4 SW 1/4	7	2 N	31 E
1540' N + 1410' E From the SW corner Section 7	NW 1/4 SW 1/4	7	2 N	31 E
1930' S + 60' W From the NE corner Section 12	SE 1/4 NE 1/4	12	2 N	30 E
1330' S + 610' W From the NE corner Section 12	SE 1/4 NE 1/4	12	2 N	30 E
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1050' S + 3680' W From the NE corner Section 12	NE 1/4 NW 1/4	12	2 N	30 E

- C) What is the name of the ditch used? N/A
- D) What is the use to which the water is applied? Irrigation of crops

E) Give the location of the authorized area irrigated or place of use other than for irrigation?

Township	Range	Section	1/4, 1/4 of Section	No. of acres irrigated
See attachment A				

- F) Is the land within an irrigation district? Yes \_\_\_\_\_ No X  
If yes, which district? \_\_\_\_\_
- G) County Umatilla

3. LOCATION OF PROPOSED USE:
- NOTE: Answer question A only if the application is for a change in the point of diversion.
- A) Describe the proposed point of diversion:

Location in Reference to Survey Corner	1/4, 1/4 of Section	Section	Township	Range
See attachment A				



T 7772

NOTE: Answer questions B, C, D, and E only if the application is for a change in use or place of use.

B) Are the lands from which you propose to transfer your water right free of all encumbrances? N/A  
(Yes, No)

C) If no, give the description below of existing encumbrances:

Encumbrance	Held By	Amount

D) What is the use to which the water will be applied? N/A

E) Give the proposed location of the area irrigated, or place of use if other than for irrigation:

Township	Range	Section	1/4, 1/4 of Section	No. of acres irrigated

4. EXHIBITS

The following exhibits shall be attached to and made part of the application:

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H. Richard (Dick) Snow  
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6. REMARKS: \_\_\_\_\_  
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I (we) Kenneth E. Gustafson, applicant(s), hereby swear that I (we) have read the above application for transfer of water right and that the statements made are true and correct. Dated and signed this \_\_\_\_\_ day of \_\_\_\_\_, 19 97.

Laura A. Schroeder / L.R.  
(Signature)  
Atty for  
B & G Resources, Inc.  
(Signature)

Subscribed and sworn to before me

(Notarial Seal)

Maureen E Redenbaugh  
Notary Public for Oregon

My commission expires: 10/12/1998



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MAY 19 1997

WATER RESOURCES DEPT.  
SALEM, OREGON

ATTACHMENT A

COPY

T 1772

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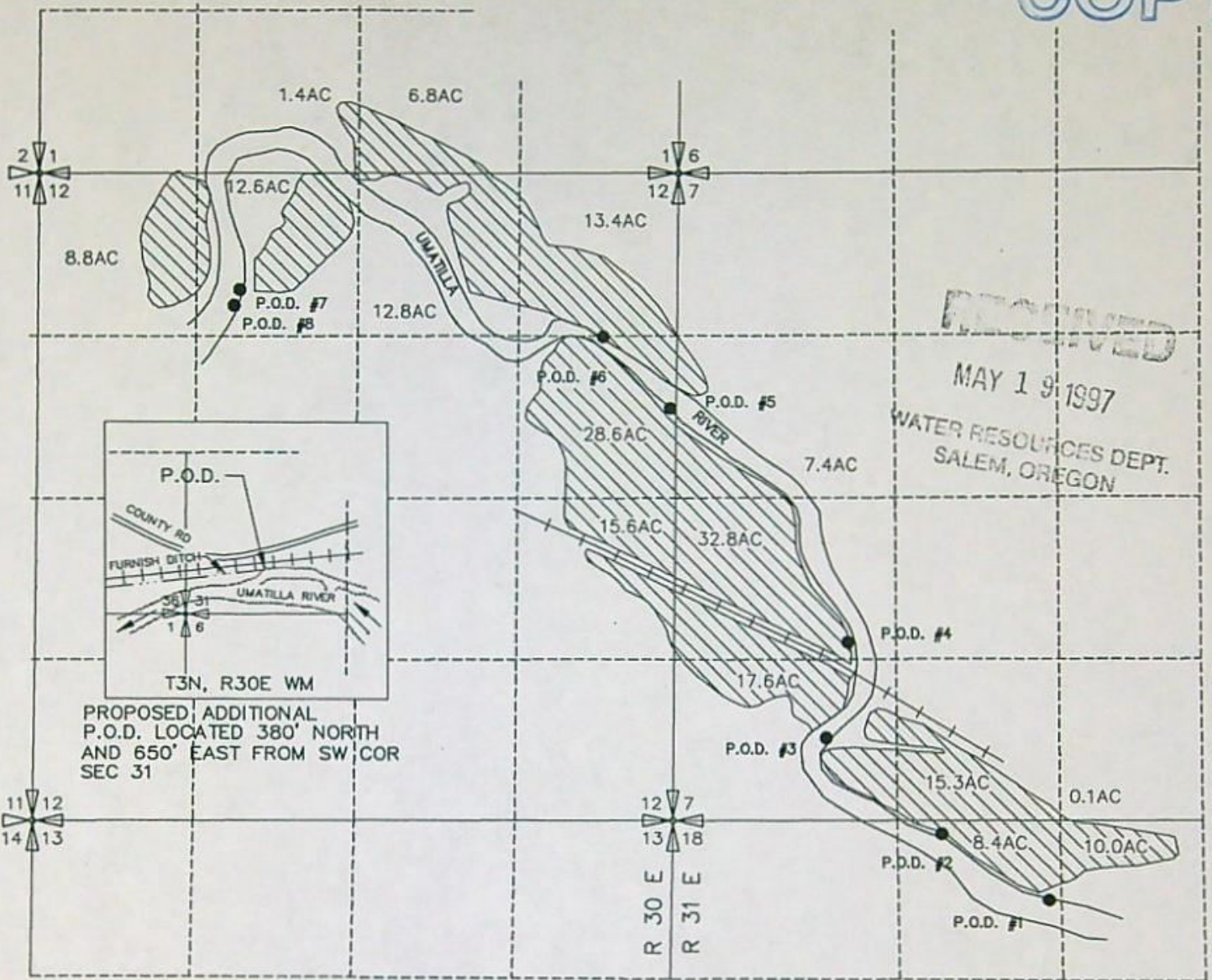
MAY 19 1997

WATER RESOURCES DEPT.  
SALEM, OREGON

TRANSFER APPLICATION MAP  
 PERMIT 16393 CERTIFICATE 28484

TOWNSHIP 2 NORTH, RANGE 30 AND 31 EAST, WILLAMETTE MERIDIAN

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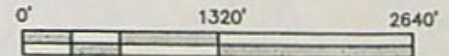
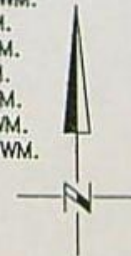


PROPOSED ADDITIONAL  
 P.O.D. LOCATED 380' NORTH  
 AND 650' EAST FROM SW COR  
 SEC 31

AUTHORIZED POINTS OF DIVERSION

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DALE H. KANDSCHNEIDER  
 5/11/97



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