

HINSON TR A# 2745 & 2746
HEARING FILE
MEDFORD - JUNE 27, 1980

TS Sam & Lucille
for follow up 11-3-80

6/28

APPLICANT: Stuart V. Hinson

Rep. by: LARRY C. HAMMACK (Ph. 779-2133)
Attorney at Law
220 Laurel
Medford, OR 97501

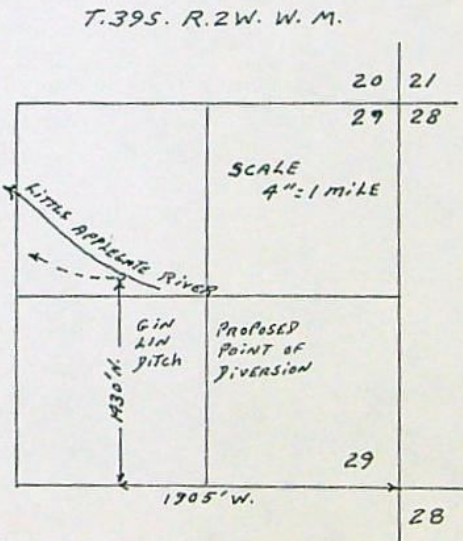
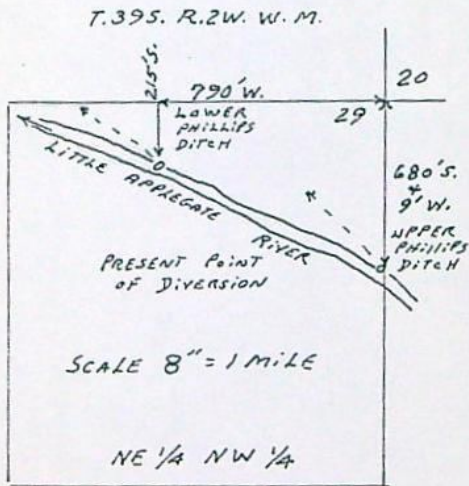
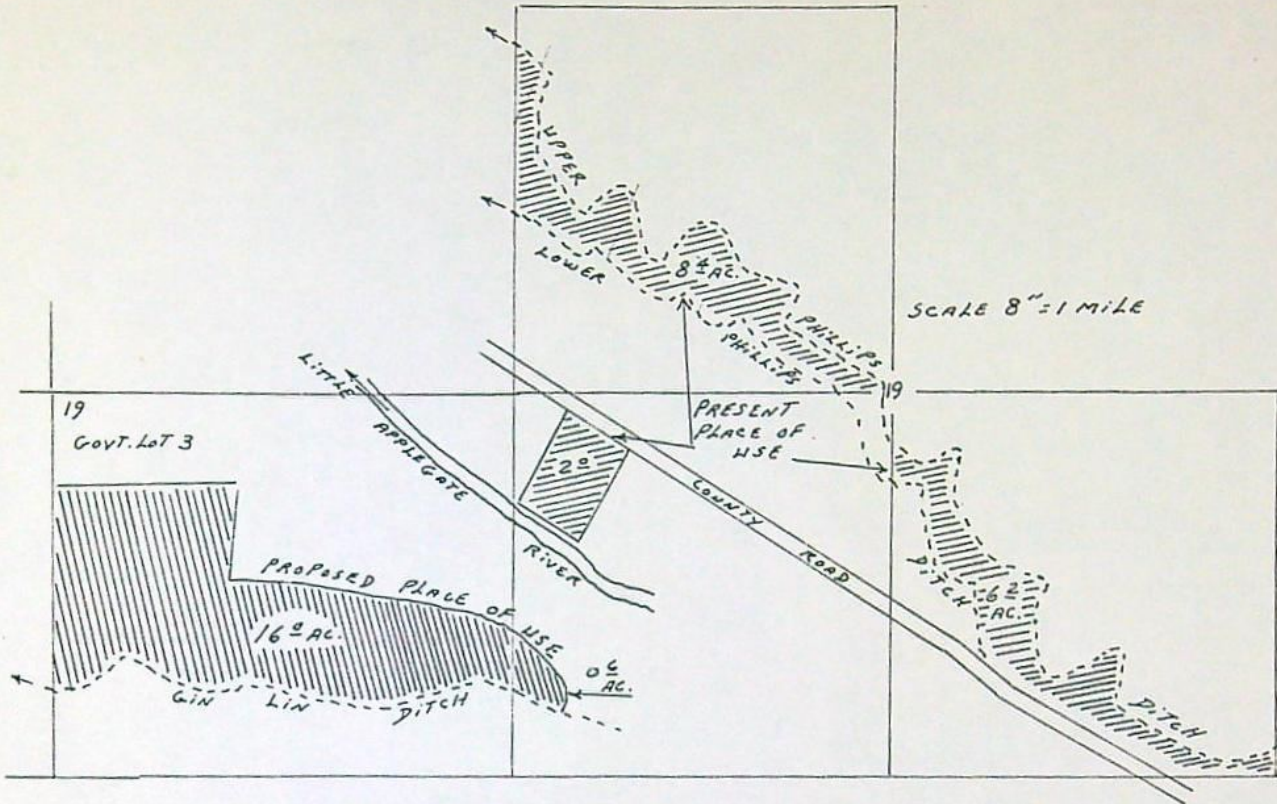
PROTESTANTS: Mr. & Mrs. Glen F. Wegner and
Mr. & Mrs. Ralph J. Richards

Rep. by: THOMAS C. HOWSER (Ph. 482-2621)
Cottle, Howser & Hampton
Attorneys at Law
607 Siskiyou Blvd.
P. O. Box 627
Ashland, OR 97520

PROTESTANTS: Everette J. & Jimmie F. Bostwick

Rep. by: ROBERT D. HEFFERNAN (Ph. 779-4075)
Heffernan & Fowler
Attorneys at Law
705 West Tenth Street
P. O. Box 1746
Medford, OR 97501

T.395. R.2W. W. M.



MAP TO ACCOMPANY APPLICATION OF
STUART V. HINSON FOR CHANGE IN POINT
OF DIVERSION AND CHANGE IN PLACE OF USE
ON CERT. 38773, PRIORITY SEPT. 1, 1857

THIS MAP PREPARED BY:

John F. Cummins

FROM INFORMATION FURNISHED BY
THE APPLICANT.



5-11-77

(T-2745)

RECEIVED

DEC 1 1982

WATER RESOURCES DEPT.
SALEM, OREGON

David A. Willard
4055 Little Applegate Rd.
Jacksonville, Or. 97530

November 28, 1982

Mr. James E. Sexson
Water Resources Director
of the State of Oregon
Mill Creek Office Park
555 13th St. Northeast
Salem, Oregon 97310

Dear Sir,

I am writing concerning the water right transfer applications nos. 2745 and 2746 in the name of Stuart V. Minson for changes in place of use and points of diversion of waters of the Little Applegate River, which you addressed in an Order dated November 3, 1980. The Order is to be found in Vol. 34, P. 56-57.

In that Order the transfers were approved based on certain provisions, one of which was, "That the diversion works shall include an in line flow meter, a weir, or other suitable devices for measuring the water to which the applicant is entitled;". It further ordered, "that the changes in place of use and points of diversion of water as authorized herein be completed, on or before October 1, 1982."

I am writing because there were no measuring devices installed at the points of diversion or any other point, and since I own property that would be affected by these transfers I have the following question. Since your Order of November 3, 1980 was not followed, does this mean that that Order is now void and that the water rights of the properties involved remain as they were prior to the date of application for transfer?

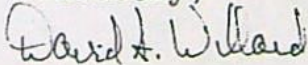
Scotch® 7664 "Post-it" Routing-Request Pad

ROUTING - REQUEST

- Please
- READ
- HANDLE
- APPROVE
- and
- FORWARD
- RETURN
- KEEP OR DISCARD
- REVIEW WITH ME

To Sony J. New P.
Please draft
reply including
planned enforcement
by 12/5 please

From Jimi S.

Sincerely,

 David A. Willard

Date _____

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

Jackson County

IN THE MATTER OF WATER RIGHT)	
TRANSFER APPLICATIONS NOS.)	
2745 AND 2746 IN THE NAME OF)	<u>Statement, Findings</u>
STUART V. HINSON FOR CHANGES)	<u>Conclusions</u>
IN PLACE OF USE AND POINTS)	<u>and Order</u>
OF DIVERSION OF WATERS OF)	
LITTLE APPLGATE RIVER)	

STATEMENT

On December 18, 1972, two applications were filed in the office of the State Engineer (predecessor to the Water Resources Director) in the name of Stuart V. Hinson, for approval of changes in place of use and points of diversion of waters appropriated from Little Applegate River under the provisions of certain existing water rights of record, pursuant to ORS 540.510 to 540.530.

The said applications, designated as transfer applications numbered 2745 and 2746, were examined and found to be defective in describing the specific portions of the subject water rights to be modified by the proposed changes in place of use and points of diversion. Over the period of time extending from December 1972 until May 1977, and with delays resulting in part from a backlog of pending applications in the Department, the applications were corrected and completed, using superseding copies of the applications, and notice of the proposed changes was published pursuant to ORS 540.520(2).

The said notice which was published in the June 10, 17 and 24, 1977 issues of the Medford Mail Tribune newspaper provided:

Notice of Water Right Transfer Applications Nos. 2745 and 2746

Notice is given hereby that two applications have been filed in the office of the Water Resources Director by Stuart V. Hinson for approval of changes in place of use and point of diversion from Little Applegate River.

(1) The certificate recorded at Page 38773, Vol. 30, State Record of Water Right Certificates, in the name of A. S. Kleinhammer, describes a right which includes the use of not to exceed 0.41 cubic foot per second from Little Applegate River for irrigation of 8.4 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, 2.0 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ and 6.0 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 19, T. 39-S., R. 2 W., W.M., with a date of priority of Sept. 1, 1857.

Water for the said right is diverted through the Upper & Lower Phillips Ditches from points located (1) 680 ft. S. and 9 ft. W., (2) 215 ft. S. and 790 ft. W. from the N. $\frac{1}{4}$ corner of Sec. 29, both being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 29, T.39 S., R. 2 W., W.M.

By application No. 2745, the applicant herein, owner of the lands above described, proposes to change the place of use and point of diversion therefrom, and without loss of priority to irrigate a certain 0.6 acre in NE $\frac{1}{4}$ SW $\frac{1}{4}$ and 16.0 acres in Lot 3 (NW $\frac{1}{4}$ SW $\frac{1}{4}$) of Sec. 19, T.39 S., R. 2 W., W.M., through the Gin Lin Ditch from a point of diversion located 1430 ft. N. and 1905 ft. W. from the E. $\frac{1}{4}$ corner of Sec. 29, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 29, T. 39 S., R. 2 W., W.M.

(2) The certificate recorded at Page 24479, Vol. 17, State Record of Water Right Certificates, in the names of First National Bank of Ashland & Armin Richter, describes a right which includes the use of not to exceed 0.21 cubic foot per second from Little Applegate River for irrigation of 0.6 acre in NE $\frac{1}{4}$ SW $\frac{1}{4}$ and 16.0 acres in Lot 3 (NW $\frac{1}{4}$ SW $\frac{1}{4}$) of Sec. 19, T. 39 S., R. 2 W., W.M., with a date of priority of Nov. 12, 1929.

Water for the said right is diverted through the Gin Lin Ditch as described above.

By application No. 2746, the applicant herein, owner of the lands above described, proposes to change the place of use and point of diversion therefrom, and without loss of priority to irrigate a certain 8.2 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ and 8.4 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Sec. 19, through the Upper Phillips Ditch as described above.

All persons interested are notified hereby that a hearing will be held at the county courthouse at Medford, Oregon on August 5, 1977, at 9:30 a.m. All objections to the proposed change, if any there are, will be heard at said time and place. Any and all objections shall be prepared in writing, one copy to be served on Stuart V. Hinson, P.O. Box 579, Jacksonville, Oregon 97530, and one copy filed with the Water Resources Department, Salem, Oregon 97310, together with a \$10 filing fee, at least 10 days prior to the date set for hearing. IF NO OBJECTION IS FILED, THE APPLICATION MAY BE APPROVED BY THE WATER RESOURCES DIRECTOR WITHOUT A HEARING. Administrative rules pertaining to the filing of a protest will be furnished by the Water Resources Department upon request.

Dated at Salem, Oregon, this 24th day of May, 1977.

James E. Sexson, Director

On July 22, 1977 a protest in the names of Everette J. Bostwick and Jimmie F. Bostwick was filed in the office of the Water Resources Director through their attorney, Robert D. Heffernan, against approval of the pending applications numbered 2745 and 2746.

On July 26, 1977 a protest in the names of Glen F. Wegner and Helen A. Wegner and Ralph Richards and June Richards was filed in the office of the Water Resources Director through their attorney, Thomas C. Howser, against approval of the pending applications.

Both protests allege that the protestants would be adversely affected by approval of the pending applications.

Pursuant to the Director's second Amended Notice of Hearing dated April 14, 1980, the matter of pending transfer applications numbered 2745 and 2746 and the protests against approval of the said applications was brought to hearing in Medford, Oregon on June 27, 1980 before James W. Carver, Jr., an employee of the Water Resources Department, authorized to preside at the hearing in behalf of the Water Resources Director.

At the beginning of the hearing, Robert D. Heffernan, Jr., Attorney at Law, appeared in behalf of the protestants, Everett J. and Jimmie F. Bostwick, and withdrew their protest against approval of the pending applications.

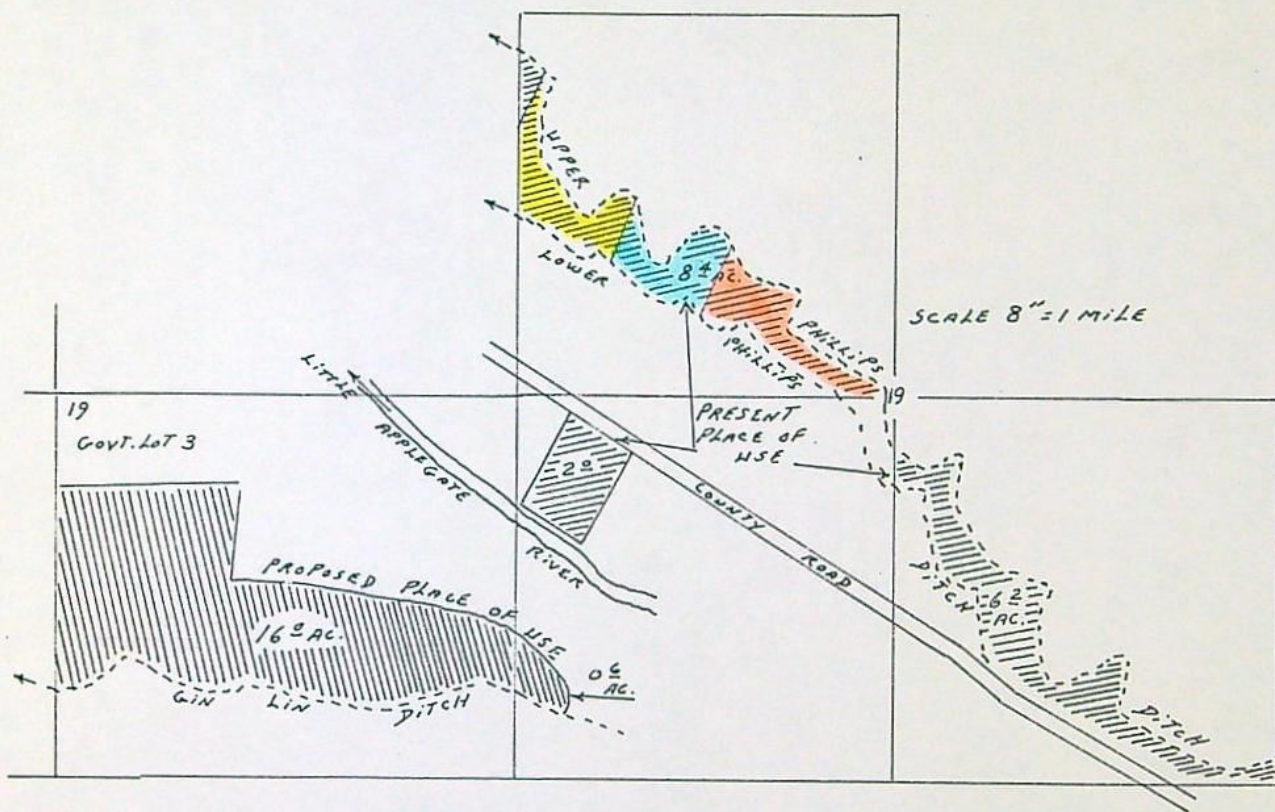
Protestants Glen F. and Helen A. Wegner and Ralph and June Richards were present at the hearing and were represented by Thomas C. Howser, Attorney at Law, of the firm of Cottle, Howser and Hampton of Ashland, Oregon. The applicant, Stuart V. Hinson, was present and was represented by Larry C. Hammack, Attorney at Law, Medford, Oregon.

Also at the beginning of the hearing, David and Anita Willard acting through their attorney, Thomas C. Howser, sought to become parties to the matter through joining in the protest by the Wegners and the Richards. Not having filed a timely protest pursuant to ORS 540.520(3) and not having filed a petition pursuant to OAR 137-03-005(2), David Willard and Anita Willard do not have party status in this matter.

The location of the lands from which the 1857 priority water right is proposed to be severed by change in place of use, and the portions thereof now owned by the protestants herein and by the Willards are shown by Figure 1 herein. The effect of the proposed transfers of water right would be to change the priority for use of water on the lands now owned by the protestants and the Willards, and others, from September 1, 1857 to November 12, 1929.

The amendments to the original transfer applications numbered 2745 and 2746, including the use of superseding copies of the applications, did not result in more lands or different lands being involved in the proposed changes in place of use and points of diversion.

T.395. R.2W. W.M.



- Glen F. & Helen A. Wegner
- Ralph & June Richards
- David & Anita Willard

(Figure 1)

RULING ON MOTION

On June 23, 1980, Thomas C. Howser, acting in behalf of his clients: Glen F. Wegner, Helen A. Wegner, Ralph Richards, June Richards, David Willard and Anita Willard submitted to the Director a motion to dismiss the proceeding for approval of the pending applications as the same would affect the objectors.

The said motion is denied.

EVIDENTIARY RULINGS

Applicant offers as his exhibit B the original of transfer application numbered 2746 that was filed in the office of the State Engineer on December 18, 1972.

Applicant offers as his exhibit C the original of part "1" of transfer application numbered 2745 that was filed in the office of the State Engineer on December 18, 1972.

Applicant offers as his exhibit D the original of part "2" of transfer application numbered 2745 that was filed in the office of the State Engineer on December 18, 1972.

Applicant offers as his exhibit E a packet containing originals of superseding copies of transfer applications numbered 2745 and 2746, which copies were first received in the office of the State Engineer on July 16, 1973, together with supporting maps, and a copy of a letter dated April 12, 1973 from the office of the State Engineer to John E. Ferris, Attorney at Law, Medford, Oregon.

Protestants object to admission of the said exhibits into the record.

Testimony was received in regard to how the superseding copies of transfer applications numbered 2745 and 2746 conform to or differ from the original documents that were filed on December 18, 1972. Therefore, protestants objections are overruled. Applicants' exhibits B, C, D and E are received into the record of this proceeding.

FINDINGS

At the time water right transfer applications numbered 2745 and 2746 were filed in the office of the State Engineer, Stuart V. Hinson, applicant, was the owner of record of all of the real property that would be directly affected by the proposed changes in place of use and points of diversion of waters of the Little Applegate River, as described above.

The portion of the subject real property now owned by Ralph and June Richards was conveyed from Stuart V. Hinson to Edward M. Lewis and Rachel Lewis by a warranty deed dated September 5, 1974 (Applicant's exhibit G). The said real property was conveyed from Edward M. Lewis and Rachel Lewis to Ralph J. Richards and June L. Richards by a warranty deed dated January 18, 1977 (Applicant's exhibit L). Both deeds were silent as to water rights.

Mr. Lewis testified that when they purchased the subject property from Mr. Hinson they understood that they would enjoy the 1857 priority water rights on certain lands served from the Lower Phillips Ditch and 1929 priority water rights on certain lands served from the Upper Phillips Ditch, and that he conveyed this same information to Mr. Richards prior to his sale of the property to the Richards.

Mr. Richards testified that in addition to a conversation with Mr. Lewis regarding water rights, prior to purchase of the subject property he inquired of the watermaster, David Hendrix, who told him what the water rights of record were for the property and informed him that there was a "transfer in the works".

The portion of the subject real property now owned by David and Anita Willard was conveyed from Stuart V. Hinson to Robert Start by a special warranty deed dated May 5, 1977 (Applicant's exhibit I). The said real property was conveyed from Robert Start to David A. Willard and Anita C. Willard by a warranty deed dated November 9, 1977 (Applicant's exhibit M). Both deeds were silent as to the subject water rights.

Mr. Start testified that his understanding of the water rights he would enjoy through the Upper and Lower Phillips Ditches was the same as that testified to by Mr. Lewis. No evidence was adduced as to whether there was any communication between Mr. Start and Mr. and/or Mrs. Willard in regard to the subject water rights.

The portion of the subject real property now owned by Glen F. and Helen A. Wegner was conveyed to them from Stuart V. Hinson by a warranty deed dated September 7, 1976 (Applicant's exhibit H). The said deed is silent as to the subject water rights.

Mr. Wegner testified that he first contacted Mr. Hinson early in the spring of the year of 1976 in regard to purchase of the subject land. He does not recall any discussion with Mr. Hinson regarding the subject water rights or any changes to the water rights prior to completion of the sale in the fall of 1976.

Mr. Wegner further testified that after having received certain papers from "the title people", he read them and found no reference to the water rights for the property and therefore went to the Watermaster, Mr. Hendrix, to ask him about the water rights. Mr. Wegner stated that he received from Mr. Hendrix the water rights information he asked for, but does not recall Mr. Hendrix having said anything about a pending transfer application or changes to the water rights for the property he was buying from Mr. Hinson.

Mr. Hinson testified that when the Wegners first came to him and expressed an interest in purchasing the subject property he explained to them that the land between the road and the Lower Phillips Ditch would have an 1857 priority for water, and that the land between the Lower Phillips Ditch and the Upper Phillips Ditch and the land around their house would have a 1929 priority for water. He does not recall whether he again discussed the subject water rights with the Wegners during later negotiations for sale of the property to them.

Mr. Hendrix testified that he recalls having talked with Mr. and/or Mrs. Wegner several different times in regard to the subject water rights; that he does not have a specific recollection of a conversation with Mr. and/or Mrs. Wegner in regard to the subject water rights prior to their purchase of the property from Mr. Hinson, but that he has made a point of informing anyone who inquired about the subject water rights that there was a proposed transfer of the rights pending in the Salem office of the Water Resources Department.

The testimony of other witnesses indicates that Mr. Hinson did make a practice of informing prospective purchasers in regard to the water rights as they would exist upon completion of the changes proposed by the pending applications, and that Mr. Hendrix did make a practice of informing persons who inquired about the subject water rights that transfer applications proposing changes to the rights were pending.

The said transfer applications numbered 2745 and 2746 have been pending before the Water Resources Director (or his predecessor, the State Engineer) and have been a matter of public record since they were filed on December 18, 1972.

The evidence adduced does not establish any intent on the part of the applicant or any agreement between the applicant and anyone purchasing a portion of the subject lands that the purchaser would receive anything but a 1929 priority right for water for irrigation of the portion of the subject lands between the Upper Phillips Ditch and the Lower Phillips Ditch. It is noted, however, that any question of misrepresentation of the water rights in connection with the sale of the subject property would not be within the jurisdiction of the Water Resources Director to determine, but within the court's jurisdiction.

The protestants argue that the applicant should not be allowed, now, to carry out the proposed changes in points of diversion and place of use that would effect a change in priority of the water right for irrigation of portions of the subject property he sold to them and to others after he filed the pending transfer applications numbered 2745 and 2746.

The protestants cite: Dry Gulch Co. v. Hutton et al., 170 Or 656; Broughton V. Stricklin, 146 Or 259; and Haney et al. v. Neace-Stark Co. et al., 109 Or 93, and also refer to an opinion of the Oregon Attorney General to Mr. Rhea Luper dated June 7, 1930. Neither the cases cited nor the said opinion of the Attorney General provides a basis for the position held by the protestants that the pending transfer applications must be denied because of the period of time they have been pending, or that they must be denied because superseding copies were used in correcting defects in the original copies of the applications.

The question before the Water Resources Director in this proceeding is set forth by ORS 540.530, which provides in part:

"If, after hearing or examination, the Water Resources Director finds that the proposed change can be effected without injury to existing rights, he shall make an order approving the transfer..."

The evidence adduced fails to show that the water rights held by the protestants through their purchase of portions of the subject real property, which was owned by the applicant at the time he filed the pending water right transfer applications numbered 2745 and 2746, would be adversely affected by the changes in place of use and points of diversion as proposed by the said applications. In fact, approval of the said applications would be necessary for the protestants to have appurtenant to their respective properties the water rights as discussed at their times of purchase of the properties.

The Watermaster, David C. Hendrix, has filed a statement to the effect that the proposed changes in place of use and points of diversion may be made without injury to other existing water rights.

ULTIMATE FINDING OF FACT

The evidence adduced fails to show that any other water rights, not directly involved in the proposed changes in place of use and points of diversion, would be adversely affected by the proposed changes. Therefore, approval of the subject water right transfer applications would not result in injury to existing water rights.

CONCLUSION

No other objections having been filed and it appearing that the proposed changes in place of use and point of diversion may be made without injury to existing rights, the applications should be approved.

ORDER

NOW, THEREFORE, it hereby is ORDERED that the requested changes in place of use and point of diversion as described herein, without loss of priority, are approved.

It is FURTHER ORDERED that the quantity of water diverted at the new points of diversion as authorized herein, together with that diverted at the old points of diversion, shall not exceed the quantity of water available at the old points of diversion under the aforesaid water rights.

It is FURTHER ORDERED that the following provisions shall be carried out prior to the diverting of water at the new points of diversion as herein confirmed:

That the diversion works shall include an in line flow meter, a weir, or other suitable devices for measuring the water to which the applicant is entitled;

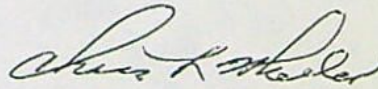
That the type and plans of the measuring device be approved by the watermaster before the beginning of construction work, and that the weir or measuring device be installed under the general supervision of said watermaster.

It is FURTHER ORDERED that the changes in place of use and points of diversion of water as authorized herein be completed, and the water so transferred be applied to beneficial use on or before October 1, 1982.

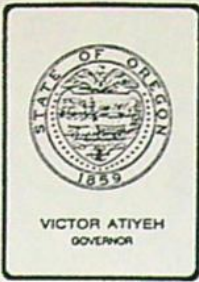
It is FURTHER ORDERED that the certificate heretofore issued to A. S. Kleinhammer and recorded at page 38773, Volume 30, State Record of Water Right Certificates, and the certificate heretofore issued to First National Bank of Ashland and Armin Richter and recorded at page 24479, Volume 17, State Record of Water Right Certificates, are hereby canceled; and in lieu thereof new certificates be issued to describe the balance of each of the aforesaid water rights, not involved in this proceeding; and upon proof satisfactory to the Water Resources Director of completion of the changes in place of use and points of diversion as authorized herein, certificates of water right shall be issued to describe the rights involved in this proceeding as modified under the provisions of this order.

Dated at Salem, Oregon this 3rd day of November 1980.

James E. Sexson, Director


By Chris L. Wheeler, Deputy

NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this order. Judicial review is pursuant to the provisions of ORS 183.482.



Water Resources Department

MILL CREEK OFFICE PARK

555 13th STREET N.E., SALEM, OREGON 97310

PHONE 378-3066

November 3, 1980

Mr. Larry C. Hammack
Attorney at Law
220 Laurel
Medford, Oregon 97501

Mr. Stuart V. Hinson
c/o Larry C. Hammack
Attorney at Law
220 Laurel
Medford, Oregon 97501

REFERENCE: File Nos. Tr. 2745 and 2746

Gentlemen:

Enclosed is a certified copy of the order of the Water Resources Director in the matter of water right transfer applications Nos. 2745 and 2746 in the name of Stuart V. Hinson.

The date of service is the date of this letter.

Sincerely,

James W. Carver, Jr.
Engineer

JWC:eh

cc: David Hendrix, Watermaster

CERTIFIED MAIL, RRR
Separate mailings

To Sam & Lucille

APPLICANT: (1) Stuart V. Hinson

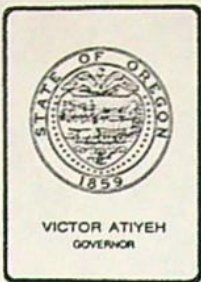
Rep. by: (2) LARRY C. HAMMACK (Ph. 779-2133)
Attorney at Law
220 Laurel
Medford, OR 97501

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Mr. & Mrs. Ralph J. Richards

Rep. by: (4) THOMAS C. HOWSER (Ph. 482-2621)
Cottle, Howser & Hampton
Attorneys at Law
607 Siskiyou Blvd.
P. O. Box 627
Ashland, OR 97520

PROTESTANTS: Everette J. & Jimmie F. Bostwick (*withdrawn*)

Rep. by: ROBERT D. HEFFERNAN (Ph. 779-4075)
Heffernan & Fowler
Attorneys at Law
705 West Tenth Street
P. O. Box 1746
Medford, OR 97501



Water Resources Department

MILL CREEK OFFICE PARK

555 13th STREET N.E., SALEM, OREGON 97310

PHONE 378-3066

November 3, 1980

Mr. Thomas C. Howser
Cottle, Howser and Hampton
Attorneys at Law
P.O. Box 627
Ashland, Oregon 97520

Mr. and Mrs. Glen F. Wegner
Mr. and Mrs. Ralph J. Richards
c/o Cottle, Howser and Hampton
Attorneys at Law
P. O. Box 627
Ashland, Oregon 97520

REFERENCE: File Nos. Tr. 2745 and 2746

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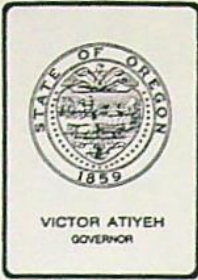
The date of service is the date of this letter.

Sincerely,

James W. Carver, Jr.
Engineer

JWC:eh
cc: David Hendrix, Watermaster

CERTIFIED MAIL, RRR
Separate mailings



Water Resources Department
MILL CREEK OFFICE PARK

555 13th STREET N.E., SALEM, OREGON 97310

PHONE 378-3066

November 3, 1980

Mr. Larry C. Hammack
Attorney at Law
220 Laurel
Medford, Oregon 97501

Mr. Stuart V. Hinson
c/o Larry C. Hammack
Attorney at Law
220 Laurel
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James W. Carver, Jr.
Engineer

JWC:eh

cc: David Hendrix, Watermaster

CERTIFIED MAIL, RRR
Separate mailings

PS Form 3811, Jan. 1979

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
- Show to whom and date delivered.....¢
 - Show to whom, date and address of delivery... ¢
 - RESTRICTED DELIVERY
Show to whom and date delivered..... ¢
 - RESTRICTED DELIVERY.
Show to whom, date, and address of delivery. \$ _____

(CONSULT POSTMASTER FOR FEES)

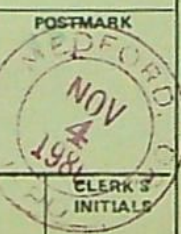
2. ARTICLE ADDRESSED TO: Stuart V. Hinson
c/o Larry C. Hammack
Attorney at Law
220 Laurel
Medford, OR 97501

3. ARTICLE DESCRIPTION:		
REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	56371	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE Addressee Authorized agent

4. DATE OF DELIVERY
P. Keck
11-4-80



5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

JWC Tr 2745-6

GPO : 1979-300-459

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

PS Form 3811, Jan. 1979

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
- Show to whom and date delivered..... ¢
 - Show to whom, date and address of delivery... ¢
 - RESTRICTED DELIVERY
Show to whom and date delivered..... ¢
 - RESTRICTED DELIVERY.
Show to whom, date, and address of delivery. \$ _____

(CONSULT POSTMASTER FOR FEES)

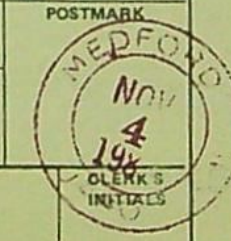
2. ARTICLE ADDRESSED TO:
Larry C. Hammack
Attorney at Law
220 Laurel
Medford, OR 97501

3. ARTICLE DESCRIPTION:		
REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	56370	

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE Addressee Authorized agent

4. DATE OF DELIVERY
L. Keck
11-4-80



5. ADDRESS (Complete only if requested)

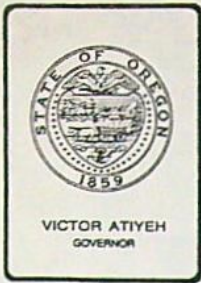
6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

JWC Tr. 2745-6

GPO : 1979-300-459

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL



Water Resources Department

MILL CREEK OFFICE PARK

555 13th STREET N.E., SALEM, OREGON 97310

PHONE 378-3066

November 3, 1980

Mr. Thomas C. Howser
Cottle, Howser and Hampton
Attorneys at Law
P.O. Box 627
Ashland, Oregon 97520

Mr. and Mrs. Glen F. Wegner
Mr. and Mrs. Ralph J. Richards
c/o Cottle, Howser and Hampton
Attorneys at Law
P. O. Box 627
Ashland, Oregon 97520

REFERENCE: File Nos. Tr. 2745 and 2746

Dear Sirs and Mesdames:

Enclosed is a certified copy of the order of the
Water Resources Director in the matter of water
right transfer applications Nos. 2745 and 2746
in the name of Stuart V. Hinson.

The date of service is the date of this letter.

Sincerely,

James W. Carver, Jr.
Engineer

JWC:eh
cc: David Hendrix, Watermaster

CERTIFIED MAIL, RRR
Separate mailings

PS Form 3811, Jan. 1979

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
 Show to whom and date delivered.....¢
 Show to whom, date and address of delivery.....¢
 RESTRICTED DELIVERY
 Show to whom and date delivered.....¢
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery.\$____

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 Mr. & Mrs. Glen F. Wegner
 Mr. & Mrs. Ralph J. Richards
 c/o Cottle, Howser & Hampton, Attorneys
 P. O. Box 627
 Ashland, OR 97520

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	56373	

(Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE Addressee Authorized agent

4. DATE OF DELIVERY *B June*

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

JWC Tr Ap. 2745-6

☆GPO : 1979-300-459

PS Form 3811, Jan. 1979

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
 Show to whom and date delivered.....¢
 Show to whom, date and address of delivery.....¢
 RESTRICTED DELIVERY
 Show to whom and date delivered.....¢
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery.\$____

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO: Thomas C. Howser
 Cottle, Howser & Hampton, Attorneys
 P. O. Box 627
 Ashland, OR 97520

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	56372	

(Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE Addressee Authorized agent

4. DATE OF DELIVERY *B June*

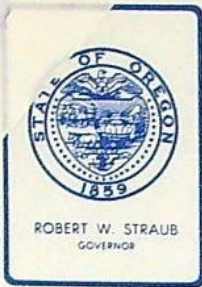
5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

JWC Ap. 2745-6

☆GPO : 1979-300-459



Water Resources Department

MILL CREEK OFFICE PARK

555 13th STREET N.E., SALEM, OREGON 97310

PHONE 378-3066

August 22, 1979

Larry C. Hammack
Haviland, deSchweinitz, Stark & Hammack
221 West Main Street
Medford, Oregon 97501

Thomas C. Howser
Cottle, Howser & Hampton
P.O. Box 627
Ashland, Oregon 97520

Robert D. Heffernan
Heffernan & Fowler
P.O. Box 1746
Medford, Oregon 97501

RE: Stuart Hinson Transfer Applications Nos. 2745, 2746

Gentlemen:

We have Mr. Hammack's letter of August 17, 1979, in reference to water right transfer applications Nos. 2745 and 2746 in the name of Stuart Hinson and the protest by Mr. and Mrs. Glen F. Wagner and Mr. and Mrs. Ralph J. Richards and the protest by Mr. and Mrs. Everette J. Bostwick, requesting that the matter be set for hearing before the Water Resources Director. If you gentlemen will agree to a date sometime after the first of October, 1979, we will attempt to accommodate that date and make the necessary arrangements for a hearing in the Jackson County Courthouse in Medford, to take testimony on the question of injury to other water rights that would result from the proposed changes in place of use and point of diversion of water from Little Applegate River.

After having had opportunity to carefully review the files, I believe the following comment should be noted: It is doubtful that the Water Resources Director could deny the applications on the basis of portions of the lands to which the subject water rights are appurtenant having changed ownership subsequent to the applications having been filed as public records. In view of this, it may be that part of the issues could be resolved by stipulation.

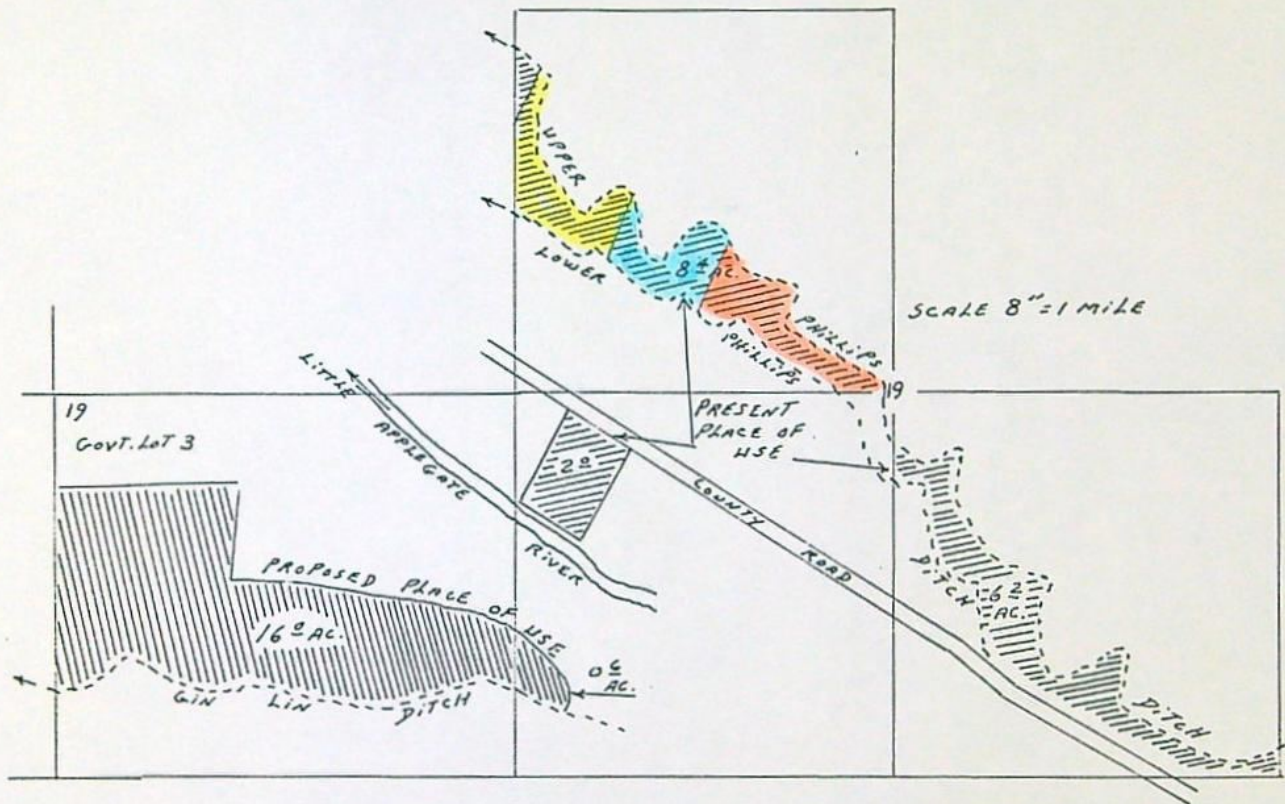
Sincerely,

James W. Carver, Jr.
Engineer

JWC:lcj
cc: David C. Hendrix, Watermaster

COPY

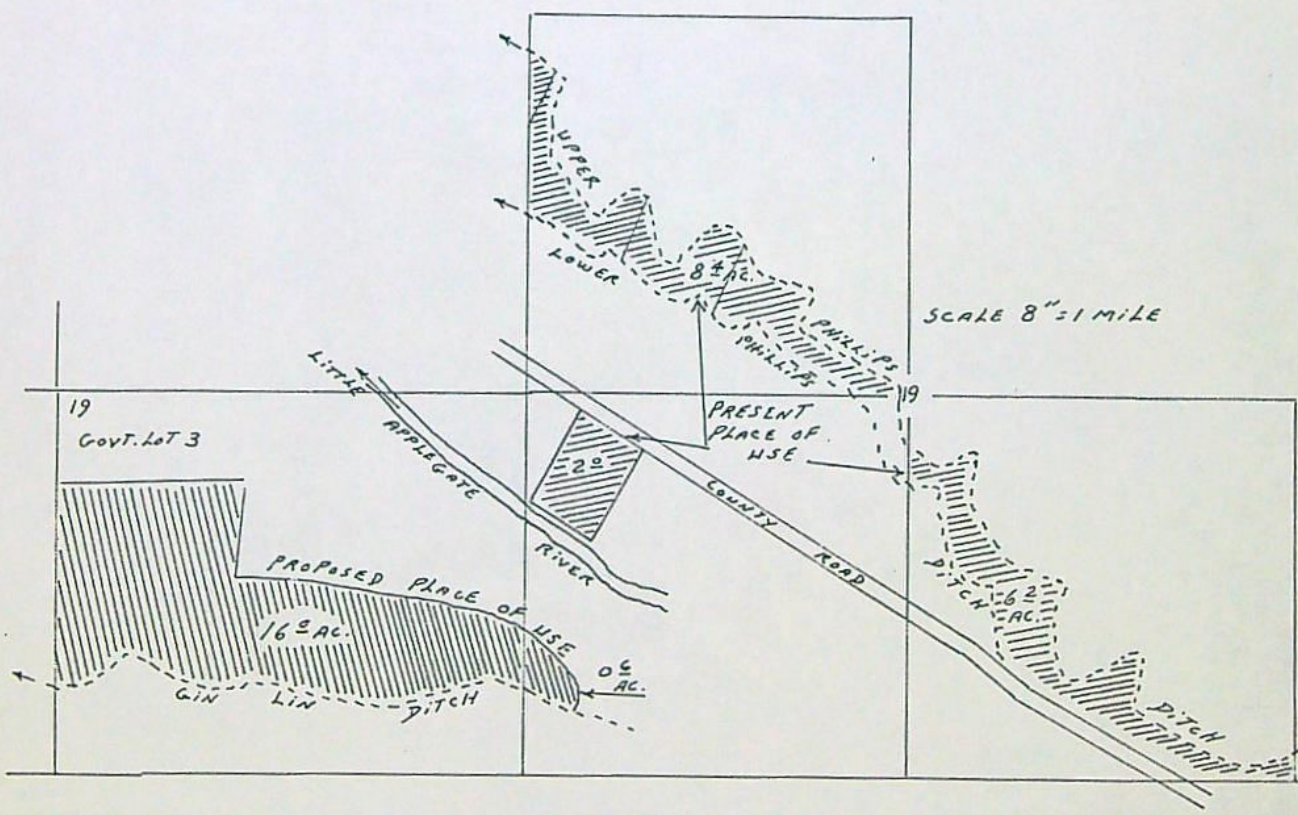
T.395. R.2W. W.M.



- Glen F. & Helen A. Wegner
- Ralph & June Richards
- David & Anita Willard

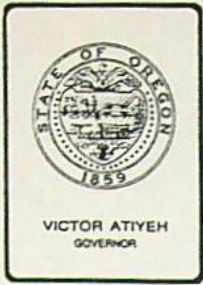
(Figure 1)

T.39S. R.2W. W. M.



- Glen F. & Helen A. Wegner
- Ralph & June Richards
- David & Anita Willard

(Figure 1)



Water Resources Department
MILL CREEK OFFICE PARK

555 13th STREET N.E., SALEM, OREGON 97310

PHONE 378-3066

June 24, 1980

Mr. Thomas C. Howser
Cottle, Howser & Cue
Attorneys at Law
607 Siskiyou Boulevard
P. O. Box 627
Ashland, Oregon 97520

REFERENCE: Transfer applications Nos. 2745 and 2746

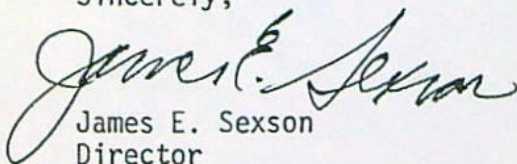
Dear Mr. Howser:

This will acknowledge receipt of your letter of June 20, 1980 transmitting a Motion to Dismiss and Amended Objections, together with proof of service, in behalf of your clients, Glen F. Wegner, Helen A. Wegner and Ralph Richards and June Richards and David Willard and Anita Willard.

OAR 690-01-030 provides: "At any time more than ten days prior to hearing, the protestant may amend his protest or petition by serving a copy of the amended protest or petition upon all parties. Proof of service shall be attached to the original and filed with the Water Resources Director." The hearing is scheduled for June 27, 1980. The amended protest was received on June 23, 1980. Therefore, the amended protest is not timely.

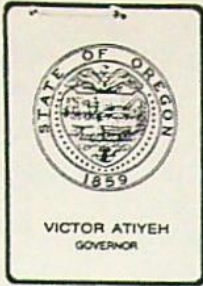
Your motion to dismiss the proceedings will not be ruled on prior to commencement of the hearing.

Sincerely,


James E. Sexson
Director

JES:JWC

cc: Mr. Larr C. Hammack
Mr. Robert D. Heffernan
Mr. David C. Hendrix, Watermaster



Water Resources Department
MILL CREEK OFFICE PARK

555 13th STREET N.E., SALEM, OREGON 97310

PHONE 378-3066

June 24, 1980

Mr. Thomas C. Howser
Cottle, Howser & Cue
Attorneys at Law
607 Siskiyou Boulevard
P. O. Box 627
Ashland, Oregon 97520

REFERENCE: Transfer applications Nos. 2745 and 2746

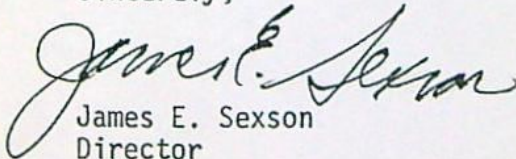
Dear Mr. Howser:

This will acknowledge receipt of your letter of June 20, 1980 transmitting a Motion to Dismiss and Amended Objections, together with proof of service, in behalf of your clients, Glen F. Wegner, Helen A. Wegner and Ralph Richards and June Richards and David Willard and Anita Willard.

OAR 690-01-030 provides: "At any time more than ten days prior to hearing, the protestant may amend his protest or petition by serving a copy of the amended protest or petition upon all parties. Proof of service shall be attached to the original and filed with the Water Resources Director." The hearing is scheduled for June 27, 1980. The amended protest was received on June 23, 1980. Therefore, the amended protest is not timely.

Your motion to dismiss the proceedings will not be ruled on prior to commencement of the hearing.

Sincerely,


James E. Sexson
Director

JES:JWC

cc: Mr. Larr C. Hammack
Mr. Robert D. Heffernan
Mr. David C. Hendrix, Watermaster

COTTLE, HOWSER & CUE

ATTORNEYS AT LAW

607 SISKIYOU BOULEVARD

POST OFFICE BOX 627

ASHLAND, OREGON 97520

(503) 482-2621

RICHARD C. COTTLE
THOMAS C. HOWSER
RONALD K. CUE
GREGORY A. PARKER

June 20, 1980

RECEIVED

JUN 23 1980

WATER RESOURCES DEPT
SALEM, OREGON

Mr. James E. Sexson
Director
Water Resources Department
Mill Creek Office Park
555 13th Street, N.E.
Salem, OR 97310


Re: Hinson/Wegner/Richards
Our File No. 5551
Your File No. T-2745; -T-2746

Dear Mr. Sexson:

Please find enclosed our Motion to Dismiss and our Amended Objections in regard to the above entitled matter.

Sincerely yours,

COTTLE, HOWSER & CUE



Thomas C. Howser

TCH:jw

Enclosures

JUN 23 1980

WATER RESOURCES DEPT
SALEM, OREGON

1 BEFORE THE WATER RESOURCES BOARD OF THE STATE OF OREGON
 2 In the Matter of Application)
 3 for Approval of Changes of)
 4 Use and Diversion from the) AMENDED OBJECTIONS
 5 Little Applegate River)

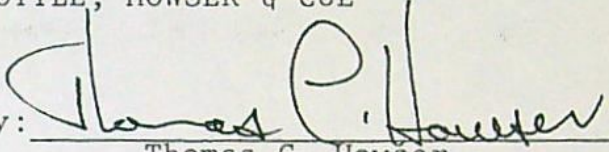
6 COME NOW GLEN F. WEGNER and HELEN A. WEGNER and RALPH
 7 RICHARDS and JUNE RICHARDS and DAVID WILLARD and ANITA WILLARD
 8 and object to the proposed transfer of use and diversion under
 9 the application by STUART V. HINSON with respect to the waters of
 10 the Little Applegate River upon the following grounds:

- 11 1. Such proposed changes will have an adverse affect upon the
- 12 Objectors.
- 13 2. The Applicant transferred said property prior to publication
- 14 of any notices regarding said transfer, the water rights passed
- 15 to objectors as an appurtenance and petitioner has no standing
- 16 relative thereto.
- 17 3. The Application for Transfer is not timely filed with respect
- 18 to sales of property by the Applicant which are appurtenant to the
- 19 water rights nor timely prosecuted, consisting of laches.
- 20 4. Petitioner is equitably estopped from maintaining this position
- 21 as objectors purchased without knowledge of the proposed change,
- 22 in reliance upon such water rights and Petitioner failed to advise
- 23 them relative thereto when he knew or should have known that such
- 24 matter was a material factor to plaintiff's purchase and use of
- 25 said property.

26

1 5. Petitioner is estopped by deed in that the deed to said
2 properties does not reserve or limit water rights which are
3 appurtenances thereto and said deeds in fact make specific
4 reference in some instances to irrigation rights without limitation.

5 COTTLE, HOWSER & CUE

6
7 By: 
8 Thomas C. Howser

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BEFORE THE WATER RESOURCES BOARD OF THE STATE OF OREGON

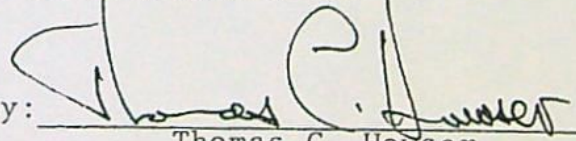
In the Matter of Application)
for Approval of Changes of)
Use and Diversion from the)
Little Applegate River)

MOTION TO DISMISS

COME NOW the objectors herein GLEN F. WEGNER and HELEN A. WEGNER and RALPH RICHARDS and JUNE RICHARDS and DAVID WILLARD and ANITA WILLARD and move to dismiss the proceedings herein as the same affect the objectors upon the grounds and for the reasons:

1. That the Petitioner has sold and transferred all of his right, title and interest in and to the properties affected prior to the first publication of notice and has no standing to maintain this proceeding.
2. The Water Resources Director has no jurisdiction to determine legal and equitable questions presented in this proceeding.
3. Petitioner's application has not been timely filed or prosecuted to the detriment of the objectors.

COTTLE, HOWSER & CUE

By: 
Thomas C. Howser

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

JACKSON COUNTY

IN THE MATTER OF THE APPLICATIONS)
OF STUART V. HINSON FOR APPROVAL)
OF CHANGES IN PLACE OF USE & POINT)
OF DIVERSION OF WATER FROM LITTLE)
APPLEGATE RIVER)

SECOND AMENDED
NOTICE OF
HEARING

TO: Stuart V. Hinson
*c/o Larry C. Hammack
Attorney at Law
220 Laurel
Medford, Oregon 97501

Everett J. & Jimmie F. Bostwick
*c/o Robert D. Heffernan, Jr.
Heffernan & Fowler
P.O. Box 1746
Medford, Oregon 97501

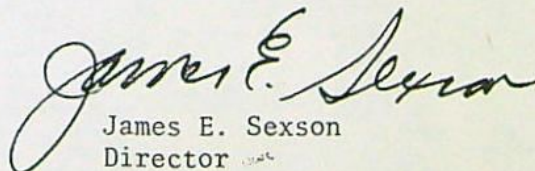
Glen F. & Helen A. Wegner
and Ralph & June Richards
*c/o Thomas C. Howser
Cottle, Howser & Hampton
P.O. Box 627
Ashland, Oregon 97520

David C. Hendrix
Watermaster, District 13
Jackson County Courthouse
Medford, Oregon 97501

Notice is given hereby that concurrent hearings in the matters of water right transfer applications Nos. 2745 and 2746, in the name of Stuart V. Hinson, for approval of changes in place of use and point of diversion of water under rights described by the certificates recorded at page 24479, Volume 17, and page 38773, Volume 30, State Record of Water Right Certificates, as set forth in the notice published in the Medford Mail Tribune newspaper in the issues of June 10, 17 and 24, 1977, and protests in the names of Everett J. Bostwick and Jimmie F. Bostwick, and in the names of Glen F. Wegner, Helen A. Wegner, Ralph Richards and June Richards against approval of said applications, have been rescheduled to be held before James W. Carver, Jr., an employee of the Water Resources Department, authorized to preside in behalf of the Water Resources Director, commencing at 10:00 a.m. on Friday, June 27, 1980, in Conference Room 106-107 in the Jackson County Justice Building, Medford, Oregon.

Attached is information material on the procedures, right of representation and other rights of parties relating to the conduct of the hearing as required under ORS 183.413(2).

Dated at Salem, Oregon this 14th day of April, 1980.


James E. Sexson
Director

ROBERT D. HEFFERNAN, JR.
WILLIAM H. FOWLER
FRANK R. ALLEY, III

HEFFERNAN & FOWLER
ATTORNEYS AT LAW
705 WEST TENTH STREET
P. O. BOX 1746
MEDFORD, OREGON 97501

AREA CODE 503
TELEPHONE 779-4075

June 23, 1980

RECEIVED

JUN 26 1980

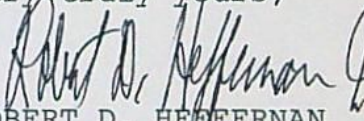
WATER RESOURCES DEPT
SALEM, OREGON

Mr. James Carver, Jr.
Engineer
Water Resources Department
555 13th Street N. E.
Salem, Oregon 97310

Dear Mr. Carver:

On behalf of the Protestants Everett J. Bostwick and Jimmie F. Bostwick we are enclosing a Supplemental and Additional Objection to Change in Place of Use and Point of Diversion and an Affidavit of Mailing in which states that copies have been sent to the attorneys representing the other parties to the proceeding.

Very truly yours,


ROBERT D. HEFFERNAN

RDH/sp

Enclosure

Fox River Bond

1 BEFORE THE STATE OF OREGON, WATER RESOURCES DEPARTMENT
 2 In the Matter of the Application)
 3 of)
 4 STUART V. HINSON, for approval in) AFFIDAVIT OF MAILING
 5 change of place and use and Point)
 6 of diversion of waters for Little)
 Applegate River.)
 _____)

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I, Robert D. Heffernan, Jr., first being duly sworn, depose and state that on June 23, 1980, I deposited in the United States mail true copies of a Supplemental and Additional Objection to Change in Place of Use and Point of Diversion addressed to Larry C. Hammack, 220 Laurel St., Medford, Oregon, and Tom Howser, P. O. Box 627, Ashland, Oregon, as attorneys for the other parties to these proceedings.

Robert D. Heffernan Jr.

 ROBERT D. HEFFERNAN, JR.

Subscribed and sworn to before me this 24 day of June, 1980.

Patsy Jazis

 Notary Public for Oregon
 My commission expires: 3/12/84

HEFFERNAN & FOWLER
 ATTORNEYS AT LAW
 TELEPHONE (503) 778-4075
 705 WEST TENTH STREET • P.O. BOX 1746
 MEDFORD, OREGON 97501

Fox River Bond

1 BEFORE THE STATE OF OREGON, WATER RESOURCES DEPARTMENT

2 In the Matter of the Application)

3 of)

4 STUART V. HINSON, for approval in)
change of place and use and point)
5 of diversion of waters for Little)
Applegate River.)
6 _____)

SUPPLEMENTAL AND ADDITIONAL
OBJECTION TO CHANGE IN PLACE
OF USE AND POINT OF DIVERSION

7

8 Comes now, Everett J. Bostwick and Jimmie F. Bostwick,
9 husband and wife, and make the following supplemental and additional
10 objections to the applications of Stuart V. Hinson designated
11 Nos. 2745 and 2746; the basis of which objections are as follows:

12 1. At the time that "Notice of Water Right Transfer
13 Application Nos. 2745 and 2746" was published under date of May 24,
14 1977 by James E. Sexson, Director, Protestants herein were the
15 owners of real property described in that Warranty Deed executed
16 by Stuart V. Hinson, as the Grantor, on August 22, 1973 and which
17 named Protestants as the Grantees, and was recorded on October 12,
18 1975 as instrument No. 75-13832, Official Records Jackson County,
19 Oregon. The notice as published by James E. Sexson, Director,
20 makes no reference to any previous application filed by Stuart V.
21 Hinson or any ammendment thereto and is in a form intended to give
22 notice of initial application.

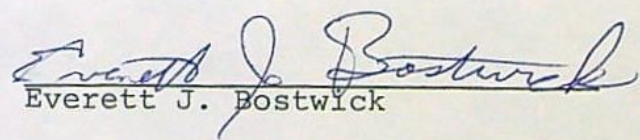
23 2. That Stuart V. Hinson has failed to use due and
24 reasonable diligence in the pursuit of his applications for change
25 in place of use and point of diversion of water from the Little
26 Applegate River and should be estopped from asserting such
applications.

HEFFERNAN & FOWLER
ATTORNEYS AT LAW
TELEPHONE (503) 778-4075
705 WEST TENTH STREET • P.O. BOX 1746
MEDFORD, OREGON 97501

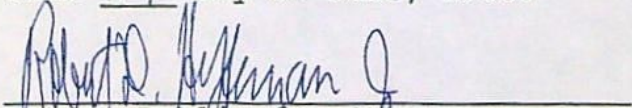
FOLY RIVER BOND

1 3. That the land located between those water ditches
 2 known as the "Upper Philips" and "Lower Philips" as the same
 3 traverse Protestants' land can be generally described as being
 4 "steep" in grade. The condition of the "Upper Philips" and the
 5 nature of the porous soil upon which it is located has permitted
 6 seepage from the ditch and percolation through the soil so that
 7 downhill "gullies" and "draws" are irrigated through such seepage
 8 and percolation with resultant growth of grass which has been
 9 annually utilized by Protestants for grazing purposes. In addition,
 10 there is a moderate to profuse growth of grass near the edges of
 11 the "Upper Philips" ditch which has enhanced the grazing character-
 12 istics of Protestants' property. That considering existing features
 13 of terrain, the portion of Protestants' property which has the use
 14 of water derived from the "Upper Philips" ditch through seepage
 15 and percolation is subject to a beneficial use of that water.

16 To permit the applications of Stuart V. Hinson to be
 17 granted would cause great hardship to Protestants and would sub-
 18 stantially diminish the value of their property for grazing pur-
 19 poses, this being its only and best use.


 Everett J. Bostwick

Subscribed and sworn to before me
 this 24 day of June, 1980.


 Notary Public for Oregon
 My commission expires: 11-24-82

HEFFERNAN & FOWLER
 ATTORNEYS AT LAW
 TELEPHONE (503) 779-4075
 705 WEST TENTH STREET • P.O. BOX 1746
 MEDFORD, OREGON 97501

M E M O R A N D U M

TO: Transfer Files Nos. 2745, 2746, Hinson

FROM: James W. Carver, Jr. *J.W.C.*

Date: June 12, 1980

Carver responded to Mr. Heffernan's letter of June 11, 1980, by telephone on this date.

Mr. Heffernan was advised that Mr. Hinson's original applications and maps, filed on December 18, 1972, were returned to Mr. Hinson's then attorney, John E. Ferris, for correction and additional information, by our letter of April 12, 1973.

The record shows that the applications (or superseding copies of the said original applications) were received from Mr. Ferris on July 16, 1973. The returned applications were held in this office, without action, until they were returned to Mr. Ferris for additional corrections and additional information, by our letter of January 28, 1977.

The record further shows that on May 16, 1977, we received a letter from David Hendrix, Watermaster, transmitting superseding copies of applications Nos. 2745 and 2746. It appears that the original applications were retained by the applicant or his attorney.

During the course of the aforesaid telephone conversation, Carver advised Mr. Heffernan that the second paragraph of Carver's letter of August 22, 1979, to Mr. Hammack, Mr. Heffernan and Mr. Howser, was the result of an informal discussion with the Water Resources Department's assigned Assistant Attorney General.

Since it appears that there may be questions as to the effect of change of ownership of real property upon a pending application, which may result in an appeal to the Oregon Court of Appeals, Carver stated that he would bring to the hearing copies of the entire correspondence file on pending transfer applications Nos. 2745 and 2746 so that they can be made a part of the record by official notice.

M E M O R A N D U M

TO: Transfer Files Nos. 2745 & 2746, Hinson

FROM: James W. Carver, Jr. *J.W.C.*

Date: June 20, 1980

Mr. Larry C. Hammack, Attorney at Law, representing Stuart Hinson, telephoned this date to request certified copies of the water right transfer applications filed by Mr. Hinson, with reference to files Nos. 2745 and 2746.

Carver informed Mr. Hammack that only the current, amended copies of the subject applications are on file; that the originally submitted applications were, apparently, retained by Mr. Hinson or his former attorney, Mr. Ferris.

Mr. Hammack then asked whether the files showed the date of receipt, return for corrections, and resubmittal of the original and/or amending copies of the applications. Carver advised Mr. Hammack that the correspondence in the files does establish such dates and that copies of the current amending copies of the subject applications and copies of the correspondence have been prepared and will be at the hearing on June 27, 1980.

Carver also informed Mr. Hammack of a similar telephone conversation with Mr. Heffernan in regard to the same matter, on June 12, 1980.

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

Jackson County

IN THE MATTER OF WATER RIGHT)
TRANSFER APPLICATIONS NOS.)
2745 & 2746 IN THE NAME OF)
STUART V. HINSON FOR CHANGES)
IN PLACE OF USE AND POINTS)
OF DIVERSION OF WATERS OF)
LITTLE APPLGATE RIVER)

STATEMENT, FINDINGS
CONCLUSIONS & ORDER

STATEMENT

On December 18, 1972, two applications were filed in the office of the State Engineer (predecessor to the Water Resources Director) in the name of Stuart V. Hinson, for approval of changes in place of use and points of diversion of waters appropriated from Little Applegate River under the provisions of certain existing water rights of record, pursuant to ORS 540.510 to 540.530.

The said applications were examined and found to be defective in describing the specific portions of the subject water rights to be modified by the proposed changes in place of use and points of diversion. Over the period of time extending from December of 1972 until May of 1977, and with delays resulting in part from a backlog of pending applications in the Department, the applications were corrected and completed, using superseding copies of the applications, and notice of the proposed changes were published pursuant to ORS 540.520(2).

The said notice which was published in the June 10, 17 and 24, 1977 issues of the Medford Mail Tribune newspaper, provided:

NOTICE OF WATER RIGHT TRANSFER APPLICATIONS NOS. 2745 and 2746

Notice is given hereby that two applications have been filed in the office of the Water Resources Director by Stuart V. Hinson for approval of changes in place of use and point of diversion from Little Applegate River.

(1) The certificate recorded at Page 38773, Vol. 30, State Record of Water Right Certificates, in the name of A.S. Kleinhammer, describes a right which includes the use of not to exceed 0.41 cubic foot per second from Little Applegate River for irrigation of 8.4 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, 2.0 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ and 6.0 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 19, T. 39 S., R. 2 W., W.M., with a date of priority of Sept. 1, 1857.

Water for the said right is diverted through the Upper & Lower Phillips Ditches from points located (1) 680 ft. S. and 9 ft. W., (2) 215 ft. S. and 790 ft. W. from the N. $\frac{1}{4}$ corner of Sec. 29, both being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 29, T. 39 S., R. 2 W., W.M.

By application No. 2745, the applicant herein, owner of the lands above

described, proposes to change the place of use and point of diversion therefrom, and without loss of priority to irrigate a certain 0.6 acre in NE $\frac{1}{4}$ SW $\frac{1}{4}$ and 16.0 acres in Lot 3 (NW $\frac{1}{4}$ SW $\frac{1}{4}$) of Sec. 19, T. 39 S., R. 2 W., W.M., through the Gin Lin Ditch from a point of diversion located 1430 ft. N. and 1905 ft. W. from the E. $\frac{1}{4}$ corner of Sec. 29, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 29, T. 39 S., R. 2 W., W.M.

(2) The certificate recorded at Page 24479, Vol. 17, State Record of Water Right Certificates, in the names of First National Bank of Ashland & Armin Richter, describes a right which includes the use of not to exceed 0.21 cubic foot per second from Little Applegate River for irrigation of 0.6 acre in NE $\frac{1}{4}$ SW $\frac{1}{4}$ and 16.0 acres in Lot 3 (NW $\frac{1}{4}$ SW $\frac{1}{4}$) of Sec. 19, T. 39 S., R. 2 W., W.M., with a date of priority of Nov. 12, 1929.

Water for the said right is diverted through the Gin Lin Ditch as described above.

By application No. 2746, the applicant herein, owner of the lands above described, proposes to change the place of use and point of diversion therefrom, and without loss of priority to irrigate a certain 8.2 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ and 8.4 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Sec. 19, through the Upper Phillips Ditch as described above.

All persons interested are notified hereby that a hearing will be held at the county courthouse at Medford, Oregon, on August 5, 1977, at 9:30 a.m. All objections to the proposed change, if any there are, will be heard at said time and place. Any and all objections shall be prepared in writing, one copy to be served on Stuart V. Hinson, P.O. Box 579, Jacksonville, Oregon 97530, and one copy filed with the Water Resources Department, Salem, Oregon 97310, together with a \$10 filing fee, at least 10 days prior to the date set for hearing. IF NO OBJECTION IS FILED, THE APPLICATION MAY BE APPROVED BY THE WATER RESOURCES DIRECTOR WITHOUT A HEARING. Administrative rules pertaining to the filing of a protest will be furnished by the Water Resources Department upon request.

Dated at Salem, Oregon, this 24th day of May, 1977.

JAMES E. SEXSON
Director

On July 22, 1977 a protest in the names of Everette J. Bostwick and Jimmie F. Bostwick was filed in the office of the Water Resources Director through their attorney, Robert D. Heffernan, against approval of the pending applications numbered 2745 and 2746.

On July 26, 1977 a protest in the names of Glen F. Wegner and Helen A. Wegner and Ralph Richards and June Richards was filed in the office of the Water Resources Director through their attorney, Thomas C. Howser, against approval of the pending applications.

Both protests allege that the protestants would be adversely affected by approval of the pending applications.

Pursuant to the Director's Second Amended Notice of Hearing dated April 14, 1980, the matter of pending transfer applications numbered 2745 and 2746 and the protests against approval of the said applications was brought to hearing in Medford, Oregon on June 27, 1980, before James W. Carver, Jr., an employee of the Water Resources Department, authorized to preside at the hearing in behalf of the Water Resources Director.

At the beginning of the hearing, Robert D. Heffernan, Jr., Attorney at Law, appeared in behalf of the protestants, Everette J. and Jimmie F. Bostwick, and withdrew their protest against approval of the pending applications.

Protestants, Glen F. and Helen A. Wegner and Ralph and June Richards, were present at the hearing and were represented by Thomas C. Howser, Attorney at Law, of the firm of Cottle, Howser and Hampton of Ashland, Oregon. The applicant, Stuart V. Hinson was present and was represented by Larry C. Hammack, Attorney at Law, Medford, Oregon.

Also at the beginning of the hearing, David and Anita Willard acting through their attorney, Thomas C. Howser, sought to become parties to the matter through joining in the protest by the Wegners and the Richards. Not having filed a timely protest pursuant to ORS 540.520(3) and not having filed a petition ~~taxi~~ pursuant to OAR 137-03-005(2), David Willard and Anita Willard do not have party status in this matter.

The location of the lands from which the 1857 priority water right is proposed to be severed by change in place of use, and the portions thereof now owned by the protestants herein and by the Williards are shown by Figure 1, herein. The effect of the proposes transfers of water right would be to change the priority for use of water on the lands now owned by the protestants and the Williards, and others, from September 1, 1857 to November 12, 1929.

RULING ON MOTION

On June 23, 1980, Thomas C. Howser, acting in behalf of his clients Glen F. Wegner, Helen A. Wegner, Ralph Richards, June Richards, David Willard and Anita Willard, submitted to the Director a motion to dismiss the proceeding for approval of the pending applications as the same would affect the objectors.

The said motion is denied.

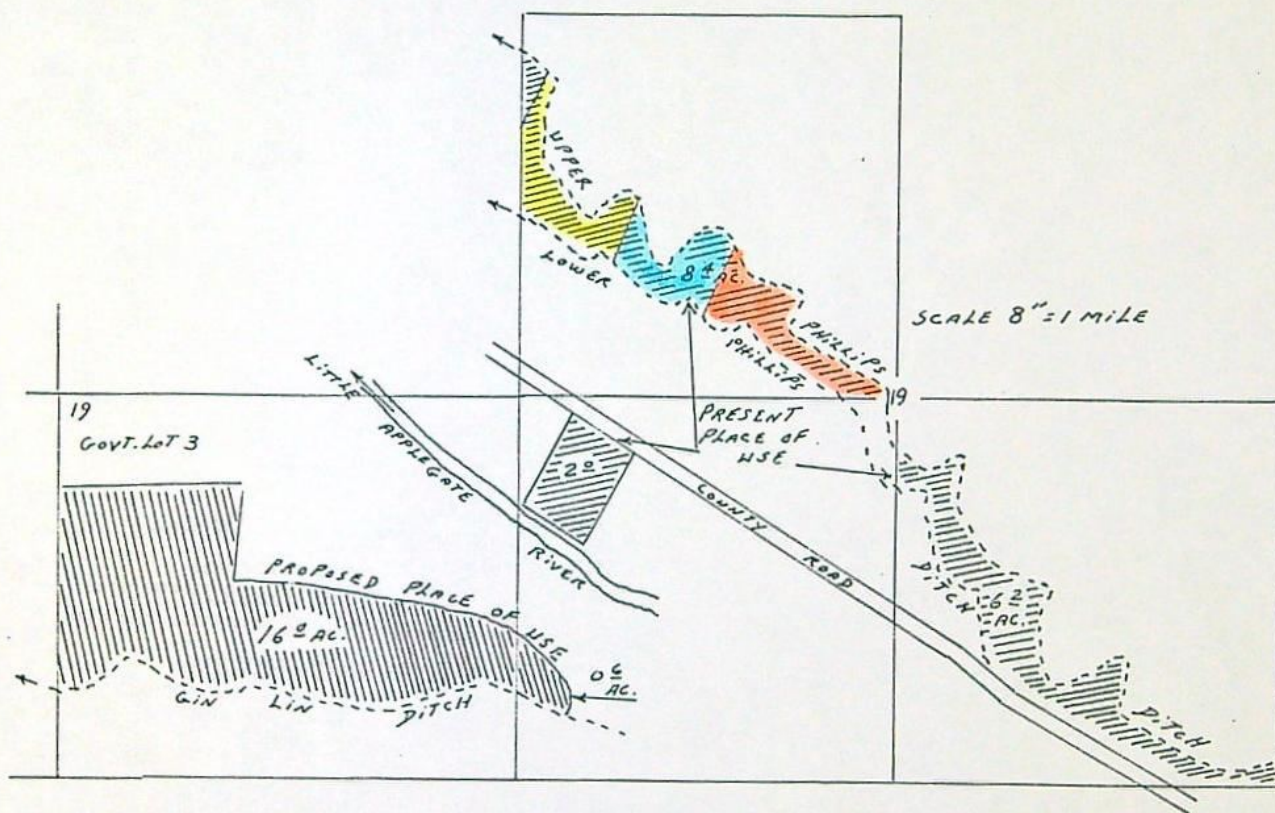
EVIDENTIARY RULINGS

Applicant offers as his exhibit "B" the original of transfer application numbered 2746 that was filed in the office of the State Engineer on December 18, 1972.

Applicant offers as his exhibit "C" the original of part "1" of transfer application numbered 2745 that was filed in the office of the State Engineer on December 18, 1972.

Applicant offers as his exhibit "D" the original of part "2" of transfer application numbered 2745 that was filed in the office of the State Engineer on December 18, 1972.

T.395. R.2W. W.M.



- Glen F. & Helen A. Wegner
- Ralph & June Richards
- David & Anita Willard

(Figure 1)

5

Applicant offers as his exhibit "E" a packet containing originals of superseding copies of transfer applications numbered 2745 and 2746, which copies were first received in the office of the State Engineer on July 16, 1973, together with supporting maps, and a copy of a letter dated April 12, 1973 from the office of the State Engineer to John E. Ferris, Attorney at Law, Medford, Oregon.

Protestants object to admission of the said exhibits into the record.

Testimony was received in regard to how the superseding copies of transfer applications numbered 2745 and 2746 conform to or differ from the original documents that were filed on December 18, 1972. Therefore, protestants' objections are overruled. Applicant's exhibits "B", "C", "D" and "E" are received into the record of this proceeding.

FINDINGS

At the time water right transfer applications numbered 2745 and 2746 were filed in the office of the State Engineer Mr. Stuart V. Hinson, applicant, was the owner of record of all of the real property that would be directly affected by the proposed changes in place of use and points of diversion of waters of the Little Applegate River, as described herein above.

The subject real property now owned by Ralph and June Richards was conveyed from Stuart V. Hinson to Edward M. Lewis and Rachel Lewis by a warranty deed dated September 5, 1974. (Applicant's exhibit "G") The said real property was conveyed from Edward M. Lewis and Rachel Lewis to Ralph J. Richards and June L. Richards by a warranty deed dated January 18, 1977. (Applicant's exhibit "L") Both deeds were silent as to water rights.

Mr. Lewis testified that when they purchased the subject property from Mr. Hinson, ~~that~~ they would enjoy 1957 priority water rights on certain lands served from the Lower Phillips Ditch and 1929 priority water rights on certain lands served from the Upper Phillips Ditch, and that he convey this same information to Mr. Richards prior to his sale of the property to the Richards.

Mr. Richards testified that in addition to a conversation with Mr. Lewis regarding water rights, prior to purchase of the subject property, he inquired of the watermaster, Mr. David Hendrix, who told him what the water rights of record were for the property and informed him that there was a "transfer in the works".

The subject real property now owned by David and Anita Willard was conveyed from Stuart V. Hinson to Robert Start by a special warranty deed dated May 5, 1977. (Applicant's exhibit "I") The said real property was conveyed from Robert Start to David A. Willard and Anita C. Willard by a warranty deed dated November 9, 1977. (Applicant's exhibit "M") Both deeds were silent as to the subject water rights.

Mr. Start testified that his understanding of the water rights he would enjoy through the Upper and Lower Phillips Ditches was the same as that testified to by Mr. Lewis. No evidenced was adduced as to whether there was any communication between Mr. Start and Mr. and/or Mrs. Willard in regard to the subject water rights.

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

JACKSON COUNTY

IN THE MATTER OF THE APPLICATIONS)
OF STUART V. HINSON FOR APPROVAL)
OF CHANGES IN PLACE OF USE & POINT)
OF DIVERSION OF WATER FROM LITTLE)
APPLEGATE RIVER)

SECOND AMENDED
NOTICE OF
HEARING

TO: Stuart V. Hinson
*c/o Larry C. Hammack
Attorney at Law
220 Laurel
Medford, Oregon 97501

Everett J. & Jimmie F. Bostwick
*c/o Robert D. Heffernan, Jr.
Heffernan & Fowler
P.O. Box 1746
Medford, Oregon 97501

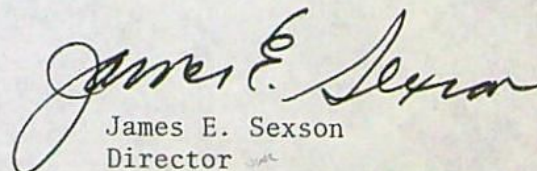
Glen F. & Helen A. Wegner
and Ralph & June Richards
*c/o Thomas C. Howser
Cottle, Howser & Hampton
P.O. Box 627
Ashland, Oregon 97520

David C. Hendrix
Watermaster, District 13
Jackson County Courthouse
Medford, Oregon 97501

Notice is given hereby that concurrent hearings in the matters of water right transfer applications Nos. 2745 and 2746, in the name of Stuart V. Hinson, for approval of changes in place of use and point of diversion of water under rights described by the certificates recorded at page 24479, Volume 17, and page 38773, Volume 30, State Record of Water Right Certificates, as set forth in the notice published in the Medford Mail Tribune newspaper in the issues of June 10, 17 and 24, 1977, and protests in the names of Everett J. Bostwick and Jimmie F. Bostwick, and in the names of Glen F. Wegner, Helen A. Wegner, Ralph Richards and June Richards against approval of said applications, have been rescheduled to be held before James W. Carver, Jr., an employee of the Water Resources Department, authorized to preside in behalf of the Water Resources Director, commencing at 10:00 a.m. on Friday, June 27, 1980, in Conference Room 106-107 in the Jackson County Justice Building, Medford, Oregon.

Attached is information material on the procedures, right of representation and other rights of parties relating to the conduct of the hearing as required under ORS 183.413(2).

Dated at Salem, Oregon this 14th day of April, 1980.


James E. Sexson
Director

Form 3811, Jan. 1979

Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
 Show to whom and date delivered..... 45c
 Show to whom, date and address of delivery..... c
 RESTRICTED DELIVERY
 Show to whom and date delivered..... c
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery. \$ _____
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 Glen F & Helen A Wegner & Ralph & Jane Richards, %Thomas C Howser; Cottle, Howser & Hampton, PO Box 627, Ashland, OR 97520

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	56336	

 (Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE Addressee Authorized agent

4. GATE OF DELIVERY: B. June POSTMARK: APR 15 1980

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

10) T-2745 ☆GPO : 1979-288-848

Form 3811, Jan. 1979

Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
 Show to whom and date delivered..... 45c
 Show to whom, date and address of delivery..... c
 RESTRICTED DELIVERY
 Show to whom and date delivered..... c
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery. \$ _____
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 Everett J & Jimmie F Bostwick, %Robert D Heffernan, JR., Heffernan & Fowler PO Box 1746, Medford, OR 97501

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	56337	

 (Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE Addressee Authorized agent

4. DATE OF DELIVERY: Robert D. Heffernan POSTMARK: APR 15 1980

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

10) T-2745 ☆GPO : 1979-288-848

Form 3811, Jan. 1979

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
 Show to whom and date delivered..... 45c
 Show to whom, date and address of delivery..... c
 RESTRICTED DELIVERY
 Show to whom and date delivered..... c
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery. \$ _____
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 Stuart V. Hinson, %Larry C. Hammack Attorney at Law, 220 Laurel Medford, OR 97501

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	56335	

 (Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE Addressee Authorized agent

4. DATE OF DELIVERY: Larry C. Hammack POSTMARK: APR 15 1980

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

10) T-2745 ☆GPO : 1979-288-848

CONTESTED CASE HEARINGS

The matter set for hearing by the accompanying notice is defined by Oregon law as a "contested case" so the procedures for conducting the hearing are established by the Administrative Procedures Act (ORS Chapter 183) and certain Oregon Administrative Rules adopted by the Water Resources Director, which rules are OAR 137-03-000 to 137-03-080 (Attorney General's Model Rules) and OAR 690-01-005, 690-1-040 and 690-01-045.

The purpose of the hearing is to allow each party (persons directly affected by the decision to be made by the Water Resources Director) the opportunity to put into the record of the hearing, first-hand knowledge of witnesses, records, documents and/or objects that will make the truth of the matter being heard known to the Water Resources Director. Under the laws governing the matter, only information and facts that are part of the record can be considered by the Water Resources Director in reaching his decision.

Each party should approach the hearing prepared to present the testimony of witnesses, the party's own testimony, and other evidence that will fully support that party's position on the matter being heard.

The hearing will be conducted by a presiding officer who is an employee of the Water Resources Director, unless otherwise identified at the beginning of the hearing.

The pattern of conduct of the hearing is similar to that of a court of law, but not quite as formal. All witnesses must take an oath to "tell the truth" before testifying; and all testimony will be recorded for later consideration by the Water Resources Director.

At the discretion of the presiding officer, the order of presenting evidence will be as follows:

- (1) Statement and evidence of party:
 - (a) Protesting application for water right permit (ORS 537.180); or
 - (b) Applying for water right transfer (ORS 540.530); or
 - (c) Seeking cancellation of a perfected water right (ORS 540.641(2)); or
 - (d) Seeking water right certificate on which a protest has been filed (ORS 537.260(3)); or
 - (e) Department, in hearing on license of Water Well Contractor or Drilling Machine Operator (ORS 537.747, 537.756).
- (2) Statement and evidence of parties in opposition to claim or position asserted in (1).
- (3) Rebuttal testimony.

Any party may request a necessary recess during the course of the hearing. Also, if it appears that some or all of the matters in dispute might be settled by an agreement between the parties, the hearing may be recessed for that purpose.

Each party has the right to present witnesses and to question them to bring out what the witness knows, first hand, about the matter being heard. Each party also has the right to question the other party's witnesses in regard to matters the

witness has already testified about. The presiding officer, authorized to represent the Director as a finder of fact, has the authority to present witnesses and to question witnesses presented by any party.

A party may subpoena Witnesses. The Water Resources Director will prepare and issue subpoenas to the requesting party upon a showing of general relevance and reasonable scope of the evidence sought. Service of the subpoena upon the intended witness, together with payment of witness and mileage fees to that witness, is the responsibility of the requesting party.

There are four kinds of evidence which are admissible:

- (1) Knowledge of the agency. The agency may take "official notice" of conclusions developed as a result of its intensive experience in their specialized field of activity. This includes technical or scientific facts. A party will be informed at the hearing should the agency take "official notice" of any fact and you will be given the opportunity to contest the facts so noticed.
- (2) Testimony of witnesses. This includes your own testimony.
- (3) Writings. This includes letters, maps, diagrams and other written material.
- (4) Other material objects presented to the senses. This has reference to experiments and demonstrations to prove a fact.

Objections to the admissibility of evidence may be made generally on one of the following grounds:

- (1) Incompetency. Lack of originality or of some defect in the witness, the document or the nature of the evidence itself.
- (2) Irrelevant. The evidence has no tendency to prove or disprove any issue involved.
- (3) Immaterial. The evidence is offered to prove a proposition which is not a matter in issue.
- (4) Unduly Repetitious. The evidence is merely repetitive of what has already been offered and admitted.

ORS 183.450(1) provides in part that:

"Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible."

The above provision in the statute, if applicable, will prevail over objections to the admissibility of evidence. In reaching a decision, the agency will only consider evidence which has been admitted.

Unless a witness is established on the record as an expert in the kind of matter he is testifying about, the opposing party has the right to object to testimony that is not the first-hand knowledge of the witness.

Any party has the choice to obtain the services of an attorney at law to act in the party's behalf at the hearing. The attorney would act particularly in the questioning of witnesses and in objecting to wrong kinds of evidence becoming part of the hearing record.

A party may request a recess during the course of the hearing to obtain services of legal counsel. Also, at the end of the hearing, a party may request an adjournment and reopening of the hearing at a later date to present additional evidence. The requesting party should not expect approval of such requests without having shown good and sufficient cause. For example, why the matter was beyond his reasonable control prior to the hearing.

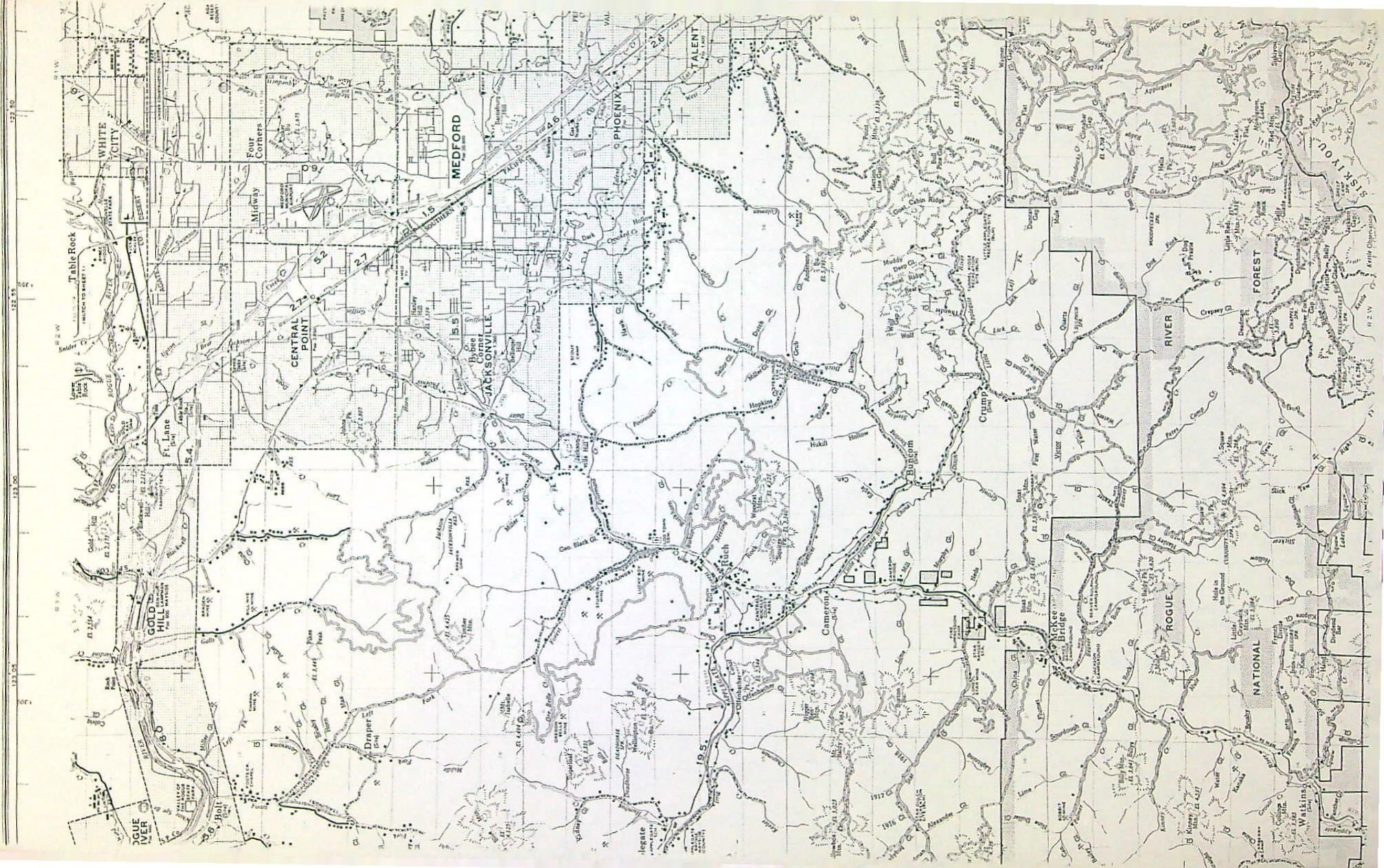
A decision on the matter being heard will NOT be reached at the hearing. The decision will be given in the form of an administrative final order by the Water Resources Director, after the Director has fully considered the record. A copy of the order will be served on each party and, if applicable, the party's attorney of record.

A party may file a petition with the Water Resources Director for rehearing or for reconsideration of the Director's order. The petition must be filed within 30 days of the date of service of the order upon that party, and must set forth the specific grounds for requesting the rehearing or reconsideration. The Director may grant or deny the request, or not act on the petition. If the petition is not acted on by the Director, it is deemed denied on the 60th day following the date it was filed. If the petition is granted, an amended order will be issued by the Director to take the place of the previous order which was the subject of the petition.

Any party has the right to appeal the Director's final order to the Oregon Court of Appeals, regardless of whether a petition for rehearing or reconsideration is filed by that party. The appeal must be handled by an attorney at law, and is taken by the filing of a petition with the Court of Appeals for a judicial review on the record of the matter. The petition to the Court of Appeals must be filed within 60 days from the date of service of a copy of the Director's final order on that party, or, if rehearing or reconsideration was requested of the Director, the petition must be filed with the Court within 60 days from the date such request was denied or deemed denied.

The law requires that during the hearing a word-for-word oral, written or mechanical record be made of all motions, rulings and testimony. In contested case hearings before the Water Resources Director, the required word-for-word record is usually made in the form of a magnetic tape recording. If the Director's final order is appealed to the Court of Appeals, the Director must prepare for the Court a written word-for-word transcript of the tape recording, in which case copies of the written transcript are also furnished to the parties to the appeal.

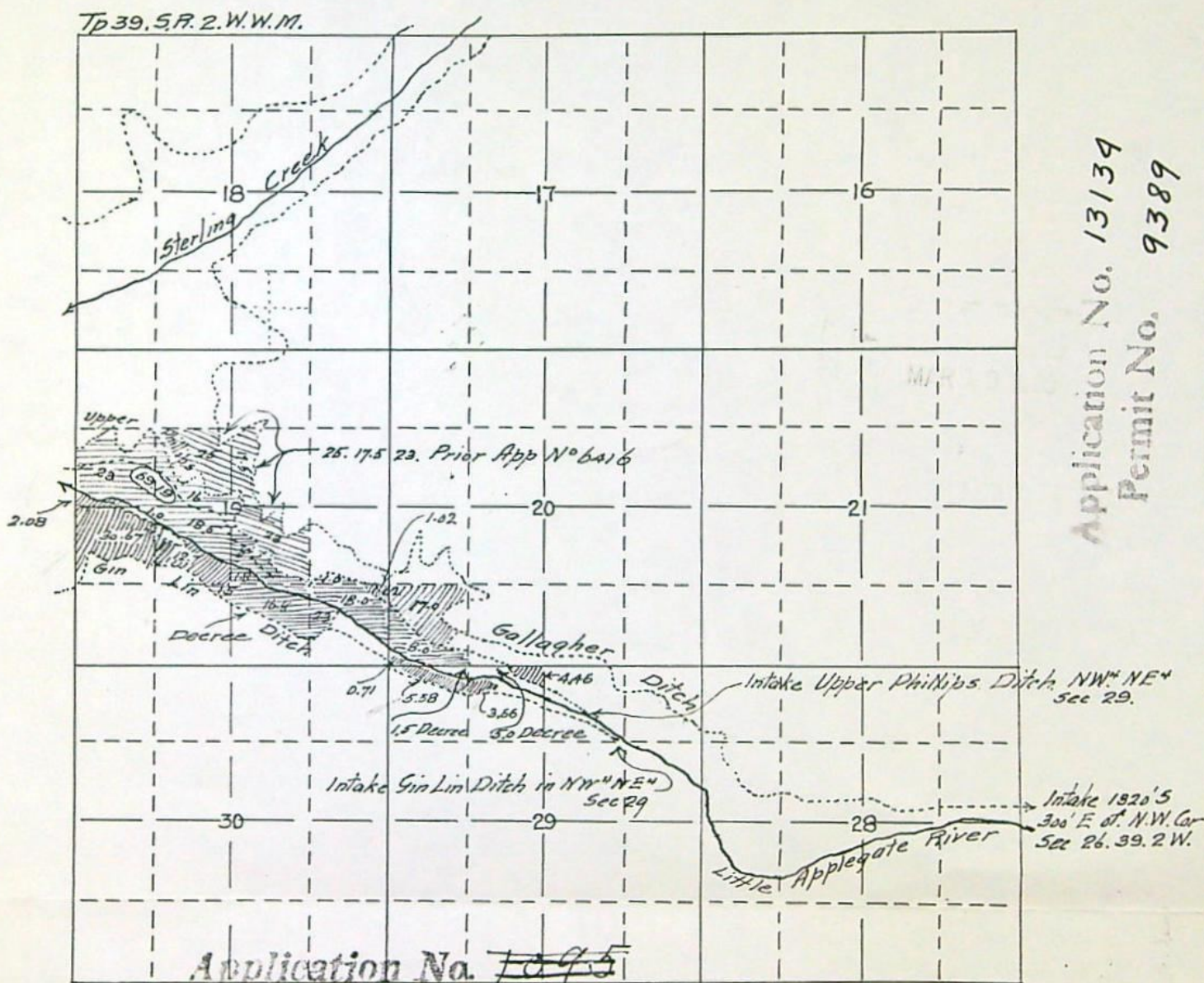
Except when an order is appealed to the Court of Appeals, a word-for-word written transcript of the tape recording is not usually prepared unless the party who wants it is willing to pay the cost of making the transcript. Any party may obtain a duplicate copy of the tape recording of the hearing by paying the cost of making the duplicate copy.



— MAP —

Accompanying application of A. S. KLEINHAMMER of Jacksonville, Oregon. for permit to the waters of Little Applegate River, "tributary to Rogue River." through the Gallagher and Gin Lin ditches. Jackson County Oregon.

— March 1920. —



Application No. 13134
Permit No. 9389

Application No. ~~7095~~

Permit No. ~~493~~

Decreed.

This Application

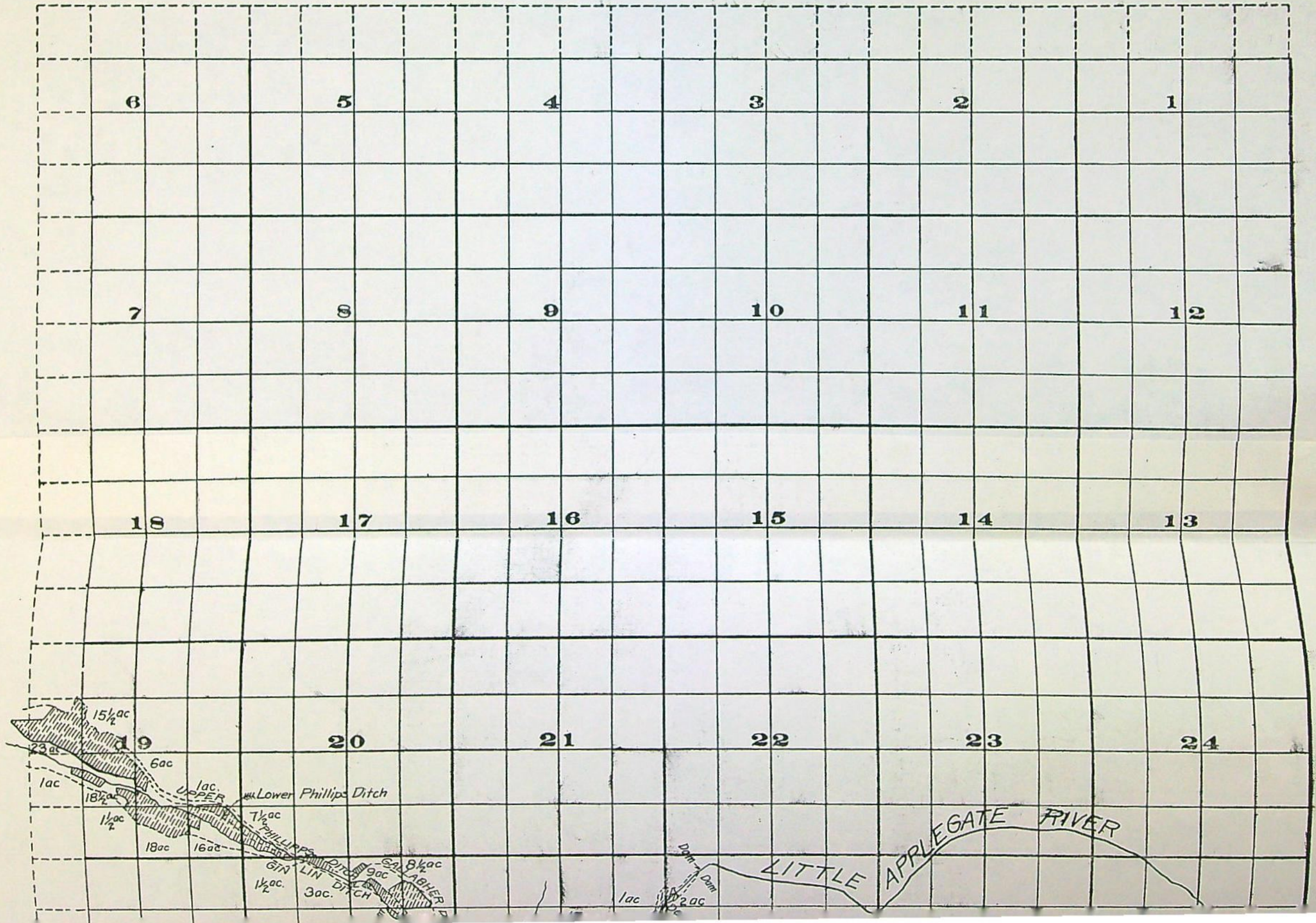
Map made from notes of an actual survey in the field by C. Frank Rhodes, correctly showing lands to be irrigated, together with streams and ditches in immediate vicinity, compiled by.

Application No. 13134

Permit No.

— Fred. N. Cummings. C.E. —

Township 39 South, Range 2 West .W.M.



NOTICE OF WATER RIGHT TRANSFER APPLICATIONS NOS. 2745 and 2746

Notice is given hereby that two applications have been filed in the office of the Water Resources Director by Stuart V. Hinson for approval of changes in place of use and point of diversion from Little Applegate River.

(1) The certificate recorded at Page 38773, Vol. 30, State Record of Water Right Certificates, in the name of A.S. Kleinhammer, describes a right which includes the use of not to exceed 0.41 cubic foot per second from Little Applegate River for irrigation of 8.4 acres in $SE\frac{1}{4} NW\frac{1}{4}$, 2.0 acres in $NE\frac{1}{4} SW\frac{1}{4}$ and 6.0 acres in $NW\frac{1}{4} SE\frac{1}{4}$ of Sec. 19, T. 39 S., R. 2 W., W.M., with a date of priority of Sept. 1, 1857.

Water for the said right is diverted through the Upper & Lower Phillips Ditches from points located (1) 680 ft. S. and 9 ft. W., (2) 215 ft. S. and 790 ft. W. from the N. $\frac{1}{4}$ corner of Sec. 29, both being within the $NE\frac{1}{4} NW\frac{1}{4}$ of Sec. 29, T. 39 S., R. 2 W., W.M.

By application No. 2745, the applicant herein, owner of the lands above described, proposes to change the place of use and point of diversion therefrom, and without loss of priority to irrigate a certain 0.6 acre in $NE\frac{1}{4} SW\frac{1}{4}$ and 16.0 acres in Lot 3 ($NW\frac{1}{4} SW\frac{1}{4}$) of Sec. 19, T. 39 S., R. 2 W., W.M., through the Gin Lin Ditch from a point of diversion located 1430 ft. N. and 1905 ft. W. from the E. $\frac{1}{4}$ corner of Sec. 29, being within the $NW\frac{1}{4} NE\frac{1}{4}$ of Sec. 29, T. 39 S., R. 2 W., W.M.

(2) The certificate recorded at Page 24479, Vol. 17, State Record of Water Right Certificates, in the names of First National Bank of Ashland & Armin Richter, describes a right which includes the use of not to exceed 0.21 cubic foot per second from Little Applegate River for irrigation of 0.6 acre in $NE\frac{1}{4} SW\frac{1}{4}$ and 16.0 acres in Lot 3 ($NW\frac{1}{4} SW\frac{1}{4}$) of Sec. 19, T. 39 S., R. 2 W., W.M., with a date of priority of Nov. 12, 1929.

Water for the said right is diverted through the Gin Lin Ditch as described above.

By application No. 2746, the applicant herein, owner of the lands above described, proposes to change the place of use and point of diversion therefrom, and without loss of priority to irrigate a certain 8.2 acres in $NW\frac{1}{4} NE\frac{1}{4}$ and 8.4 acres in $SE\frac{1}{4} NW\frac{1}{4}$ of said Sec. 19, through the Upper Phillips Ditch as described above.

All persons interested are notified hereby that a hearing will be held at the county courthouse at Medford, Oregon, on August 5, 1977, at 9:30 a.m. All objections to the proposed change, if any there are, will be heard at said time and place. Any and all objections shall be prepared in writing, one copy to be served on Stuart V. Hinson, P.O. Box 579, Jacksonville, Oregon 97530, and one copy filed with the Water Resources Department, Salem, Oregon 97310, together with a \$10 filing fee, at least 10 days prior to the date set for hearing. IF NO OBJECTION IS FILED, THE APPLICATION MAY BE APPROVED BY THE WATER RESOURCES DIRECTOR WITHOUT A HEARING. Administrative rules pertaining to the filing of a protest will be furnished by the Water Resources Department upon request.

Dated at Salem, Oregon, this 24th day of May, 1977.

JAMES E. SEXSON
Director

A person appealing from a conviction in a municipal court for violation of a city ordinance can not be required to pay a fee for filing a transcript on appeal.

June 7, 1930.

Hon. Ross Farnham,
District Attorney.

Dear Sir: In your letter of June 3 you state that the charter of the city of Bend, Oregon, authorizes appeals from convictions in the municipal court and ask to be advised as to whether or not a party appealing from conviction in municipal court for violation of a city ordinance is required to pay a fee to the county clerk for filing a transcript on appeal.

Chapter 196, Laws of 1929, provides:

"Whenever any person shall be convicted in the municipal court of any city of the state of Oregon of any offense defined and made punishable by any city charter or ordinance, unless the charter of such city prohibits appeals from such court, such person shall have the same right of appeal to the circuit court of the state of Oregon within whose jurisdiction such city lies, as now obtains from a conviction from courts of justice of the peace, which appeal shall be taken and perfected in the same manner as is provided by law for taking appeals from justices' courts."

Section 2508, et seq., provides the procedure for taking appeals from justices' courts, and I am not aware of any statutory authority in this state whereby a party appealing from a conviction in a justices' court is compelled to pay a fee for filing a transcript on appeal.

Upon the principle that a defendant whose freedom is in jeopardy has the constitutional right of every legitimate defense without being forced to pay for same, I am of the opinion that the fee in question can not be collected.

I. H. VAN WINKLE,
Attorney-General,
By Arch MacDonald, Assistant.

A water right is not created by merely filing an application for such water right with the State Engineer, where no action has been taken on the application by the State Engineer.

Such applications pending before the State Engineer at the time of the enactment of ch. 287, L. 1929, may not now be perfected and the applicants may not construct the dam proposed therein.

June 7, 1930.

Mr. Rhea Luper,
State Engineer.

Dear Sir: In your letter of May 27 you state that there are six applications for permits to appropriate water from the Rogue river, which are on file in your office. Two of these were filed August 2, 1926, and four on November 25, 1927, all of which were filed before the enactment of chapter 287, General Laws of Oregon,

1929. It is my understanding that no action has been taken by your department relative to allowing any of these applications. You ask whether or not these applications should be denied on account of the provisions of said chapter 287.

Said chapter 287 reads as follows:

"Section 1. Subject to such water rights as are existing at the time of taking effect of this act, the waters flowing in the main channel of the Rogue river from its intersection with the south line of section 27, township 33 south, range 1 east of the Willamette meridian in Jackson county, Oregon, to its confluence with the Pacific ocean, hereby are withdrawn from appropriation; provided, that this act shall not prevent the appropriation and use of such water for domestic, stock, irrigation and municipal purposes; and provided further, that it shall not prevent the appropriation, diversion and use of the waters of any tributary streams.

"Section 2. It shall be unlawful for any person, firm or corporation to build any dam or hydraulic structure in the channel of the Rogue river below its intersection with the south line of section 27, township 33 south, range 1 east, Willamette meridian, in Jackson county, Oregon, to its confluence with the Pacific ocean, which will interfere with the free passage, either up or down stream, of migratory fish."

It is provided in section 1 of chapter 287, that the right to appropriate water in certain portions of the Rogue river is withdrawn, subject to such water rights as were in existence at the time of taking effect of this act. The question arises as to whether or not any water rights exist by virtue of either of the six applications discussed in your letter.

All six applications are for the appropriation of water within that portion of the Rogue river withdrawn from appropriation, under the provisions of said chapter 287. Four of the applications are for the appropriation of water for power, mining and manufacturing purposes; one, application No. 11854, is for the construction of a dam for the storage of a certain quantity of water for the development of hydro-electric power; the sixth is for the appropriation of a certain quantity of water from the Rogue river to be stored in the dam covered by said application No. 11854. Therefore, none of the applications are for purposes which are exempted from the provisions of said chapter 287.

Sections 5721 to 5730, Oregon Laws, as amended, provide for the filing of applications for appropriating water of the state, and for permits for the construction of reservoirs. Provision is made for the approval or refusal of any such applications by the State Engineer.

Section 5724, Oregon Laws, provides that if the application is approved,

"* * * the applicant shall be authorized, on receipt thereof, to proceed with the construction of the necessary works, and to take

all steps required to apply the water to a beneficial use, and to perfect the proposed appropriation. If the application is refused, the applicant shall take no steps toward the construction of the proposed work or the diversion and use of water so long as such refusal shall continue in force."

Section 5728, as amended by chapter 87, General Laws of 1927, provides:

"Upon it being made to appear to the satisfaction of the state engineer that any appropriation has been perfected in accordance with the provisions of this act, it shall be the duty of the state engineer to issue to the applicant a certificate of the same character as that described in section 5744, Oregon Laws. Said certificate shall be recorded and transmitted to the applicant as provided in said section. Rights to the use of water acquired under the provisions of this act, as set forth in any such certificate, shall continue in the owner thereof so long as such water shall be applied to a beneficial use under and in accordance with the terms of said certificate. * * *"

Section 5744, Oregon Laws, provides for the issuance of a certificate setting forth, among other things, the priority of the date, extent and purpose of a water right.

Section 5729, Oregon Laws, provides:

"The right acquired by such appropriation shall date from the filing of the application in the office of the state engineer."

The term "water right," is defined in *Wiel, Water Rights*, Third Edition, page 304, as follows:

"A water-right of appropriation is real estate, independent of the ditch for carrying the water, and independent of place of use or mode of enjoyment, whereby the appropriator is granted by the government the exclusive use of the water anywhere so long as he applies it to any beneficial purpose; and it is an incorporeal hereditament, solely usufructuary, not conferring ownership in the corpus of the water or in the channel of the stream."

The question arises as to whether or not a water right is created by merely filing an application for such water right with the State Engineer, where no action has been taken on the application by the State Engineer.

It will be noted that our statute provides that after the application has been approved the applicant is authorized to proceed with the construction of the necessary work and to take all steps required to apply the water to a beneficial use to perfect the proposed appropriation; (see section 5724, Oregon Laws) and that upon it appearing to the satisfaction of the State Engineer that any appropriation has been perfected in accordance with the provisions of the act it shall be the duty of the State Engineer to issue to the applicant a certificate, giving the priority of the date, extent and purpose of the water right. (See sections 5728 and 5744, Oregon Laws, as amended.)

In *Washington State Sugar Company v. Goodrich et al.*, (Idaho) 147 Pac. 1073,

the statute provided for applications for water rights being filed in a similar manner as provided in the statute of this state. The court held that the evidence was conclusive that neither of the applicants had, at any time subsequent to the date of the issuance of the permit by the State Engineer, even attempted to comply with the conditions therein contained. At page 1076 the court says:

"* * * A water right claim is not a water right. A water right claim is a declaration of intention, made in a written form prescribed by statute, to give public notice of intention to create water rights identical with descriptions stated in the writing, commonly referred to as a water right. Although they are not, water right claims have become commonly regarded as being the same thing as water rights. One is a mere declaration of intention to create a water right which may never be anything more than an intention. By a compliance with conditions of the permit, the water right claim then becomes a water right."

At page 1077 the court says:

"The granting by the state engineer of a permit for the right to use the waters of this state, in and of itself secures to the applicant no right to the use of the waters applied for in said permit, unless there be a substantial compliance with each and every provision of the statute relating to or in any manner affecting the issuance of such permit and a fulfillment of the conditions and limitations therein, but a compliance with the conditions and limitations prescribed in such permit initiates a right to the use of the water in the applicant, and said right then becomes a vested one and dates back to the issuance of said permit."

The purpose of the Legislature in enacting said chapter 287, General Laws of Oregon, 1929, was to close certain portions of the Rogue river from the appropriation of water, and to prevent the construction of any dams or other hydraulic structures in the channel of that portion of the Rogue river covered by the act, which would interfere with the free passage, either up or down the stream, of migratory fish. At the time this act was passed by the Legislature, the applications in question were pending before the State Engineer, and undoubtedly the Legislature had knowledge of these applications in enacting this statute. To hold that these applications may be perfected and the applicants may construct the dam proposed in these applications, would defeat the purpose of said chapter 287.

It is my opinion that the reasoning of the supreme court of Idaho in *Washington State Sugar Company v. Goodrich*, supra, is applicable to our statute, and that the applicants discussed in your letter merely have a water right claim pending with the State Engineer. This claim is not a water right. A water right does not come into existence until the application has been approved and the applicant has, subject to such approval,

taken at least some steps to apply the water to the beneficial use authorized by the State Engineer. This has not been done, and it is my opinion that it can not now be done, under the provisions of said chapter 287.

The applications mentioned in your letter should be denied.

I. H. VAN WINKLE,
Attorney-General.
By Miles H. McKey, Assistant.

The Board of Library Trustees of any city in Oregon has no authority under existing laws to establish a retirement plan and disability pension system for employes, such system to be paid for jointly by the employes and the library.

June 9, 1930.

Oregon State Library.

Gentlemen: I have your letter of May 31 in which you request my opinion upon the following question:

"Has a Board of Library Trustees in any city of Oregon the authority under existing laws to establish a retirement plan and disability pension system for employes, such a system to be paid for jointly by the employes and the library, and administered by the Board of Trustees directly or through contract with a commercial insurance company?"

Section 5497, Oregon Laws (Supp. 1927, p. 569), provides:

"Any county or incorporated city shall have the power to establish, equip and maintain a free public library, or maintain and support any free public library already established therein, and to contract with existing and established free public libraries for the purpose of providing free use of the libraries for their inhabitants residing within their respective territorial limits, to levy annually and cause to be collected, as other general taxes are collected, a tax upon each dollar of the assessed value of the taxable property of such county or city to provide a library fund, which fund shall be kept separate from other money of the county or city, to be used exclusively to maintain such library, and through library boards to purchase real estate and build buildings thereon necessary for properly housing and maintaining such libraries. All such money so appropriated or collected from taxes so levied shall be placed in a separate fund to be known as the 'public library fund' and shall be disbursed only upon the order of the public library board of such county or city as hereinafter provided:"

Section 5501, Oregon Laws (Supp. 1927, p. 571), enumerates the powers and duties of the Public Library Board, but no power is granted to such board to use any portion of the library fund for the purpose of establishing a retirement or disability fund for employes of such library.

A similar question was discussed in my opinion to Mr. L. H. Johnson, secretary Board of Regents, University of Oregon, dated May 23, 1929, a copy of which I herewith enclose, relative to the powers of the Board of Regents of the University of Oregon, or the Board of Higher

Education to provide for retirement funds or annuities for members of the faculty of the University of Oregon. I call your attention to the case of Minnesota ex rel. v. Rogers, 87 Minn. 130, 91 N. W. 430, 58 L. R. A. 663, 665, cited and quoted from in said opinion, which case involved the validity of the action of the Board of Education of the city of Minneapolis in adopting certain rules and regulations which provided that a portion of the salaries of all teachers employed by the board should be deducted and paid into a fund for the purpose of annuities for teachers becoming incapacitated by reason of long service. It was held that the act of the board in providing for and exacting by contract such percentage of salaries was not authorized by law and was void.

It is my opinion that there is nothing in the statute relating to the establishment and maintenance of free public libraries in incorporated cities in the state of Oregon to permit a public library board to deduct or retain any portion of the salary of an employe of such library for the purpose of establishing or maintaining a retirement fund or disability pension for employes.

Under the rule, as stated in the Minnesota case above mentioned, if the public library board should draw a warrant for a less amount than the full amount of an employe's salary, deducting or retaining a portion for the purpose of establishing or maintaining a retirement or disability fund, the money so deducted or retained would never leave the treasury and would remain public money; therefore, the public library board would have no authority to divert it from the uses mentioned in said section 5497, Oregon Laws, as amended, which specifically enumerates the purposes for which the library fund may be expended.

I. H. VAN WINKLE,
Attorney-General.
By Grace E. Smith, Assistant.

A certain insurance policy entitled "Special Wool Growers Policy" is a fire insurance policy, not a marine policy.

June 10, 1930.

Mr. Clare A. Lee,
Insurance Commissioner.

Dear Sir: I am in receipt of your favor of the 19th ultimo, enclosing a sample copy of insurance policy entitled, "Special Wool Growers Policy," also an explanatory letter of the points involved in said policy from the Pacific department of the Commercial Union Assurance Company, Ltd., of London, England, at 315 Montgomery Street, San Francisco, California.

Your letter states that the policy closely borders on certain laws relating

to marine insurance, as contained in subdivision 2 (a), section 6337, Oregon Laws, or section 1, 18 or 19, chapter 354, General Laws of Oregon, 1921.

My opinion is requested as to whether or not the form as submitted constitutes a marine policy or a fire insurance policy.

The form provides for coverage on bags of wool while at or in transit from shearing plant or corral to points and/or places and/or locations within the limits of Continental United States (exclusive of Alaska), Dominion of Canada or Newfoundland, against loss or damage, and quoting from paragraph 6 of the enclosed letter, we read:

"6. The contract covers the hazards of fire, lightning, cloudburst, flood, theft, collision, upset or overturning of the transporting vehicle, collapse of bridges, stranding, sinking, burning, and collision of vessels and/or craft with substances other than water—all coverages with the exception of the first two mentioned permitted to be covered by marine companies only. See page 16, section 5 (2B) of the Insurance Laws of the State of Oregon, 1929."

Subdivision 2, section 6337, Oregon Laws, provides:

"A company may be licensed to make any or all insurance and reinsurance comprised in any one of the following numbered subdivisions:

"First, Fire and Marine Insurance. (a) On property and rents and use and occupancy, against loss or damage by fire, lightning, tempest, flood, earthquake, hail, frost, snow, explosion (other than explosion of steam boilers or breakage of flywheels), leakage of sprinklers or other apparatus erected for extinguishing fires, and on such apparatus against accidental injury; on automobiles against loss or damage from collision or theft, and against liability of the owner or user for injury to property caused by his automobile.

"Vessels and Common Carriers. (b) On vessels, cars, and other vehicles, freight, goods, moneys, effects, and money loaned on bottomry and respondentia against loss or damages from the perils of the sea and other perils insured against by marine insurance, including the risks of inland navigation and transportation."

You will observe that the foregoing major subdivision groups together two distinct subjects of insurance, viz., (1) fire and (2) marine, and that the minor subdivision (b) relates specifically to marine insurance.

Section 18, chapter 354, General Laws of Oregon, 1921, defines marine insurance as:

"A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses; that is to say, the losses incident to marine adventure."

Marine insurance is a contract whereby one for consideration agrees to indemnify another for loss or damage on a certain interest subject to marine risks by certain perils of the sea, or specified casualty during a voyage or a fixed period; Joyce on Insurance, Vol. 1, section 5,

page 76; or it is a contract by which for a consideration stipulated to be paid by one interested in a ship, freight or cargo, subject to marine risks, another undertakes to indemnify him against some or all of those risks during a certain period or voyage: Matheson v. Equitable Marine Insurance Co., 118 Mass. 211; and for other definitions of the same subject, see footnote to section 5, page 76, Volume 1, Joyce on Insurance.

Arnold says that the contract of marine insurance, in short, is nothing but a contract of indemnity against the risk of loss by sea perils: Arnold on Marine Insurance, section 5, volume 1. And in section 6 of the same reference the author says:

"Two things are mainly essential to every contract of marine insurance:

"1. An interest in the subject-matter insured.

"2. Exposure of that interest to risk of loss or detriment by sea perils."

It is of interest to note the provisions of the California statutes affecting marine insurance, in view of the fact that the enclosed letter has come from that state.

Section 2655 of the California Civil Code defines marine insurance as:

"An insurance against risks connected with navigation to which a ship, cargo, freightage, profits or other insurable interest in movable property may be exposed during a certain voyage or a fixed period of time."

It is to be observed that while our own statute defining marine insurance is taken word for word from section 1 of the Marine Insurance Act, 1906 (6 Edw. 7 c. 4), it does not vary in its effect from that of the California statute above set forth, as both refer to classes of risks which are subject to marine losses, or incidental to perils of the sea.

Subdivision 3, section 594, of the Political Code of California, includes within the meaning of marine insurance every insurance connected with marine risks, and risks of transportation and navigation, including the risks of lake, river and inland transportation and navigation.

Section 19, chapter 354, General Laws of Oregon, 1921, provides in part that:

"1. A contract of marine insurance may, by its express terms, or by usage of trade, be extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage. . . ."

While the California statute may be capable of a different construction, the statute of this state is explicit in requiring the risk to be incidental to any sea voyage.

Section 20, chapter 354, General Laws of Oregon, 1921, provides:

"1. Subject to the provisions of this act, every lawful marine adventure may be the subject of a contract of marine insurance.

Waters and Watercourses—Water Right may be Sold and Transferred Separately from Land to Which Appurtenant.

2. A water right may be sold and transferred separately from the land to which it is appurtenant, in view of Section 5764, Or. L., providing that, if it becomes impracticable to use water for irrigation of any land to which it is appurtenant, the right may be transferred without loss of priority, if such change can be made without detriment to existing rights.

Judgment—Decree Settling Rights to Use Surplus Water Stored in Dams Held Binding as Former Adjudication.

3. In a suit to determine the extent of water rights and the right to use surplus water captured and stored upon certain lands by means of dams, a former decree wherein such issue was settled held to bar relief by plaintiff as a former adjudication.

Judgment—What Constitutes Former Adjudication Stated.

4. Every necessary question properly before the court, tried and determined in a former suit, is conclusive of the same question in a subsequent proceeding between the same parties.

ON PETITION FOR REHEARING.

Judgment—Nature of Plea of "Former Adjudication" Stated.

5. A plea of former adjudication is a plea in bar of further prosecution, on the ground that the same subject matter has been already litigated between the same parties or their privies and a judgment rendered on the merits.

Judgment—Prior Judgment must have Been Rendered on Merits to Bar Further Litigation.

6. For a plea of former adjudication to bar further litigation, under Sections 411, 756, Or. L., the judgment or decree must have been rendered on the merits.

Equity—"Decree" Defined.

7. A decree is a judgment or sentence of a court of equity, pronounced on the hearing of issues and determining the rights of the parties.

Judgment—When Judgment is on "Merits" Stated.

8. A judgment is on the merits, so as to bar further litigation, when it amounts to a declaration of the law as to the parties' respective rights and duties based on the ultimate facts disclosed by the pleadings and evidence, irrespective of formal technical or dilatory objections or contentions; "merits" meaning matter of substance as distinguished from matters of form.

Judgment—Decree of Dismissal not Bar to Another Suit, Unless Material Issues Made by Pleadings are Determined.

9. Under Section 411, Or. L., providing that "whenever * * it is determined that the plaintiff is not entitled to the relief claimed,"

2. Transfer of rights to use water for irrigation, see note in 65 L. R. A. 407.

a decree of dismissal shall be given, which shall bar another suit, a decree of dismissal is not a bar unless the material issues made by the pleadings are determined, though not stated to be without prejudice.

Judgment—Defendant must Establish Defense of Former Adjudication.

10. For defendant to avail himself of the defense of former adjudication, he must establish it.

Judgment—Decree Dismissing Complaint for Insufficiency of Pleadings to Sustain Decree Adjudicating Water Rights Held not Res Adjudicata.

11. Where the court, in a suit to determine water rights, refused to determine the issue because of the insufficiency of the pleadings to sustain a decree adjudicating such rights, and recorded, in its findings and conclusions, that such issue had not been determined, a decree dismissing the complaint did not bar another suit.

Judgment—Not Admissible as Evidence of Matter not Adjudicated.

12. A judgment or decree as to a matter in issue but not decided cannot be used as evidence between the parties in a subsequent action as to such matter.

From Baker: GUSTAV ANDERSON, Judge.

In Banc.

The plaintiffs in this case are Herman C. Haney and John E. Astner. The defendants are Neace-Stark Company a corporation; State Water Board of Oregon; Percy A. Cupper, State Engineer; George T. Cochran, member of the State Water Board; Rhea Luper, Assistant State Engineer, and Loy M. Turner, Water-master.

The plaintiffs filed their complaint in the Circuit Court of the State of Oregon for Baker County, and averred that they were the owners of certain lands situate in Baker County, Oregon, arid in nature and susceptible of irrigation, and that such lands, with sufficient water to irrigate the same and for the growing of crops thereon, would produce large crops of hay, grain, vegetables and other products. The pleadings contain a description of the lands.

It is averred by plaintiffs that on April 19, 1910, the predecessors in interest of plaintiffs filed with

There is no competent testimony that the receiver did not make an honest attempt to carry out the orders of the court. The court's order was to get bids on the property and submit them to the court. No one appeared in court at any time and complained that she refused to make a sale of the property. Neither did plaintiffs produce any purchaser who was ready, willing and able to buy the premises. There is absolutely no testimony that Collier knew of any one wishing to buy the premises from the receiver.

5. Plaintiffs complain that defendant kept them in ignorance of what was transpiring in connection with the business. Everything that was done was a matter of record and plaintiffs could easily inform themselves. Defendants were under no obligation to furnish plaintiffs any further information.

The evidence shows that the plaintiff turned over to the receiver, at the time of her appointment, about \$160 to apply on the payment of the current bills. The money was so applied, but was insufficient to pay all the outstanding bills of the partnership. The real reason for this complaint is found in the allegation that owing to the financial depression, for which defendants are not responsible, plaintiffs are unable to redeem from the foreclosure sale.

6. The defendants were entitled to a directed verdict. But the cause having been submitted to the jury and a verdict returned in favor of defendants Earl Loney and Lalah Loney, no prejudicial error was committed so far as they are concerned and the judgment in their favor will be affirmed. The judgment against defendant Collier will be reversed and the cause remanded with instructions to vacate the same and enter one in favor of defendant Collier for his costs and disbursements. It is so ordered.

RAND, C. J., BEAN and BAILEY, JJ., concur.

Argued at Pendleton October 30; reversed December 19, 1933; rehearing denied March 13, 1934

BROUGHTON ET AL. v. STRICKLIN ET AL.

(28 P. (2d) 219, 30 P. (2d) 332)

Waters and water courses—Diversion of water—Rights of lower users

1. Holder of water rights for power purposes could not by contract or other arrangement with water users above authorize such upper users to divert water awarded to it for power purposes, a nonconsuming use, and thereby deprive lower users of use of such water.

Waters and water courses—Diversion of water—Place of use

2. Change in point of diversion and place of use of water rights may be made when it can be done without prejudice to rights of others.

Waters and water courses—Necessary and beneficial use

3. Appropriator has right to apply only so much water as is necessary for his use and actually beneficial.

Waters and water courses—Diversion of water—Place of use

4. Application to state engineer and approval of change of place of use of water was condition precedent to exercise of right to change place from that specified by decree in proceeding for adjudication of water rights.

Waters and water courses—Irrigation—Land under cultivation

5. Amount of water to which appropriators are entitled for irrigation purposes is governed by amount of water necessary for land cultivated, not exceeding amount awarded by decree in proceeding for adjudication of water rights.

Waters and water courses—Decrees—Res judicata

6. Decree in proceeding for adjudication of water rights *held* not res judicata in respect to right of lower user to use of returned waters awarded for power purposes.

Waters and water courses—Prevention of waste

7. Appropriator of water must exercise reasonable degree of care to prevent waste.

Waters and water courses—Waste and leakage

8. Water user awarded right to use of returned waters for power purposes *held* required to eliminate waste or leakage estimated to be from 25 to 40 second feet.

Waters and water courses—Irrigation—Waste

9. Economical use of water for irrigation without excessive waste should be made even though some expense is incurred in constructing facilities therefor.

Constitutional law—Waters and water courses—Vested rights

10. Right of successor to appropriator of water to use thereof is vested right.

Waters and water courses—Abandonment of water right

11. Proposal of user of water for power purposes to change place of use of water to district or districts above to be used for irrigational purposes was not "abandonment" of such water.

Waters and water courses—Abandonment of water right

12. "Abandonment of water right" requires concurrence of intention to abandon and actual failure in its use for statutory period.

Waters and water courses—Prior right—Use of water

13. Where party has prior right to certain quantity of water, he is entitled to it, but only to extent needed for use to which it was appropriated.

Waters and water courses—Prior right—Use of water

14. Next person in priority is entitled to water temporarily not needed by prior claimant.

ON PETITION FOR REHEARING**Appeal and error—Record on appeal**

15. Supreme Court had no right to consider testimony in another case.

Appeal and error—Record on appeal

16. Supreme Court, on motion for rehearing, cannot consider map filed since rendition of former opinion.

Waters and water courses—Beneficial use

17. In case involving water rights, amount of water allotted by water master each season should not exceed amount necessary for beneficial use.

Waters and water courses—Quantity of water necessary

18. Where quantity of water used by one having inchoate right must change from year to year, court need not determine amount to be used each year.

Waters and water courses—Prevention of waste—Water master

19. Under statutes, *held* that it would be duty of water master to close or partially close headgates or arrange apparatus in use to prevent unreasonable waste of water.

Waters and water courses—Prevention of waste—Water master

20. In case involving water rights, plaintiff *held* required to practically eliminate waste of water, which should be done under direction of state engineer and supervision of water master; report to be made to circuit court.

Waters and water courses—Irrigation—Inchoate right

21. In case involving water rights of opposing parties, water rights awarded for irrigation purposes and for pumping both *held* to be inchoate rights, which do not take effect until water awarded is applied to a beneficial use.

Waters and water courses—Inchoate right—Established right

22. Inchoate water right provided for in adjudication decree is "established right" although conditional and not perfected.

Waters and water courses—Diversion of water—Place of use

23. Right of appropriator of water, although subsequent in time to prior appropriator, whose place of diversion and character of use is such that waters are returned to stream and made available to subsequent appropriator below and applied to beneficial use by him, so that rights of subsequent appropriator have attached, cannot be changed by prior appropriator, or his use extended to injury of lower subsequent appropriator.

Waters and water courses—Rights of lower appropriator

24. Change in place of use of water right *held* to be detriment and irreparable injury to lower appropriator's right which had attached before contract for change of place of use was made.

Appeal and error—Waters and water courses

25. Where most of questions discussed on appeal from decree involving water rights related to administration of decree, it was unnecessary to remand case to circuit court for taking further testimony.

See 27 R. C. L. 1273, 1279, 1281 (8 Perm. Supp., 6062).

In Banc.

Appeal from Circuit Court, Deschutes County.

T. E. J. DUFFY, Judge.

Suit by Clara L. Broughton and another against C. E. Stricklin, State Engineer, the Cline Falls Finance Company, the Central Oregon Irrigation District, and others. From the decree, plaintiffs appeal, opposed by the last two named defendants.

REVERSED. REHEARING DENIED.

Percy A. Cupper, of Salem, and *O. C. Spencer*, of Portland (*Percy A. Cupper*, of Salem, and *Carey, Hart, Spencer & McCulloch*, of Portland, on the brief), for appellants.

at Cline Falls for power. But little, if any, question remains as to the 90 second feet used by the Pacific Power & Light Company for power purposes during the term of the fifty-year lease. As we understand, that question is passed.

1. The question arises, can the Cline Falls Finance Company, by contract or any other arrangement with the water users above, on the river, authorize such upper water users to divert the water awarded to Cline Falls for power purposes, a nonconsuming use, and thereby deprive the plaintiffs of the use of such water? We think our statute regulates the matter. Section 47-712, Oregon Code 1930, which was enacted in 1909, with later minor amendments, provides, in part, as follows: All water used in this state for any purpose shall remain appurtenant to the premises upon which it is used and no change in use or place of use of any water for any purpose may be made without compliance with the provisions of this act; provided, that the owner of any water right may, upon compliance with the provisions of this act, change the use and place of use, the point of diversion or the use theretofore made of the water in all cases without losing priority of the right theretofore established. Whenever the owner of a water right for irrigation, domestic use, manufacturing purposes, or other use, for any reason desires to change the place of use, the point of diversion or the use theretofore made of the water, an application to make such change, as the case may be, shall be filed with the state engineer. The statute then provides that such application shall state, among other things, the use theretofore made of the water, description of the premises upon which the water is used, the description of the premises upon which it is proposed to use the water, the use which is proposed

to be made of the water and the reasons for making the proposed change, and provides the manner in which the state engineer shall give notice of the time and place for the hearing of such application and for persons having objections to the proposed change, for filing such objections, for the hearing, if objections are filed, and the determination thereof. Also, "If, after hearing or examination, the state engineer shall find that the proposed change can be effected without injury to existing rights, he shall make an order approving such transfer and fixing a time limit within which the application of water may be made to the new use". If a certificate has been issued covering such water rights, the state engineer is required to cancel the same on proof of complete application of the water to the new use and issue in lieu thereof a new certificate or certificates preserving the priority of rights theretofore established in connection therewith and covering such change in use or place of use. The act provides for an appeal from the decision of the state engineer.

2. In an opinion by the late Justice EAKIN, in the case of *In Re North Powder River*, 75 Or. 83 (144 P. 485, 146 P. 475), where the North Powder Milling & Merchantile Company relinquished its claim to water during July and August of each year by an agreement with the farmers, made in the year 1896, we find, commencing on page 90 of the report, many statements and conditions which are peculiarly applicable to the case in hand. We there learn, by the holding in Oregon, "the water is held to be appurtenant to the land to which it is diverted, and the point of diversion cannot be changed if thereby the rights of others are prejudiced". As said in *Williams v. Altnow*, 51 Or. 275 (95 P. 200, 97 P. 539): "After the rights of sub-

sequent appropriators have attached, the prior appropriator cannot change or extend his use to their injury." In *Hough v. Porter*, 51 Or. 318, at page 426 (95 P. 732, 98 P. 1083, 102 P. 728), we find the following: "None of the quantity acquired under this appropriation can be used elsewhere without prejudicing others' rights, for which reason he is limited to its use, when needed, to the lands mentioned." In 2 *Kinney on Irrigation* (2d Ed.) § 870, p. 1530, it is stated, in effect, that water appropriated for milling purposes only cannot, as against an appropriator below, be used for irrigation; and the same rule would apply to a change in point of diversion of water used for power purposes to a point higher up the stream to be used for irrigation. There are two uses to which the water may be put: One in which none of the water is consumed, as for power purposes only, and one in which all or nearly all of it is consumed, as in the case of irrigation. And if the changed use be from one in which the water is not consumed (like that used for power at Cline Falls) to one in which it is (like the use proposed to be made by the Central Oregon Irrigation District for irrigation), such diversion is more apt to injuriously affect others. A change in the point of diversion and place of use may be made when it can be done without prejudice to the rights of others: *Whited v. Cavin*, 55 Or. 98 (105 P. 396).

3. In the North Powder River case, at page 94, the idea is conveyed that independently of the 1909 statute, in decisions permitting an appropriator to change the point of diversion or use, the Supreme Court of this state has apparently recognized the doctrine that if the change injuriously affects others it cannot be made. From the first water right cases in Oregon the rule established is that the appropriator has a right to apply

only so much water as is necessary for his use and actually beneficial, citing and quoting from *Simmons v. Winters*, 21 Or. 35 (27 P. 7, 28 Am. St. Rep. 727); citing *McCall v. Porter*, 42 Or. 49 (70 P. 820, 71 P. 976); *Bolter v. Garrett*, 44 Or. 304 (75 P. 142).

4. We conclude that the Cline Falls Finance Company, successor to the Cline Falls Power Company, with a date of relative priority of 1892, after the rights of the Odin Falls Land Company, to which plaintiffs have succeeded, have attached, cannot authorize or empower the Central Oregon Irrigation District to change the place of use of the water for power purposes, a nonconsuming use, to the irrigation district some 22 miles above, to be used for irrigation, or a consuming use, to the injury of the subsequent appropriator, the Odin Falls Land Company, thereby depriving the plaintiffs, successors in interest of the Odin Falls Land Company's right, of the right to that quantity of water to which they are entitled under the award, as adjudicated: § 47-712, Oregon Code 1930; *Hough v. Porter*, supra; *In Re Willow Creek*, 74 Or. 592 (144 P. 505, 146 P. 475); *In Re North Powder River*, supra; *Haney v. Neace-Stark Co.*, 109 Or. 93, 115, 116 (216 P. 757, 219 P. 190). Moreover, under the statute, it is a condition precedent to the exercise of the right to change the place of the use of water from that specified by the decree in a proceeding for the adjudication of water rights that the owner of such right make application to the state engineer and obtain his approval of such change: *Squaw Creek Irrigation District v. Mamero*, 107 Or. 291, 301 (214 P. 889). We find no evidence of any application being made to the state engineer to change the place of use from the Cline Falls Ranch to the Central Oregon Irrigation District.

Argued at Pendleton October 26, 1942; reversed January 19;
rehearing denied April 6, 1943

DRY GULCH DITCH CO. ET AL. v.

HUTTON ET AL.

(133 P. (2d) 601)

Waters and water courses

1. Evidence failed to establish that plaintiffs, or their predecessors in interest, "waived" any rights which they might otherwise claim to waters of creek and its tributaries by agreeing to entry of a decree ratifying an exchange of rights between an appropriator holding rights prior to plaintiffs or their predecessors and an appropriator holding rights junior to plaintiffs or their predecessors.

Waters and water courses

2. A subsequent appropriator may assert right to take waters of stream from which prior appropriation has been made and give prior appropriator in return therefor other water from a different source, but of like quantity and quality delivered at such a place that prior appropriator can make full use thereof without being injured in any way.

Waters and water courses

3. The appropriation of water to a beneficial use is founded upon rule of necessity, which, when satisfied, becomes measure of the right, whereupon subsequent appropriators may use the surplus or that to which prior appropriator is entitled, when not necessary to prior appropriator's use.

Waters and water courses

4. An owner of a water right by prior appropriation cannot change his point of diversion if such a change will injuriously affect other users on the stream, nor can he sell it separately from the land either to change the point of diversion, to make a new or different use of it to injury of other users, or to secure same priority.

Waters and water courses

5. Where right of defendants' predecessor in interest to divert water of creek and its tributaries was junior to right of plaintiffs' predecessor in interest at time defendants' predecessor entered into an exchange of rights with an appropriator holding rights prior to plaintiffs' predecessor, rights of defendants' predecessor remained subordinate to priority of plaintiffs' predecessor after the exchange.

Adverse possession

6. The elements of "title by prescription" are open, visible and continuous use under a claim of right, adverse to and with knowledge of owner.

Waters and water courses

7. Evidence failed to establish use of waters of creek by defendants adverse to plaintiffs who were prior appropriators for a sufficient length of time to give defendants title thereto by prescription.

Estoppel

8. Even if plaintiffs who were prior appropriators of waters of a creek and its tributaries knew that defendants' predecessors in interest were expending large sums of money in construction of reservoir and feeder ditches to make use of waters of a tributary pursuant to an exchange agreement with a holder of rights prior to plaintiffs which required defendants' predecessor to return water in like amount and quality from reservoirs of defendants' predecessor, plaintiffs were not "estopped" from claiming prior right to water of creek or water in like amount and quality from reservoirs of defendants' predecessor.

Waters and water courses

9. The rights of prior appropriators from a stream cannot be impaired by subsequent appropriations of water from its tributaries.

Waters and water courses

10. The water taken into an artificial structure and reduced to possession is "private property" during period of possession, but when possession of actual water has been relinquished or lost, by overflow or discharge after use, property in it ceases.

Waters and water courses

11. The substitution of impounded water in same quantity and same quality for water normally flowing in natural stream does not constitute a "trespass" or infringement upon or restriction of rights of lower appropriators, as regards issue of title by prescription.

Waters and water courses

12. In order that title to waters may be acquired by adverse user, it is necessary that during the entire statutory period there shall have been an infringement upon another's right to such an extent that such other would have had a cause of action against claimant.

See 27 R. C. L. 1269.

31 C. J. S., Estoppel, § 94.

Before KELLY, Chief Justice, and ROSSMAN, LUSK,
BRAND and RAND, Associate Justices.

Appeal from Circuit Court, Baker County.

ROBERT M. DUNCAN, Judge.

Suit by Dry Gulch Ditch Company, the Waterbury-Allen Ditch Company, and others, constituting the stockholders of such companies, against Orin Hutton and others, owners of the ditch known as the Hogum Ditch, Charles E. Stricklin, State Engineer, and Rufus Bunch, Water Master, in their official capacities, to enjoin defendants from diverting the water from West Eagle Creek, or to require the defendants to supply for plaintiffs use an amount of impounded water from Eagle and Looking Glass lakes equal in quantity to normal flow of West Eagle Creek. From a decree of dismissal, the plaintiffs appeal.

REVERSED. REHEARING DENIED

George T. Cochran, of La Grande (Cochran & Eberhard, of La Grande, and W. H. Strayer, of Baker, on the brief), for appellants.

Allan A. Smith, of Portland, and *Blaine Hallock*, of Baker (Hallock, Donald & Banta, of Baker, and Laing, Gray & Smith, of Portland, on the brief), for respondents.

KELLY, J. Plaintiffs are corporations, namely, the Dry Gulch Ditch Company and the Waterbury-Allen Ditch Company, and their stockholders. Defendants, Orin Hutton, Fred A. Phillips, Charles F. Doby, Wayne Phillips and Joseph Jackson constitute the partnership, which is the owner of Hogum Ditch. The State Engineer and the Water Master are also defendants, but are not active contestants herein, although both of them filed answers in the trial court. For convenience, the members of the partnership, owners of the Hogum Ditch, will be termed the defendants.

Involved in this record are three natural water courses, namely, Eagle Creek, West Eagle Creek and Goose Creek. There are four lakes, namely, Traverse, Echo, Eagle and Looking Glass lakes, and five artificial ditches, likewise involved. The ditches are called Hogum Ditch, the feeder ditch, the Sparta Ditch, the Dry Gulch Ditch and the Waterbury Ditch. Glendenning Ditch or creek, a part of which is used as a part of the Hogum Ditch, is mentioned and reference is also made to Balm Creek.

There are three separate and distinct areas which have been served with the water from these natural streams or water courses just mentioned. These respective areas for convenience will be referred to as plaintiffs' lands, defendants' lands and the Sparta lands respectively.

Eagle Creek, sometimes referred to as Main Eagle Creek, rises near the northeast corner of township 6, south range 43 east and flows in a southwesterly direction until its confluence with West Eagle Creek near the northwest corner of section 28 in said township 6, south range 43 east. From that point Main Eagle or Eagle Creek flows in a southeasterly direction emptying into Powder River near the northwest quarter of the northeast quarter of section 35, township 9 south range 45 east.

West Eagle Creek is a tributary of Eagle Creek and rises near the northern boundary line of section 5, township 6 south range 43 east and flows in a southerly direction to its confluence with Eagle Creek as above stated.

Goose Creek has its source in the northern part of township 7, south range 43 east. Goose Creek flows in a southerly direction and empties into Powder River near the southern boundary line of section 32, town-

ship 8 south range 43 east. By means of a dividing box, defendants distribute the water from Goose Creek to their lands which are located in the southwesterly part of township 8 south range 43 east.

Hogum Ditch taps West Eagle Creek near the southwest corner of section 9, township 6, south range 43 east and runs southerly about eleven miles emptying its waters into Goose Creek.

The feeder ditch is owned by the defendants and taps Eagle Creek, or Main Eagle Creek, near the southwest corner of the southwest quarter of the northwest quarter of section 15, township 6, south range 43 east, and furnishes water by means of a spillway to West Eagle Creek above the head gate of the Sparta Ditch which head gate is about two miles southerly from the head gate of the Hogum Ditch.

The Sparta Ditch has its head gate as just indicated, and when in operation, ran southerly to Sparta and the Sparta lands located near the center of township 8, south range 44 east.

The Dry Gulch Ditch taps Eagle Creek near the southeast quarter of the northwest quarter of section 17 in township 8 south range 45 east, runs southwesterly, connects with the Waterbury Ditch and in that way supplies plaintiffs' lands with water. Plaintiffs' lands are nearly all located in township 9, south range 45 east, a comparatively small portion being located in the eastern part of township 9 south range 43 east.

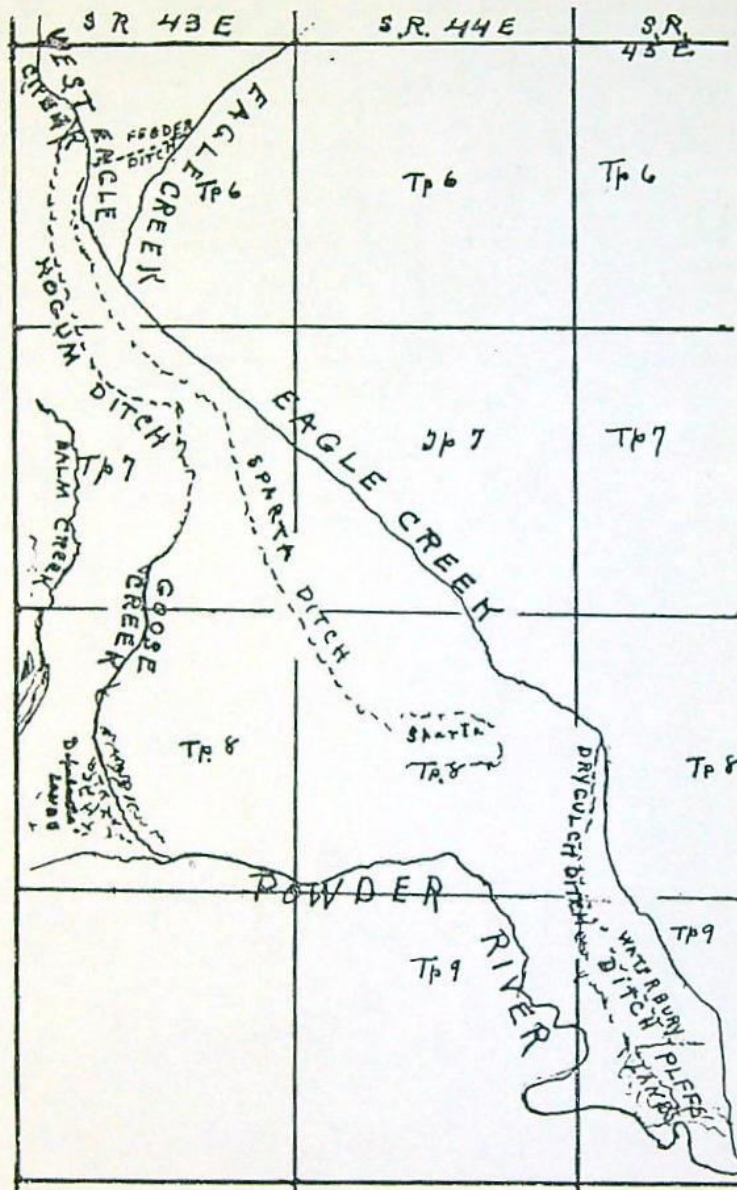
Traverse and Echo lakes are located at the head waters of West Eagle Creek and Eagle and Looking Glass lakes are located at the head waters of Eagle Creek. These four lakes just named were converted by the owners of the Hogum Ditch into reservoirs for the storage of water. The water from Traverse and

Echo lakes, when released, flow into West Eagle Creek; and those of Eagle and Looking Glass lakes, when released, flow into Eagle Creek.

Herewith is a rough draft of the premises with the four lakes omitted and the Glendenning Creek not designated. As stated, these lakes are northerly of the premises shown on the plat and are at the head waters of West Eagle and Eagle creeks.

Eagle Creek is a natural stream which drains the east and southeast slopes of a high range of mountains and known as the Eagle Creek or Wallowa Mountains. As stated, at its head it has two main forks, known as the west fork of West Eagle Creek and the main fork or Eagle Creek. From its head, it flows through a long, narrow canyon for some 25 or 30 miles before reaching Eagle Valley at the lower end of which it empties into Powder River. Its waters were first appropriated for placer mining purposes, but are now almost exclusively used for irrigation purposes. There are some 10,000 acres or more of irrigated lands lying in Eagle Valley and the immediate vicinity thereof. Some of the owners of these lands have earlier rights to the use of the water of Eagle Creek than those of the plaintiffs, whose lands are situate in the vicinity of Eagle Valley. Eagle Creek furnishes a large flow of water through the year but during the dry seasons of a few years, for short intervals of time, there has been insufficient water to fill the needs of all the users thereof.

As stated, Traverse and Echo lakes, above referred to, are located near the extreme head of West Eagle Creek and Eagle Lake and Looking Glass Lake near the head of Main Eagle Creek. These two streams come together some three or four miles below the point where defendants now divert water from West Eagle Lake



through what is known as the Hogum Ditch, which, as stated, is some 20 miles or more from defendants' lands.

A suit having been instituted by the Sparta Irrigation Company against defendants' predecessors in interest to restrain their interference with said Hogum Ditch, a decree, based on stipulation of the parties, was entered in said suit on November 5, 1915, which, among other things, decreed:

"That the plaintiff is also the owner and entitled to the uninterrupted use of and possession of that certain ditch or canal known as the Hogum Ditch conducting water and extending from a point on the West Fork of Eagle Creek near the Southeast Corner of Section 8, Township 6 South, Range 43 E. W. M., and running thence in a general southerly and southeasterly direction to a point where the waters conducted in said ditch are diverted therefrom over the mountain side into Glendenning Creek, a small natural stream immediately below said point, and thence into said Sparta Ditch, and that plaintiff has the right to the use and possession of said ditch to said point for the purpose of slumming said Sparta Ditch and to flow into said Sparta Ditch by means of said Hogum Ditch, the additional volume of water incident to said process, and for the aforementioned uses and purposes; and that the portion of said Hogum Ditch originally constructed below the aforementioned point of diversion into said Glendenning Creek and to a point below where defendants claim has for more than 20 years been abandoned and not operated, except as reconstructed by defendants herein, and that plaintiff has no title to said lower portion.

That defendants are the owners and entitled to the uninterrupted use and possession of that certain ditch, designated and named by defendants as Goose Creek Ditch, extending along the line of the ditch originally constructed and named Hogum Ditch from a point on the Northeast quarter of Section

29, Township 6, South R. 43, E. W. M., west of the spillway into which the waters conducted in said Hogum Ditch are diverted over said mountain side into said Glendenning Creek, and from said point to a point on said ditch line from which the quarter section corner on the north line of Section, Township 7 S. R., 43 E. W. M., bears north fifty-six degrees, thirty minutes, West, 1401 feet distance and that defendants have the right to build, construct and use said ditch for the purpose of conducting water therein to connect with Goose Creek at or about said last described point, for irrigation, and domestic purposes.

It is further considered, ordered, adjudged and decreed, that defendants, and each of them, their servants, agents, employees and any and all persons claiming by, through or under them or either of them, be and hereby are, and each is, enjoined, inhibited, and restrained from claiming or asserting any right, title or interest in, or to the portion of the hereinbefore described ditch and ditch line herein decreed to be the property of plaintiff, and from interfering with plaintiff in its use, possession or operation of said ditch as herein decreed to be the rights of plaintiff; and the plaintiff, its officers, agents, or servants and all persons claiming by, through or under it, be and hereby are and each is, restrained, inhibited and enjoined from claiming, or asserting any right, title, or interest in or to the portion of the hereinabove described ditch or ditch line decreed to be the property of defendants, and from interfering with defendants in their use, possession or operation of said ditch as herein decreed to be the rights of defendants."

Following the decree of November 5, 1915, as signed by the trial judge, is the following statement:

"And the rights of said parties are hereby established in accordance with said decree.

That the Sparta Irrigation Company is the successor in interest of Geo. Grant, Trustee, and owns

the Sparta Ditch in Baker County, Oregon, and that part of the Hoagum Ditch extending from a point on the West Fork of Eagle Creek, near the Southeast corner of Section 8, T. 6 S. R. 43 E. W. M., to a point where the water as conducted in said ditch is diverted into Glendenning Creek, and thence down said Glendenning Creek into Sparta Ditch. That said Cranston and Ingle own said Hoagum Ditch from said Glendenning Creek to a point from which the quarter section corner on the North line of Section 3, T. 7., S. R. 43 E. W. M. bears north 56° 30' west, 1401 feet distant. That all of that part of said Hoagum Ditch below said point belongs to said Sparta Irrigation Company. That said decree found that 750 miners inches of water, under six inch pressure, delivered at the place of use, was sufficient water to irrigate the lands of the stockholders of said Sparta Ditch Company. That said Sparta Ditch is 30 miles in length; that the seepage in said ditch would be great. That a reasonable seepage to be allowed said Sparta Ditch would be about 250 miners inches. That the water master of the district shall allow for seepage in the distribution of water, such an amount as such seepage aggregates, not to exceed 250 miners inches.

That the stockholders and water users from said Sparta Ditch Company are: F. W. Tallmadge, L. W. Tallmadge, Maud E. Boyd, Arthur S. Boyd, P. T. Wyatt and W. A. Wyatt, and the land to be irrigated is described in the tabulation hereinafter set forth under Inchoate Rights."

On the 16th day of June, 1917, a written contract was executed by said Sparta Irrigation Company as party of the first part and the predecessors in interest of defendants herein, as parties of the second part, wherein and whereby the party of the first part in consideration of the sum of \$1,850, and in further consideration of the covenants to be kept and performed by the parties of the second part did grant unto the parties

of the second part their heirs and assigns the perpetual right, privilege and authority [subject to the reservations and conditions hereinafter set forth] to go in and upon that portion of said Hogum Ditch in Baker County, Oregon, belonging to it, and to enlarge said portion of said ditch to any capacity which said parties of the second part may desire and to use that portion of said ditch for the conveyance of such of the waters of the West Fork of Eagle Creek as said parties of the second party may own or title to which they may hereafter acquire and also for the conveyance of any other waters which they may from other sources acquire a title or an interest in and subject to the conditions hereinafter set forth, to use said ditch for all necessary purposes connected with their operations, present or future.

By the terms of said contract of June 16, 1917, the Sparta Irrigation Company reserved unto itself all rights in and to the waters of West Fork of Eagle Creek and in and to the portion of the Hogum Ditch owned by it as defined and set forth in the decree entered in the suit between said Sparta Irrigation Company and defendants' predecessors in interest.

Shortly after the execution of the written contract last above mentioned, an oral agreement was made by the Sparta Irrigation Company, and defendants' predecessors in interest, that for the privilege of diverting the stream flow of West Eagle Creek at the head of the Hogum Ditch, defendants' predecessors would build reservoirs at Eagle and Looking Glass lakes and a feeder ditch from Main Eagle Creek to West Eagle Creek so that the Sparta Irrigation Company would have available as much water from these reservoirs at the head of their ditch as the normal flow of West Eagle Creek.

Pursuant to the provisions of the Water Code then in effect [Chap. 216, General Laws 1909; Secs. 6594 to 6672, inc. Vol. 3, L. O. L.] on the 27th day of May, 1909, certain users of the water of Powder River and its tributaries filed in the office of the State Water Board a petition requesting a determination of the relative rights of the various claimants of said stream, and its tributaries. Seventy-one contests ensued. In due course, the record of the proceeding thus inaugurated and conducted was certified to the Circuit Court of the State of Oregon for Baker County; and on the 18th day of March, 1918, a final adjudication was therein decreed.

According to said decree of March 18, 1918, the first appropriation of the waters of Eagle Creek was made in 1863, through the Hogum Ditch which was constructed over a very high divide and water was conducted through the same during that year to a point near Sanger, and was there used for placer mining purposes. According to said decree, the next appropriation of the waters of Eagle Creek was made in 1870 by William H. Packwood and Alex Stewart through what is known as the Sparta Ditch which diverted water from West Eagle Creek a mile or so above the head of the Hogum Ditch and water was conducted through said ditch to Sparta, a distance of some 30 miles in October 1871; and, at that time, the owners of the Sparta Ditch purchased the Hogum Ditch and, for many years thereafter the waters conveyed by the Hogum Ditch were turned into and used by the Sparta Ditch for mining purposes near Sparta, Oregon. This condition existed until the time when said decree was entered in 1918. At the time of the entry of said decree, the Sparta Irrigation Company was the owner of both the Sparta and Hogum Ditches, and its stock was held in trust by one George Grant as trustee. At that time the Sparta Irrigation

Company, being the first appropriator of any of the waters of Eagle Creek, was diverting from the west fork of Eagle Creek, through the said ditches, all the water flowing in said stream which the ditch was capable of carrying.

In that proceeding a large number of landowners living in Eagle Valley, who irrigated their lands from the waters of Eagle Creek including both of the plaintiff corporations, filed contests against Grant, as said trustee, and, as shown by said decree, that contest was settled by a stipulation entered into by all the parties wherein it

“was stipulated to the effect that the contestee [Sparta Irrigation Company, by Grant, Trustee,] should take all of the waters awarded it in these proceedings from West Eagle Creek and the natural tributaries thereof flowing into said stream above the head of what is known as the Sparta Ditch, and any and all of the feeders of said Sparta Ditch, heretofore and now feeding said ditch, and that said contestants may be awarded all other waters constituting Eagle Creek, including all waters of what is known as Middle Fork of Eagle Creek, and including all other source of water supply, save and except as hereinbefore mentioned. * * *”

The decree then recites:

* * * “that the contestee [Sparta Irrigation Company] is the successor in interest, and owner of the water used in connection with the Sparta & Hoagum Ditches; that in 1863 water was appropriated and thereafter used through the Hoagum Ditch, and that in November, 1870, William H. Packwood and Alex Stewart posted a notice on Eagle Creek appropriating 3,000 inches of water for what is known as the Sparta Ditch. That thereafter the Sparta Ditch was surveyed, and on the 11th day of May, 1871, construction of said ditch was begun and

water was run through said ditch to the town of Sparta, Oregon, on the 14th day of October, 1871. That said appropriation was for domestic, mechanical, mining and irrigation purposes. That upon the completion of said ditch there was at one time 800 miners inches of water delivered to the water users out of said ditch, and the diversion of said water into said ditch, at the time the same was used to full capacity, was between 1,000 and 1,500 inches. That in 1871 the Hoagum Ditch was extended to empty its waters into the Sparta Ditch, and was purchased by the owners of said Sparta Ditch at said time. That thereafter, and until the present time, said Hoagum Ditch has been used as a feeding ditch to said Sparta Ditch, and especially for the purpose of running water into said Sparta Ditch which would be picked up by said Hoagum Ditch from the melting snows during the spring thaws, and from the canyons that flowed water during the thaw, and this use was especially made at a time when the head of the Sparta Ditch and of the Hoagum Ditch were not thawed out so as to permit the diversion of water from the creek. That the early flow of the waters picked up in said thaw by said Sparta Ditch and said Hoagum Ditch, furnished a sufficient amount of water to supply said Sparta Ditch, until the heads of the ditches were thawed, out, and that thereupon the water would be delivered from the head of said ditch. That from the building of said ditch, until 1914, the water of said Sparta Ditch was sold each year by the owners thereof, for the purpose of domestic, mining, power and irrigation use. That beginning with the year 1915, the owners of said ditch proposed to apply the water from said ditch partly upon the lands described in the tabulation hereinafter, amounting to 1,500 acres; that 750 miners inches of water delivered on the land is sufficient to irrigate the lands proposed to be irrigated. That the change of use of water from sale for domestic, mining, power and irrigation use, to an irrigation use does not infringe upon the rights of any

other water user from Eagle Creek, and in making said change said George Grant, Trustee, and the Water Users from said Sparta Ditch have the right to use a reasonable time for making said change without losing their date of priority. That five years is such a reasonable time, and the lands to be irrigated in making such change shall be tabulated herein under the head of Inchoate Rights."

These lands were tabulated accordingly in the decree. All other lands then being served from the waters of Powder River and its tributaries were also tabulated in conformity to said stipulation. In said tabulation which constitutes part of said decree of March 18, 1918, the Dry Gulch Ditch Company is listed as having the right to divert through the said ditch sufficient water to irrigate 572.52 acres of land, but not to exceed a continuous flow of 1/40 of a cubic foot per second per acre with a priority date of July 10, 1894.

This listing appears on pages 182 and 183 of said decree. The stream from which diversion is to be made by the Dry Gulch Ditch Company is designated in said tabulated list as "Little Eagle Creek". It is obvious from the context of the decree that the trial court and all the interested parties were fully aware of the actual point of diversion. It appears from the testimony that Little Eagle Creek is about two miles above the head of the Dry Gulch Ditch on the opposite side of the river. The application for Enlargement Permit No. 16, to which reference is expressly made in said decree of March 18, 1918, designates Eagle Creek as the source of the proposed appropriation to be made by the enlargement of the Dry Gulch Ditch or Canal. Said application which constitutes a part of said enlargement permit specifically designates the point of diversion as south 27° east 23.70 chains from the northwest corner

of Sec. 20, T. 8 S. R. 45 E. W. M.; and states that the head gate is located within the northeast quarter of the northwest quarter of said section 20. The reference in the tabulation to the stream from which the diversion was made by the Dry Gulch Ditch Company as Little Eagle Creek was a clerical error which did not change or affect said Dry Gulch Ditch Company's priority right or right of diversion from Eagle Creek.

In said decree of March 18, 1918, it is recited:

"That the Dry Gulch Ditch Company secured a State Engineer's permit under a priority date of August 31, 1909, which permit was approved September 24, 1909, and is known as Application No. 193, Enlargement Permit No. 16."

A certified copy of the State Engineer's permit, as originally issued, is known to this record as part of plaintiffs' exhibit 3-A.

Plaintiffs' exhibit 2, which was rejected by the trial court, but was taken under the rule governing procedure in equity cases, discloses that the permit, as originally issued, was returned for correction and as corrected constitutes the State Engineer's permit mentioned in the excerpt above quoted from the decree of March 18, 1918. This corrected permit was secured by the Dry Gulch Ditch Company under a priority date of August 31, 1909, and was approved September 24, 1909, as stated in said decree of March 18, 1918. It discloses that the land to be irrigated thereunder has a total area of 2779.93 acres, and that the appropriation for irrigation purposes shall be limited to 1/80 of one cubic foot per second for each acre irrigated.

The identity of the corrected certificate [plaintiffs' exhibit 2] as being the permit recognized and referred to in said decree of March 18, 1918, is definitely estab-

lished by the priority date and the date of approval which are the same in said decree as in said exhibit 2.

The tabulation in the decree of March 18, 1918, lists the Waterbury-Allen Ditch Company as serving through its ditch 657 acres of land with water from Eagle Creek having a priority of 1891.

Plaintiffs' exhibit 3-A, in addition to the copy of certificate of water right under permit No. E-16, as above stated, is also a copy of a certificate of water right to the effect, —

“That Waterbury-Allen Ditch Company, of Richland, State of Oregon, has a right to the use of the waters of Eagle Creek, a tributary of Powder River, for the purpose of irrigation, * * * that the priority of the right hereby confirmed dates from 1891, that the amount of water to which such right is entitled for the purpose aforesaid, is limited to an amount actually beneficially used for said purposes and shall not exceed 1/40 of one cubic foot per second per acre.”

The defendants, who, besides owning the Hogum Ditch, also own in severalty contiguous tracts of land on the Powder River slope some twenty miles or more from Eagle Creek, were adjudicated by said decree to have the right to the use of water for the irrigation of these lands from Powder River, Balm Creek and Goose Creek under various dates of priority from 1872 to 1909, but were not adjudicated to have any right to divert water from Eagle Creek or any of its tributaries except such as should thereafter be secured through permits from the State Engineer upon applications which had been filed prior to the entry of said decree and thereafter permits were duly issued by the State Engineer authorizing said defendants to store 300 acre-feet of water from West Eagle Creek in Echo Lake, 170

acre-feet in Traverse Lake with a priority date of June 18, 1917, as appears from defendants' exhibit L, and the right to store in Looking Glass Lake 527 acre-feet of water and in Eagle Lake 844 acre-feet of water from Main Eagle under priority dates of September 18, 1917, and November 16, 1917, as appears from defendants' exhibits Q, O, and R. They also secured from the State Engineer the right to use the water thus stored, together with the stream flow of West Eagle Creek, for the irrigation of 1386.5 acres of land as a new right and 954.5 acres of land as a supplemental right under a priority date of June 18, 1917, as appears from defendants' exhibit M, and also 397 acres as a new right and 203 acres as a supplemental right under the priority date of October 30, 1933, as appears from defendants' exhibit P.

It will thus be seen that the plaintiffs' decreed rights to divert water from Eagle Creek and its tributaries are prior in time and right to the decreed rights of the defendants or any of them except as to the right of the defendants to divert and use the water thus stored, and, as to which, defendants' rights are superior to all other persons appropriating water from Eagle Creek or any of its tributaries.

1. It is argued by defendants that plaintiffs, or their predecessors in interest, expressly waived and relinquished any right which they might otherwise claim to the waters of West Eagle Creek and its tributaries by a stipulation wherein they agreed to an entry of a judgment and decree,

“Awarding to said contestee” [George Grant, Trustee] all the waters of West Eagle Creek and the natural tributaries thereof, flowing into said stream above the head of what is known as the Sparta Ditch.”

We think that the decree, in that particular, clarifies the stipulation, and that the language of the decree is controlling.

We repeat that part of the decree:

“Was stipulated to the effect that the contestee should take all of the waters awarded it in these proceedings from West Eagle Creek and the natural tributaries thereof flowing into said stream above the head of what is known as the Sparta Ditch, and any and all of the feeders of said Sparta Ditch, heretofore and now feeding said ditch, and that said contestants may be awarded all other waters constituting Eagle Creek,” etc.

This part of the decree was in effect a ratification of the exchange by contestants of their right to the use of the water from West Eagle for the relinquishment on the part of the Sparta Irrigation Company, appearing by its trustee, of its right to the water of Eagle Creek. The effect of it was not to destroy either right thus exchanged nor to change the respective priorities of the parties thereto. It certainly was not a grant of any right to the defendants in the instant case.

We cannot agree that, by the use of the word “Little” in listing the name of the creek from which defendants were to obtain water as Little Eagle Creek the trial court signified or intended to decree that there was any waiver by any party hereto. As stated, we hold that it was an immaterial clerical error.

The defendants also contend that they are entitled to divert through the Hogum Ditch all the natural flow of West Eagle Creek at said point through the arrangement entered into by them with the former owners of the Sparta Ditch. The defendants also claim said right of diversion by prescription; and also claim that plain-

tiffs ought not to be permitted to contest said right by reason of facts constituting estoppel by conduct.

The arrangement with the former owners of the Sparta Ditch, as above shown, consisted of an exchange of waters. For the Sparta Irrigation Company's right to divert water from West Eagle Creek defendants' predecessors exchanged impounded water from Eagle and Looking Glass Lakes.

2-4. As shown above, defendants' predecessors were appropriators subsequent to the Sparta Irrigation Company and to plaintiffs herein. A subsequent appropriator may assert the right to take the waters of the stream from which the prior appropriation has been made and give the prior appropriator in return therefor other water from a different source, but of like quantity and quality delivered at such a place that the prior appropriator can make full use thereof without being injured in any way. 67 C. J. Waters, p. 1018, § 445, citing *Mt. Shasta Power Corporation v. McArthur*, 109 Cal. App. 171, 292 P. 549, and *United States v. Caldwell*, 64 Utah 490, 231 P. 434.

“The appropriation of water to a beneficial use is founded upon the rule of necessity, which, when satisfied, becomes the measure of the right, whereupon subsequent appropriators may use the surplus of that to which the prior appropriator is entitled, when not necessary to his use.” *Mattis v. Hosmer*, 37 Or. 523, 529, 530, 62 P. 17, 19.

“An owner of a water right by prior appropriation cannot change his point of diversion if such a change will injuriously affect other users on the stream, nor can he sell it separately from the land either to change the point of diversion, to make a new or different use of it to the injury of other users, or to secure the same priority. *In Re North Powder River*, 75 Or. 83, 90, 144 P. 485, 146 P. 475.

5. As to the priority of the right of defendants' predecessors in interest to divert the water of West Eagle Creek, it remained the same after the exchange of the impounded waters for the water from the stream, as before that exchange was made. Defendants' priority remained subsequent and subordinate to the priority of plaintiffs as well as to that of the Sparta Irrigation Company.

* * * "the water being appurtenant to the land to which it was appropriated if transferred to another separately from the land, cannot carry its priority to the new owner, but would become a new appropriation as of that date" *In Re North Powder River*, supra.

By that exchange, defendants acquired no right or interest adverse or prejudicial to plaintiffs' right to the use of the water of West Eagle Creek.

As to defendants' claim that they have acquired a right by prescription superior to that of plaintiffs to divert the water of West Eagle Creek, we think that such claim is not supported by the record.

6. It is elementary that the elements of title by prescription are open, visible and continuous use under a claim of right, adverse to and with the knowledge of the owner.

The supply of impounded water in the same quantity and of the same quality as that of the normal flow of West Eagle Creek in exchange for the right to divert the waters of West Eagle Creek at a point two miles above the point where the impounded waters were brought into that creek was in nowise prejudicial or adverse to the rights of plaintiffs.

The Sparta Irrigation Company made no further use of its ditch or of the water involved in this controversy after the fall of 1926, or the spring of 1927.

It appears from the testimony that the Dry Gulch Ditch Company's ditch was in operation thirty-five years before the trial of this case in the circuit court and has been in continuous operation ever since.

It also appears from the testimony that the Waterbury-Allen Ditch Company's ditch was completed in 1898, and has been in continuous operation ever since.

During these respective intervals of time, these ditch companies, plaintiffs herein, respectively, have operated said ditches by diverting the water of Eagle Creek continuously, openly, visibly and under a claim of right. Not until 1928, when defendants gave them notice, after the discontinuance of operation by the Sparta Irrigation Company, that water impounded by defendants would be furnished only as an accommodation, was there any assertion by defendants of a right to the water of West Eagle Creek hostile or adverse to plaintiffs' right thereto.

Thus it will be seen that, for more than ten years prior to defendants' said notice to plaintiffs of an adverse claim thereto, plaintiffs operated their ditches and diverted the water of Eagle Creek.

This suit was instituted on October 6, 1936. It is not clearly shown that ten years elapsed after the Sparta Irrigation Company discontinued the use of the ditch before the institution of this suit.

In 1928, plaintiffs, being in need of water from Eagle Creek, communicated with defendants and were informed that defendants would turn some water down as an accommodation.

Plaintiffs refused to accept the water merely as a matter of accommodation, and retained counsel to institute proceedings to enjoin and restrain defendants from diverting the water of West Eagle Creek

to plaintiffs' prejudice. An issue of fact is presented with reference to what then occurred.

Plaintiffs contend that by means of a telephonic conversation an agreement was made between plaintiffs' counsel and F. A. Phillips, one of the defendants.

Mr. W. H. Strayer testified, as one of the plaintiffs' counsel, that he told Mr. Phillips by telephone that plaintiffs would institute suit to enjoin defendants from diverting the water of West Eagle Creek, unless it was agreed by defendants that defendants would supply for plaintiffs' use an amount of impounded water equal to the normal flow of West Eagle Creek; and that in answer to that proposition, Mr. Phillips assented to it.

The telephonic conversation, above mentioned, was detailed by Mr. Strayer as a witness for plaintiffs, and the occurrence in Mr. Strayer's office, as stated by him, was corroborated by two other witnesses.

Mr. Phillips denied that such an agreement was made and testified that he had no remembrance of the telephonic conversation. We are impressed with plaintiffs' version of this issue. Mr. Strayer's positive statements outweigh Mr. Phillips' lack of memory. As stated, the instant case was instituted on October 6, 1936, or approximately only eight years after the telephonic conversation between Mr. Strayer and Mr. Phillips.

Mr. J. W. Case testified that on August 19, 1935, at the instance of plaintiffs, he was sworn in as Assistant Water Master for the purpose of seeing "that Looking Glass reservoir lake and Main Eagle Lake furnished as much water as West Eagle would flow". Mr. Case also testified that he went up to Looking Glass Lake first and found that it was already running out and the next day he went up to Main Eagle Lake

and it was running a good flow of water; and that he turned down what he thought would be about half of the lake flow, put boards in it and turned down West Eagle about half of West Eagle water to make about what the lake was furnishing. A day or two later, according to his testimony, Mr. Case went back to the head of the ditch and a board had been taken out and he put it back and put a notice on the head gate, saying to leave it alone. He further testified that after that he again visited Main Eagle Lake and diverted all its water into West Eagle Creek by putting in boards.

7. In the light of the foregoing testimony, we think continuous and adverse use of the water of West Eagle Creek by defendants has not been shown for a sufficient length of time to give defendants title thereto by prescription.

8. Assuming that plaintiffs knew that defendants' predecessors in interest were constructing the reservoirs and feeder ditch mentioned and were improving and repairing Hogum Ditch, and, in doing so, were expending large sums of money, still it would not be inconsistent with plaintiffs' present claim of right to the water of West Eagle Creek or water in like amount and quality from the reservoirs of defendants subject only to the prior right thereto of the Sparta Irrigation Company.

9. The rights of prior appropriators from a stream cannot be impaired by subsequent appropriations of water from its tributaries. 67 C. J., Waters, p. 1006, and cases cited in note 75; Weil, Water Rights of the Western States (3d Ed.) Vol. 1, pp. 3589, § 337; Kinney on Irrigation and Water Rights, Vol. 3, p. 2820.

Plaintiffs and their predecessors in interest were and are prior appropriators from Eagle Creek of which stream West Eagle Creek is a tributary. De-

defendants and their predecessors in interest were and are subsequent appropriators of water from said tributary, hence, defendants have no right to impair, restrict or interfere with plaintiffs' right to the water of West Eagle Creek.

10. Defendants call attention to the distinction between impounded water and water flowing in a natural stream. This distinction is stated in the two cases which defendants cite, namely, *Vaughan v. Kolb*, 130 Or. 506, 280 P. 518, and *Jones v. Warm Springs Irrigation Dist.*, 162 Or. 186, 91 P. 2d 542. In the latter of these two cases, we find the following quotation from Vol. 1, *Wiel, Water Rights* (3rd Ed.) p. 36, § 37.

"The water taken into an artificial structure and reduced to possession is private property during the period of possession. When possession of the actual water or *corpus* has been relinquished or lost, by overflow or discharge after use, property in it ceases; the water becomes again nobody's property and re-enters the negative community, or 'belongs to the public,' just as it was before being taken into the ditch. It has no earmarks to enable its former possessor to follow it and say it is his. The specific water so discharged or escaped is abandoned; not an abandonment of a water-right, but an abandonment of specific portions of water, viz., the very particles that are discharged or have escaped from control."

Confined to the question whether plaintiffs acquired by prescription the right to the waters when impounded or stored in the lakes which were converted by defendants into reservoirs, these two cases sustain defendants' position that plaintiffs did not obtain a prescriptive right to the water so impounded by defendants; but, in the view of the writer, these cases support plaintiffs' claim that while the normal flow

of West Eagle Creek remained the same after as it was before the exchange was made by the Sparta Irrigation Company with defendants whereby the Sparta Irrigation Company received impounded water and defendants diverted water from the stream, plaintiffs' rights to the water of the stream were in nowise adversely affected and therefore plaintiffs had no cause of complaint.

11. In other words, the substitution of impounded water in the same quantity and of the same quality for water normally flowing in the natural stream does not constitute a trespass or infringement upon or a restriction of the rights of lower appropriators.

The distinction between the instant case and the case of *Wood River Power Company, v. Arkoosh*, 37 Idaho, 348, 215 P. 975, is that in the Idaho case defendants sought to change the point of diversion of certain water belonging to one of the defendants from plaintiffs' tailrace to plaintiffs' forebay and claimed the right to divert water in excess of ten inches from plaintiff's forebay, defendants' right to divert ten inches from plaintiffs' forebay not being controverted.

In the case at bar, plaintiffs seek to enjoin defendants from diverting water naturally flowing down a tributary to a stream to the waters of which plaintiffs have a right prior in time to the rights thereto of defendants. There is no claim on plaintiffs' part of a right to divert the waters at the reservoirs constructed by defendants.

Scott v. Fruit Growers Supply Co., 202 Cal. 47, 258 P. 1095, holds that an upper riparian proprietor has no right to divert the water of a tributary to a stream to the prejudice of lower riparian owners, the tributary in that case being Bagwell Springs. Defendant

claimed to have acquired the right by prescription to make such diversion.

The court held that inasmuch as the evidence disclosed that defendant in irrigating his ranch merely diminished the water for a period of from 24 to 48 hours and thereafter the water returned to the creek for the use and benefit of the lower riparian owner, defendant gained no prescriptive right against the lower riparian owners.

The case of *Dontanello v. Gust*, 86 Wash. 268, 150 P. 420, held that the filing of a claim in 1891 to the waters of the spring in suit and the right to conduct the same through an irrigation ditch, the construction in 1902 of a ditch for the purpose of carrying all waters from this spring to his land, the construction of a dam about 250 feet below the spring, which dam was the intake for the ditch, and the operation of said ditch each year beginning with 1892 and continuing until 1915, in which operation all of the water from said spring was diverted into said ditch and used by plaintiff for the irrigation of his land, gave plaintiff title by prescription to the waters of said spring.

12. In *Dontanello v. Gust*, supra, we find the following rule stated:

“In order that title to waters may be acquired by adverse user, it is necessary that during the entire statutory period there shall have been an infringement upon another's right to such an extent that such other would have had a cause of action against the claimant.”

To this point the following cases are cited: *Davis v. Chamberlain*, 51 Or. 304, 98 P. 154; *Perry v. Calkins*, 159 Cal. 175, 113 P. 136; *Ison v. Sturgill*, 57 Or. 109, 109 P. 579, 110 P. 535; and *Smith v. Duff*, 39 Mont. 374, 102 P. 981, 133 Am. St. Rep. 582.

While at this point we are reviewing authorities, cited by defendants, we venture to remark that the legal rule last above quoted from *Dontanello v. Gust*, supra, is invoked by plaintiffs in resisting defendants' claim that defendants have acquired by prescription the right of diversion which plaintiffs seek to enjoin. This rule is applicable for the reason that as long as water equal in quantity and quality to that diverted was being returned to the stream in question above plaintiffs' intake, plaintiffs could have no right of action for infringement, trespass, interference or restriction upon their rights as appropriators of the waters of Eagle Creek and its tributaries.

In defendants' discussion of the exchange contract between the Sparta Irrigation Company and the defendants, it is urged that there are but two appropriations from West Eagle Creek, namely, that of the Sparta Irrigation Company under its 1870 priority and that of defendants under their 1917 priority. That argument is based upon the assumption that plaintiffs waived and relinquished their right to the water of West Eagle Creek by consenting to that portion of the decree which declares that the Sparta Irrigation Company, by its trustee Mr. Grant, shall take all of the water granted to that company from West Eagle Creek. We do not construe that as a waiver or a relinquishment on plaintiffs' part. It was pursuant to an agreement between defendants and the Sparta Irrigation Company that, because defendants sought to divert water from West Eagle Creek at a point above the Sparta Irrigation Company's intake therefrom, the defendants in exchange for that privilege would supply water of like kind and quantity to that of West Eagle Creek's normal flow at a point above the Sparta Irrigation Company's intake therefrom. That agree-

ment was in effect and performed until the Sparta Irrigation Company discontinued its operations in the fall of 1926 or the spring of 1927.

Plaintiffs were not thereby deprived of any water which they would have otherwise received. We think that there were four appropriations from West Eagle Creek besides that of the Sparta Irrigation Company, namely, the appropriation of the Dry Gulch Ditch Company with a priority of 1891; and that of the Dry Gulch Ditch Company with a priority of 1909; the appropriation of the Waterbury-Allen Ditch Company with a priority of 1891, and the appropriation of defendants with a priority of 1917. While an exchange of waters is permitted, such exchange cannot be given the effect of changing priority rights to the extent that one holding an older priority before such exchange thereafter should be deemed no longer the owner of a senior priority but only that of a priority junior to the other party to such exchange.

The decree of the circuit court dismissing this suit is reversed; and a decree is hereby entered herein enjoining and restraining defendants Orin Hutton, Fred A. Phillips, Charles F. Duby, Wayne Phillips and Joseph Jackson, and all persons acting or holding under, by or through them, or any of them, from diverting the water of West Eagle Creek or of Eagle Creek to the prejudice, diminution, impairment or interference with the rights of plaintiffs to the use of the waters of said streams, namely, the right of the Dry Gulch Ditch Company to divert sufficient water to irrigate 572.52 acres of land, but not to exceed a continuous flow of 1/40 of a cubic foot per second per acre with a priority of July 10, 1894; and said Dry Gulch Ditch Company's further right with a priority of August 31, 1909, to divert water from said streams not exceeding 1/80 of a cubic foot

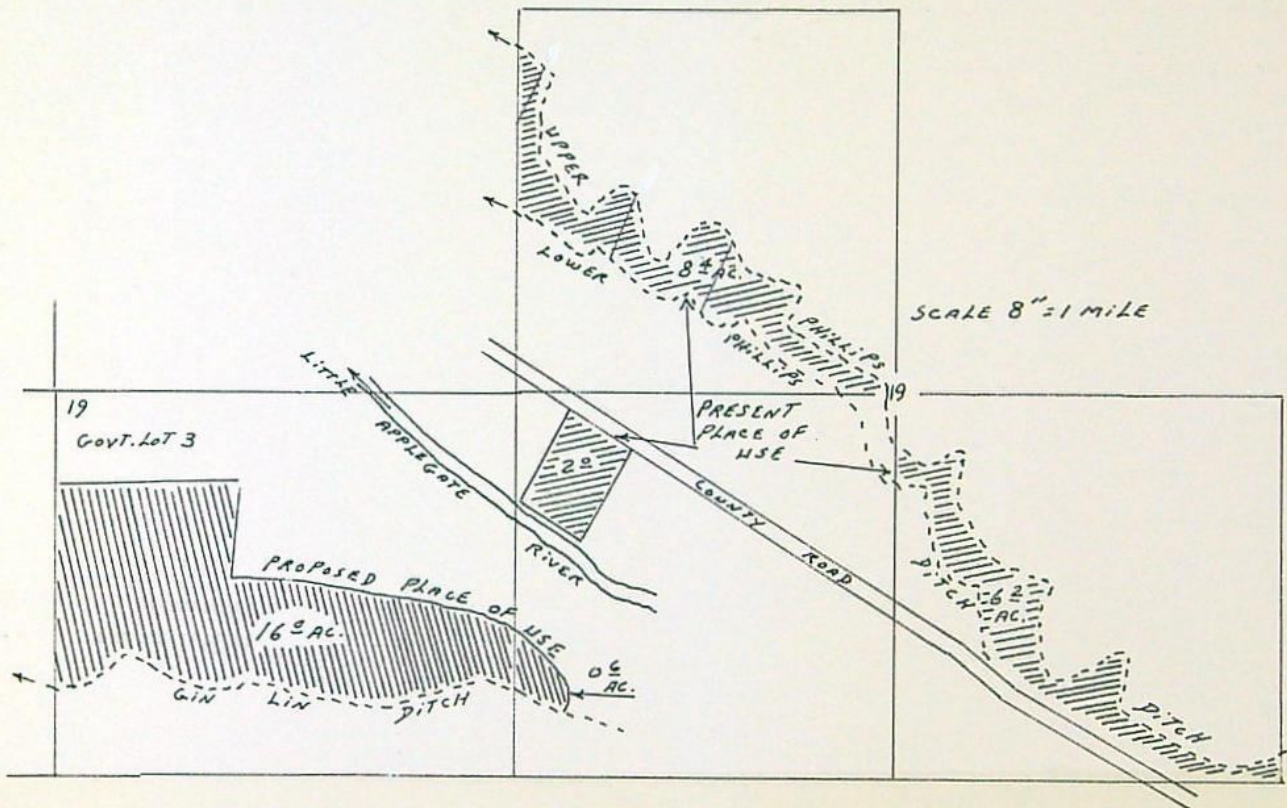
per second per acre for the irrigation of 2779.93 acres of other lands belonging to its stockholders; and the right of the Waterbury-Allen Ditch Company to divert waters from said streams for the benefit of its stockholders sufficient to irrigate 637 acres of land but not to exceed 1/40 of a cubic foot per second per acre with a priority date of 1891.

It is further ordered that plaintiffs have and recover judgment against defendants last hereinabove named for plaintiffs' costs and disbursements herein.

And it is further ordered that, except as above stated, neither party hereto recover costs or disbursements herein.

The late Mr. Justice RAND did not participate in this opinion.

T.395. R.2W. W.M.



- Glen F. & Helen A. Wegner
- Ralph & June Richards
- David & Anita Willard

(Figure 1)

App. Ex E



STATE
ENGINEER

WATER RESOURCES DEPARTMENT

1178 CHEMEKETA STREET N.E. • SALEM, OREGON • 97310 • Phone 378-3739

TOM McCALL
GOVERNOR

April 12, 1973

CHRIS L. WHEELER
State Engineer

File No. 2745
2746

Collins, Redden, Ferris & Velure
Attorneys at Law
225 West Main Street
Medford, Oregon 97501

Attention: John E. Ferris

Dear Mr. Ferris:

This will acknowledge three applications submitted in the name of Stuart V. Hinson for approval of changes in point of diversion and place of use of the water of Little Applegate River, six maps, and fees in the amount of \$105.00 for which our receipts numbered 31798, 31799, 31800, 31801, and 31802 are enclosed.

These applications have been filed as numbers T-2745 and T-2746 and the numbers shown on the application forms. Two are further identified by circled numbers 1 and 2, as these involve the same right and can be filed as one application.

Since the proposed change in point of diversion is over $\frac{1}{4}$ mile, the State Engineer is required to publish notice of the proposed change in a newspaper published and having general circulation in Jackson County. Please designate the newspaper of your choice.

We will need a letter from the First National Bank of Oregon, Medford Branch, as mortgage holders, stating that they have no objection to the water rights being transferred from the lands as listed in these applications.

The applications apparently were prepared on the basis of all lands irrigated from the three ditches, which results in repeating the acreage list and is somewhat confusing.

Checked this with John Ferris } 11/29/76
DLH } 7726115
12/9/76

also called John Ferris 5/13/77 &
advised that appl's had been
revised & are ready to send in,
DLH.

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APR 13 1973

COPY

Collins, Redden, Ferris & Velure
April 12, 1973
Page 2

The lands south of the river were, according to the adjudication map, irrigated from the Gin Lin Ditch and the lands north of the river irrigated through the Upper Phillips or Lower Phillips Ditch.

The 1898 and 1857 rights were not established under State Engineer's Permit and the 1929 right was, so items 9 and 11 need changing. The reference corner was omitted from item 4 and Section 19 is listed in item 13 instead of Section 20, if the map is correct. Also, Certificate 16400 has been superseded by Certificate 38773.

Instead of detailing suggested changes, I have used the records and the applications and maps submitted to prepare two new applications which I believe correctly describe the intended changes. The application for change of the 1929 right lists both Phillips Ditches with no division of lands between the two. I assume the land above the Lower Phillips Ditch will be irrigated from the Upper Ditch and the land below the Lower Phillips Ditch will be irrigated from that ditch and have prepared the application accordingly.

We will need a statement that Mr. Hinson owns all the land described in Certificate 38773 or an agreement with other owners as to a division by priority date.

If you agree with the applications I have prepared, Mr. Hinson should execute the affidavits of applicant and return the applications.

Mr. David Hendrix, our Watermaster in Medford, will receive all of this information in case you wish to discuss any question with him.

I am also returning the original applications along with the maps. On return of the applications and completed superseding applications, we will promptly prepare a notice for publication.

Very truly yours,

Trevor Jones
Assistant

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TJ:bjs
Enclosures
cc: David C. Hendrix, Watermaster

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JUL 16 1973

STATE ENGINEER
SALEM, OREGON

T-2745

*This Application has been
recommended in May 1977
R67*

Application for Transfer of Water Right

To the STATE ENGINEER OF OREGON:

I, Stuart V. Hinson (Name of applicant)

of Route 2, Box 25, Jacksonville (Postoffice), County of Jackson

State of Oregon, do hereby make application for change in point of

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

1. The source of present water right is Little Applegate River (Name of stream)

2. The use to which the water is applied is irrigation and domestic use (Irrigation; Mining; Power; Manufacturing; etc.)

3. The name of the ditch, canal or pipe line is ① Upper & Lower Phillips Ditches
② Gin Lin Ditch

4. The point of diversion is located ① Upper 680 S. 9 W. 215 ft. S. and 790 ft. W. from the N 1/4
① Lower ② 1430 (N 1/4 S.) 1905 (E 1/4 or W.) E 1/4

corner of Section 29 (Section or subdivision) being within the ① NE 1/4 NW 1/4
② NW 1/4 NE 1/4

of Section 29 Tp. 39S R. 2W W. M., in the County of Jackson
(No. N. or S.) (No. E. or W.)

5. List the number of acres irrigated in each smallest legal subdivision (40-acre tract) involved in this transfer. If for any other use, indicate place of use.

Twp.	Range	Sec.	NE 1-4				NW 1-4				SW 1-4				SE 1-4					
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4		
39S	2W	19	PRIORITY Sept. 1, 1857						10.3	9.0	10.6				1.5			5.7		①
					1898								1.0						②	
					1898										1.0				①	

NOTE: If you own less than 40-acre tracts, attach a description of your land as it appears in your deed.

(Attach separate sheet if necessary)

*1857
37.1 ac*

*any other
lands*

6. Are you the legal owner of the above described lands? yes (If not owner, explain your interest)

7. Has water been used beneficially for the purposes indicated herein during the past 5 years? yes

8. What is the date of priority of your water right? see Item 5

9. Was your water right acquired by State Engineer's Permit? No If so, give number (Yes or No)

of permit

10. Do you hold a water right certificate? Yes If so, give number of certificate 38773
(Yes or No)

11. Was your water right determined by State Engineer's order of Determination or Decree of Court?
Yes If so, give title of proceedings Rogue River (Vol. 4, p. 30 cd 3)
(Yes or No)

12. Is the water right recorded in your name? A. S. Kleinhammer
(If not, give name)

13. I propose to transfer the water right to the following described lands: (Do not answer if your application is for change in point of diversion only.)

Twp.	Range	Sec.	NE 1-4				NW 1-4				SW 1-4				SE 1-4			
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$
39S	2W	19			1.5		7.7	27.9	1.5		7.7	27.9						9/1/1857
		19															2.0	1898

39L 90.

(Attach separate sheet if necessary)

NOTE: Answer questions 14, 15, 16 and 17, if the application is for change in point of diversion.

14. The proposed point of diversion is located 1430 ft. N. and 1905 ft. W. from the E $\frac{1}{4}$
(N. or S.) (E. or W.)
 corner of Sec. 29 being within the NW $\frac{1}{4}$, NE $\frac{1}{4}$ of Section 29 Tp. 39S R. 2W W. M.,
(Smallest legal subdivision) (No. N. or S.) (No. E. or W.)
 in the county of Jackson. The name of the ditch to be used is Gin. Lin

15. Are you the owner of the land on which the proposed point of diversion is to be located? yes

16. If not the owner of the land on which the proposed point of diversion is to be located, give the name and address of owner and submit evidence of your right-of-way for your proposed ditch, canal, or pipe line.

17. Are there any diversions between your present point of diversion and the proposed point of diversion? no

NOTE: Answer questions 18 and 19 if application is for change in use or place of use.

18. Are the lands from which you propose to transfer your water right free of all encumbrances, including taxes, mortgages, liens, etc.? no
(Answer Yes or No)

19. If not, give below a description of existing encumbrances:

NATURE OF ENCUMBRANCE	HELD BY	AMOUNT
Mortgage	1st National Bank of Oregon (Medford)	\$30,000.00

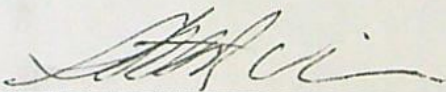
20. Reasons for the proposed changes are more economical use of water rights

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STATE ENGINEER
SALEM OREGON

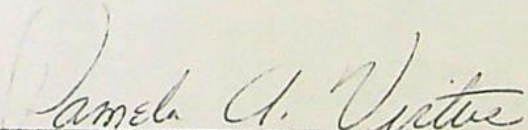
STATE OF OREGON)
) ss
County of Jackson)

I, STUART V. HINSON, do hereby certify that I am the owner of all of the properties listed on these two applications for transfer of Water Rights.

X 

STUART V. HINSON

Subscribed and sworn to before me this 13th day of July, 1973.

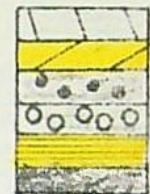
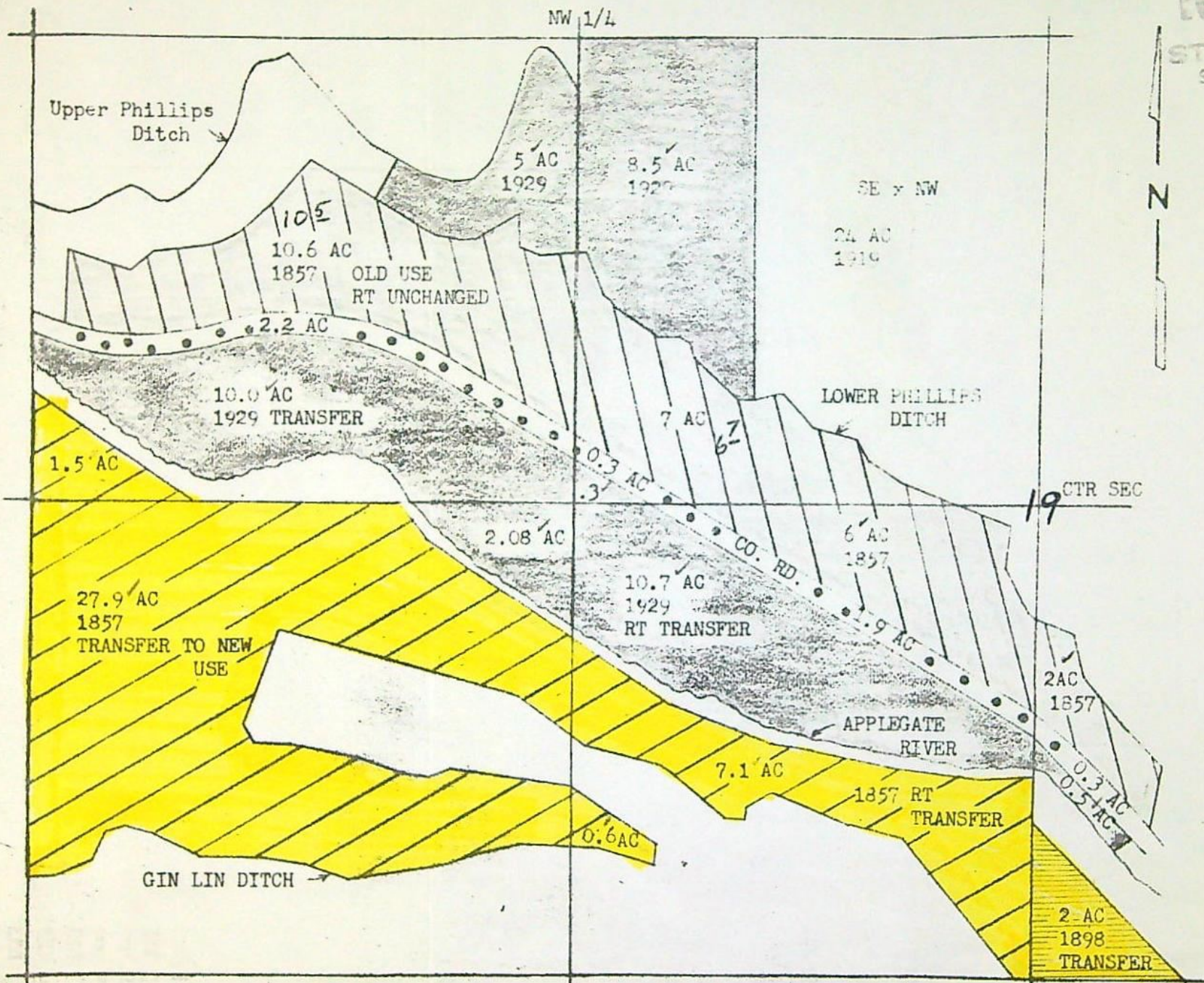


NOTARY PUBLIC FOR OREGON
My Commission Expires: 2/19/77

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STATE ENGINEER T - 2745
SALEM OREGON T - 2746

T# 2745
"To"



(Diagonal lines)	1857 WATER RT NO CHANGE
(Stippling)	1857 WATER RT TRANSFER THIS APPLICATION
(Circles)	1857 " " PENDING TRANSFER (T-2580)
(Solid yellow)	1898 WATER RT NO CHANGE
(Solid yellow)	1898 " " TRANSFER THIS APPLICATION
(Solid yellow)	1929 " " " " " "

FOR IRRIGATION PURPOSES ONLY

SEC. 19, T39S, R2W, WM

for
STUART HINSON

Scale, 1 in. = 1400 ft.
September 6, 1972

Edward McGinty
Medford, Oregon

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Edward A. McGinty
 OREGON
 JULY 10, 1953
 EDWARD A. MCGINTY

AFFIDAVIT OF APPLICANT

STATE OF OREGON,

County of Jackson

} ss.

I, STUART V. HINSON, the applicant herein, being first duly sworn, depose and say that I have read the above and foregoing application for transfer of water right; that I know the contents thereof and that the statements therein made are true and correct to the best of my knowledge and belief.

In Witness Whereof, I have hereunto set my hand this 13 day of July, 1973.

[Signature of Stuart V. Hinson]

(Name of applicant)

Subscribed and sworn to before me this 13th day of July, 1973.

[Signature of Pamela A. Virtue]

NOTARY PUBLIC FOR OREGON

[Notarial Seal]

My commission expires 2/19/77

Remarks

THIS APPLICATION MUST BE ACCOMPANIED BY A MAP SHOWING THE LOCATION OF THE POINT OF DIVERSION, PLACE OF USE AND WORKS UTILIZED UNDER THE PRESENT WATER RIGHT. THE MAP SHOULD ALSO SHOW THE NEW POINT OF DIVERSION OR PLACE OF USE, AS THE CASE MAY BE.

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JUL 16 1973

STATE ENGINEER
SALEM OREGON

*This application
has been amended
May 1977. DLX*

Application for Transfer of Water Right

To the STATE ENGINEER OF OREGON:

I, Stuart V. Hinson
(Name of applicant)

of Route 2, Box 25, Jacksonville
(Postoffice), County of Jackson

State of Oregon, do hereby make application for change in point of

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

1. The source of present water right is Little Applegate River
(Name of stream)

2. The use to which the water is applied is irrigation and domestic use
(Irrigation; Mining; Power; Manufacturing; etc.)

3. The name of the ditch, canal or pipe line is Gin Lin Ditch

4. The point of diversion is located 1430 ft. N. and 1905 ft. W. from the E.
(N. or S.) (E. or W.)

corner of Section 29 being within the NW 1/4, NE 1/4
(Section or subdivision)

of Section 29 Tp. 39 S. R. 2 W. W. M., in the County of Jackson
(No. N. or S.) (No. E. or W.)

5. List the number of acres irrigated in each smallest legal subdivision (40-acre tract) involved in this transfer. If for any other use, indicate place of use.

Twp.	Range	Sec.	NE 1-4				NW 1-4				SW 1-4				SE 1-4			
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4
39S	2W	19					2.08			12.7	30.67							

NOTE: If you own less than 40-acre tracts, attach a description of your land as it appears in your deed. 45.45 ac
200 122 3067 0.57 cfs

(Attach separate sheet if necessary)

*among other
lands*

6. Are you the legal owner of the above described lands? yes
(If not owner, explain your interest)

7. Has water been used beneficially for the purposes indicated herein during the past 5 years? yes

8. What is the date of priority of your water right? November 12, 1929

9. Was your water right acquired by State Engineer's Permit? yes If so, give number
(Yes or No)
of permit 9389

10. Do you hold a water right certificate? Yes If so, give number of certificate 24479
(Yes or No)

11. Was your water right determined by State Engineer's order of Determination or Decree of Court?

No If so, give title of proceedings
(Yes or No)

12. Is the water right recorded in your name? First National Bank & Armin Richter
(If not, give name)

13. I propose to transfer the water right to the following described lands: (Do not answer if your application is for change in point of diversion only.)

Twp.	Range	Sec.	NE 1-4				NW 1-4				SW 1-4				SE 1-4				
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
39S	2 W	19						10.0	0.3	10.7	2.08					0.5			(1)
		19						5.0	8.5		8.37								(2)
		20									8.37								(2)

(Attach separate sheet if necessary)

NOTE: Answer questions 14, 15, 16 and 17, if the application is for change in point of diversion.

(1) Lower Phillips 215 S. 790 W.

14. The proposed point of diversion is located 680 ft. S. and 9 ft. W. from the N $\frac{1}{4}$
 corner of Sec. 29 being within the Upper Phillips of Section 29 Tp. 39S R. 2W W. M.,
(Smallest legal subdivision) (N. or S.) (E. or W.)

in the county of Jackson The name of the ditch to be used is (1) Lower Phillips
 (2) Upper Phillips

15. Are you the owner of the land on which the proposed point of diversion is to be located? Yes

16. If not the owner of the land on which the proposed point of diversion is to be located, give the name and address of owner and submit evidence of your right-of-way for your proposed ditch, canal, or pipe line.

17. Are there any diversions between your present point of diversion and the proposed point of diversion? No

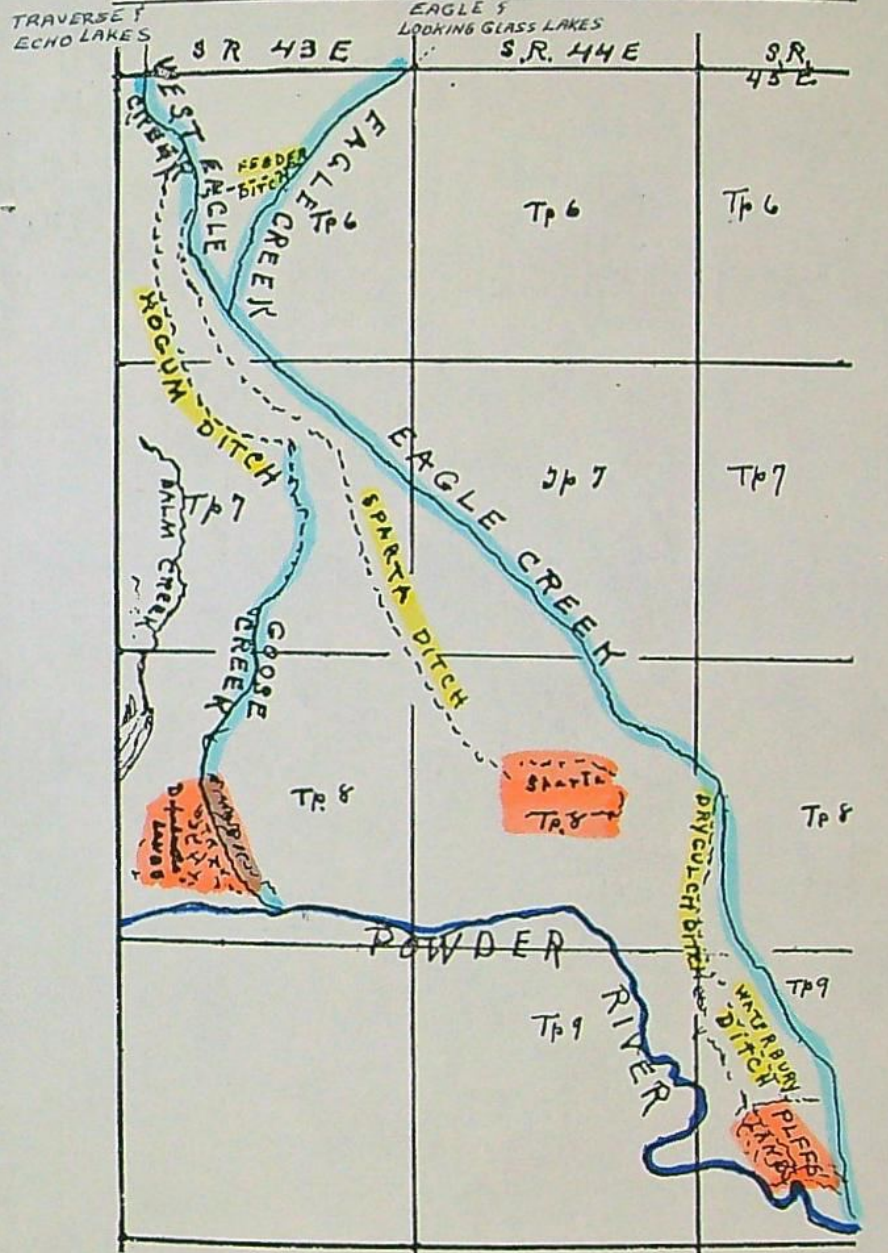
NOTE: Answer questions 18 and 19 if application is for change in use or place of use.

18. Are the lands from which you propose to transfer your water right free of all encumbrances, including taxes, mortgages, liens, etc.? No
(Answer Yes or No)

19. If not, give below a description of existing encumbrances:

NATURE OF ENCUMBRANCE	HELD BY	AMOUNT
Mortgage	1st National Bank of Oregon (Medford)	\$30,000.00

20. Reasons for the proposed changes are more economical use of water rights



T# 2746
"To"

SHEET 1

NW 1/4

Upper Phillips Ditch

NO change

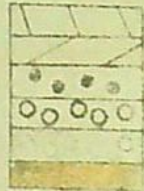
5 AC
1929

8.5 AC
1929

SW x NW

24 AC
1919

N



1857 WATER RT	NO CHANGE
1857 WATER RT	TRANSFER THIS APPLICATION
1857 " "	PENDING TRANSFER
1898 WATER RT	NO CHANGE
1898 " "	TRANSFER THIS APPLICATION
1929 " "	" "

1929

10.6 AC
1857

OLD USE
RT UNCHANGED

22 AC

10.0 AC
1929 TRANSFER

LOWER PHILLIPS DITCH

7 AC

19 CTR SEC

1.5 AC

2.08 AC

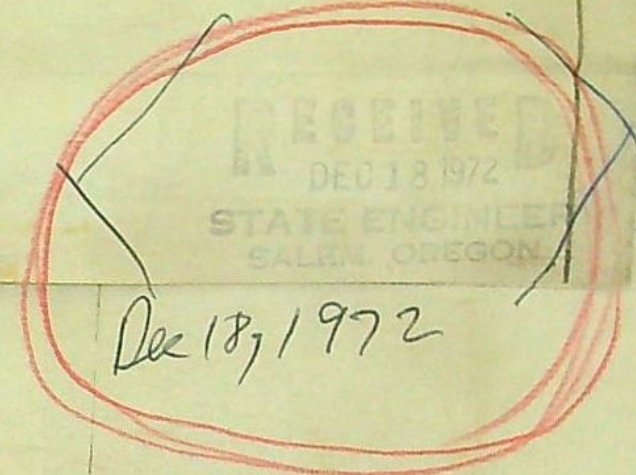
6 AC
1857

10.7 AC
1929
RT TRANSFER

7.1 AC

1857 RT
TRANSFER

27.9 AC
1857
TRANSFER TO NEW
USE



Dec 18, 1972

GIN LIN DITCH

0.6 AC

APPLEGATE RIVER

2 AC
1857

NW X SE

0.3 AC

1898
2 AC

1 AC 1898
TRANSFER TO NW
APPLICATION

8.37 AC 1929
TRANSFER TO HER

N

20 AC 1898
164 →
NO CHANGE

18 AC 1857
NO CHANGE

PENDING TRANSFER
1857 4.7 AC

SW X SE

8 AC
1857
NO CHANGE

LITTLE APPLEGATE RIVER

SW X SE

SE X SE

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Edward A. McGinty
OREGON
JULY 10, 1953
EDWARD A. MCGINTY
301

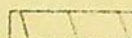
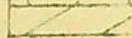
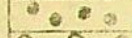
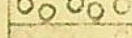


1/4

S 19
S 30

S 20
S 29

T# 2746
" 70"

SHEET 1

	1857 WATER RT NO CHANGE
	1857 WATER RT TRANSFER THIS APPLICATION
	1857 " " PENDING TRANSFER
	1898 WATER RT NO CHANGE
	1898 " " TRANSFER THIS APPLICATION
	1929 " " " " " "

RECEIVED
DEC 18 1972
STATE ENGINEER
SALEM, OREGON

Dec 18, 1972

SHEET 2

FOR
IRRIGATION PURPOSES
ONLY
SEC 19, T29S, R2W, WM
for
STUART HINSON

Scale 1 in. = 400 ft.
September 6, 1972

Edward A. McGinty
Medford, Oregon

NW X SE

NW X W

1 AC 1898
TRANSFER TO NW
APPLICATION

8.37 AC 1929 WATER RT.
TRANSFER TO HERE APPLIC.

PENDING TRANSFER
1857 4.7 AC

AC 1898
CHANGE

18 AC 1857
NO CHANGE

SW X SW

8 AC
1857
NO CHANGE

SW X SE

SE X SE

REGISTERED
PROFESSIONAL
LAND SURVEYOR

S 19 S 20
S 30 S 29

CO. RD.

NO CHANGE
1.5

EDWARD A. MCGINTY
OREGON
JULY 10, 1953
EDWARD A. MCGINTY
501

AFFIDAVIT OF APPLICANT

STATE OF OREGON,

County of Jackson } ss.

I, STUART V. HINSON, the applicant herein, being first duly sworn, depose and say that I have read the above and foregoing application for transfer of water right; that I know the contents thereof and that the statements therein made are true and correct to the best of my knowledge and belief.

In Witness Whereof, I have hereunto set my hand this 13 day of July, 1973.

X [Signature] (Name of applicant)

Subscribed and sworn to before me this 13th day of July, 1973

[Notarial Seal]

[Signature] NOTARY PUBLIC FOR OREGON

My commission expires 2/19/77

Remarks

THIS APPLICATION MUST BE ACCOMPANIED BY A MAP SHOWING THE LOCATION OF THE POINT OF DIVERSION, PLACE OF USE AND WORKS UTILIZED UNDER THE PRESENT WATER RIGHT. THE MAP SHOULD ALSO SHOW THE NEW POINT OF DIVERSION OR PLACE OF USE, AS THE CASE MAY BE.

[Handwritten flourish]

S U HINSON

Helen Wagner
Helen Wagner

June Richards

Ralph J. Richards

David L. Hendrix

David A. Willard

Edward Lewis

Robert M. Stout

App. 1st. Stuart HINSON

Dir by Hammack

Identify sigs on Ex B C D C and current appls. Received

App. Ex 'F' deed (8x11) ✓

" Ex G deed (5 1/2 x 8) ✓

" Ex H deed ("x") ✓

" Ex I deed ("x") ✓

" Ex J statement by Hinson 170 OR 656 (1943) NOT Received X

" Ex K 5 Receipts by S.E. ✓

X by Howser

Prot Ex A-A

Received

App. 2nd David C. HENDRIX, WM.

Dir by Hammack

Re: Exhibits App "E" § WRD 1 & 2

77 amended apps cover less A. of same lands as
on 73 amended apps.

Dave's observations of lands between the upper and
lower Phillips ditches

Appl. 3rd Edward M. Lewis

Dir by Hammach.

App Ex. "L" Deed

Appl. 4th Robert Start

Dir by Hammack

App Ex "M" deed. Start to Williard
Upper ditch 1929 priority

APPL EX "N"

- EX "O"

Protestants 1st (out of turn, following D. Hendrix.)

Glen F. Wegner

Dir. by Howser

Hendrix told him water rights pass with property
w/out being in deed - that pri was 1857

Protestants 2nd: Ralph J. Richards

Dir by Howser

Richards property identified by yellow lines
on Prot. Ex B-B

Prot Ex C-C "Special Assessments"

Aware of pending transf prior to purchase

Protestants 3rd

David A Willard

Dir. by Howser

Effect of approval of apps on Willard
as result of Δ of pri on lands between
Upper and Lower Phillips ditches 1857 \rightarrow 1929

Prot. Ex D-D

Recall of Stuart Hinson

What loss of irr under 1929 right as compared
to

Richard 1.3

Wegner 2.1

Recall David Hendrix

Wegner advised

LITTLE ARLEGATE RD

N ↑

13 18
24 19

18 19

18 17
19 20

SVH

LAMBERT SVH

HUFFMAN

WENNER

RICHARD

WILLARD

TL 201

202

203

204

205

TL 220

TL 214

Postwick

Upper PHILLIPS

LOWER PHILLIPS

← West

Red Line Lower Phillips Ditch

Green Line upper Phillips Ditch

1929 above Lower Phillips

South ↓

24 19
25 30

19 20
30 29

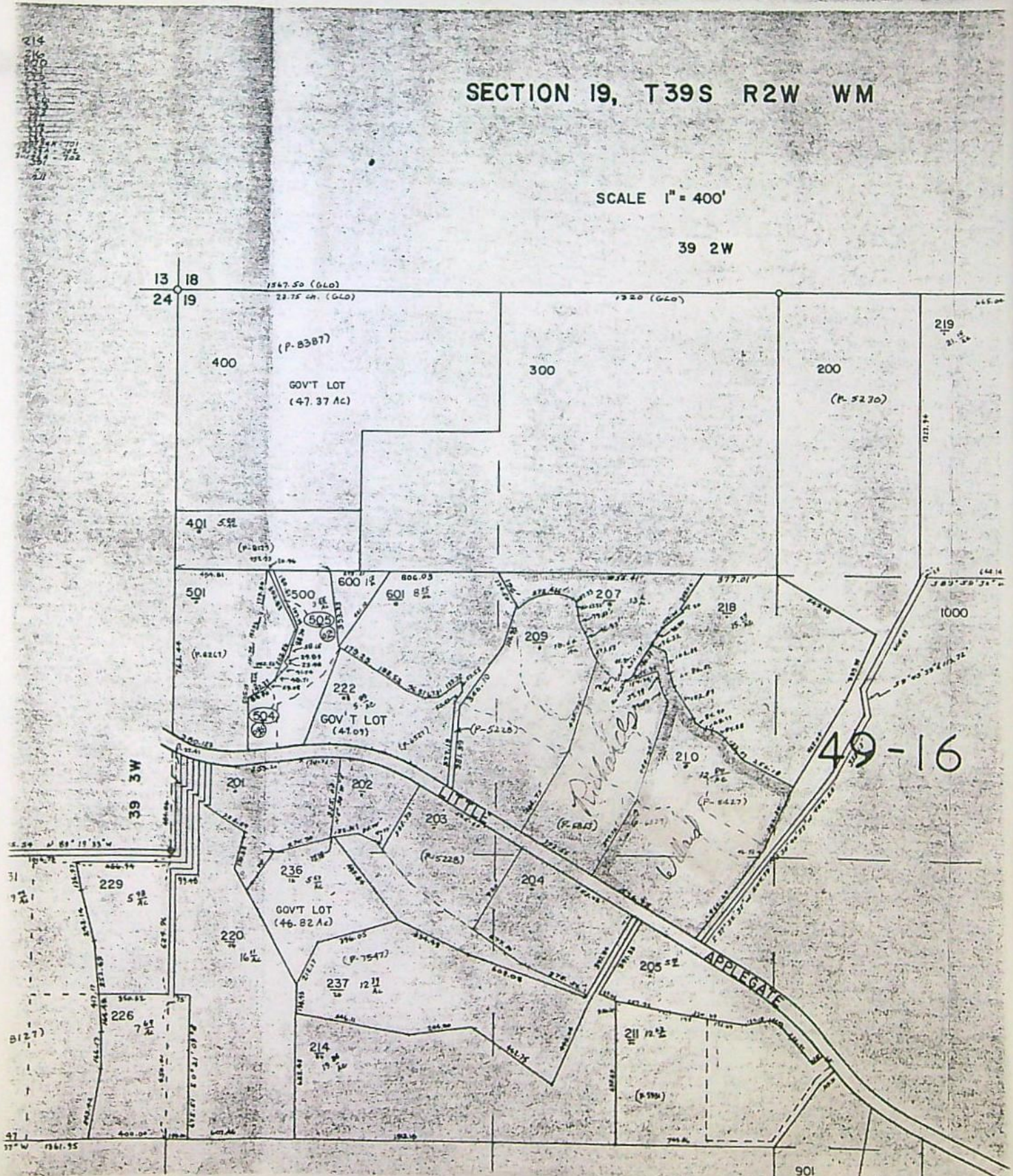
25 30

30 29

SECTION 19, T39S R2W WM

SCALE 1" = 400'

39 2W



RECEIVED
DEC 18 1972
STATE ENGINEER
SALEM OREGON

Application for Transfer of Water Right

To the STATE ENGINEER OF OREGON:

I, Stuart V. Hinson (Name of applicant)

of Route 2 Box 25 Jacksonville (Postoffice), County of Jackson

State of Oregon, do hereby make application for change in point of

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

1. The source of present water right is Little Applegate River (Name of stream)

2. The use to which the water is applied is irrigation and domestic use (Irrigation; Mining; Power; Manufacturing; etc.)

3. The name of the ditch, canal or pipe line is upper Phillips

4. The point of diversion is located 680 ft. S and 9 ft. W from the N 1/4 (N. or S.) (E. or W.)

corner of Sec 29 (Section or subdivision) being within the NE 1/4 NW 1/4

of Section 29 Tp. 39E R. 2W W. M., in the County of Jackson (see attached sheets)
(No. N. or S.) (No. E. or W.)

5. List the number of acres irrigated in each smallest legal subdivision (40-acre tract) involved in this transfer. If for any other use, indicate place of use.

Twp.	Range	Sec.	NE 1-4				NW 1-4				SW 1-4				SE 1-4			
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4
39	2W	19						10.3	9.0	10.6				1.5		5.7		

NOTE: If you own less than 40-acre tracts, attach a description of your land as it appears in your deed.

208 152 166

15 72

(Attach separate sheet if necessary)

0.93 acs
many other lands
37 acres

6. Are you the legal owner of the above described lands? yes (If not owner, explain your interest)

7. Has water been used beneficially for the purposes indicated herein during the past 5 years? yes

8. What is the date of priority of your water right? September 1, 1857

9. Was your water right acquired by State Engineer's Permit? yes If so, give number (Yes or No)

of permit 9389

V. 1.30
38773

10. Do you hold a water right certificate? yes If so, give number of certificate 16400
(Yes or No)

11. Was your water right determined by State Engineer's order of Determination or Decree of Court?

No If so, give title of proceedings
(Yes or No)

12. Is the water right recorded in your name? No, as A. S. Kleinhammer
(If not, give name)

13. I propose to transfer the water right to the following described lands: (Do not answer if your application is for change in point of diversion only.)

Twp.	Range	Sec.	NE 1-4				NW 1-4				SW 1-4				SE 1-4			
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$
39	2W	19						1.5			7.7	27.9						

(Attach separate sheet if necessary)

NOTE: Answer questions 14, 15, 16 and 17, if the application is for change in point of diversion.

14. The proposed point of diversion is located 1430 ft. N and 1905 ft. W from the
(N. or S.) (E. or W.)
corner of Sec. 29 being within the NW 1/4, NE 1/4 of Section 29 Tp. 39S R. 2W W. M.,
(Smallest legal subdivision) (No. N. or S.) (No. E. or W.)
in the county of Jackson The name of the ditch to be used is Gin Lin Ditch

15. Are you the owner of the land on which the proposed point of diversion is to be located? yes

16. If not the owner of the land on which the proposed point of diversion is to be located, give the name and address of owner and submit evidence of your right-of-way for your proposed ditch, canal, or pipe line.

17. Are there any diversions between your present point of diversion and the proposed point of diversion? no

NOTE: Answer questions 18 and 19 if application is for change in use or place of use.

18. Are the lands from which you propose to transfer your water right free of all encumbrances, including taxes, mortgages, liens, etc.? no
(Answer Yes or No)

19. If not, give below a description of existing encumbrances:

NATURE OF ENCUMBRANCE	HELD BY	AMOUNT
Mortgage	1st National Bank of Oregon (Medford)	\$30,000.00

20. Reasons for the proposed changes are more economical use of water rights

RECEIVED
DEC 18 1972
STATE ENGINEER
SALEM, OREGON

Application for Transfer of Water Right

To the STATE ENGINEER OF OREGON:

I, Stuart V. Hinson (Name of applicant)

of Route 2 Box 25 Jacksonville (Postoffice), County of Jackson

State of Oregon, do hereby make application for change in point of

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

1. The source of present water right is Little Applegate River (Name of stream)

2. The use to which the water is applied is Irrigation and domestic use (Irrigation; Mining; Power; Manufacturing; etc.)

3. The name of the ditch, canal or pipe line is Gin Lin Ditch

4. The point of diversion is located 1430 ft. N (N. or S.) and 1905 ft. W (E. or W.) from the E 1/4

corner of Sec 29 (Section or subdivision) being within the NW 1/4 NE 1/4

of Section 29 Tp. 39S R. 2W W. M., in the County of Jackson (No. N. or S.) (No. E. or W.)

5. List the number of acres irrigated in each smallest legal subdivision (40-acre tract) involved in this transfer. If for any other use, indicate place of use.

Twp.	Range	Sec.	NE 1-4				NW 1-4				SW 1-4				SE 1-4			
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4
39	2W	19						2.08			12.7	3067						

0.57 cfs

among other lands 45.48 acres

NOTE: If you own less than 40-acre tracts, attach a description of your land as it appears in your deed.

(Attach separate sheet if necessary)

6. Are you the legal owner of the above described lands? yes (If not owner, explain your interest)

7. Has water been used beneficially for the purposes indicated herein during the past 5 years? yes

8. What is the date of priority of your water right? November 12, 1929

9. Was your water right acquired by State Engineer's Permit? Yes (Yes or No) If so, give number of permit 9389

App. Ex B

10. Do you hold a water right certificate? Yes If so, give number of certificate 24479 ^{Vol. 17}
(Yes or No)

11. Was your water right determined by State Engineer's order of Determination or Decree of Court?

Yes If so, give title of proceedings State Engineer Order of Determination
(Yes or No)

12. Is the water right recorded in your name? No, First National Bank of Ashland
(If not, give name)

13. I propose to transfer the water right to the following described lands: (Do not answer if your application is for change in point of diversion only.)

Twp.	Range	Sec.	NE 1-4				NW 1-4				SW 1-4				SE 1-4			
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$
39	2W	19						15.0	8.8	10.7	2.08					0.5		
39	2W	19									8.37							

(Attach separate sheet if necessary)

NOTE: Answer questions 14, 15, 16 and 17, if the application is for change in point of diversion.

14. The proposed point of diversion is located 680 ft. S and 9 ft. W from the N 1/4 corner of Sec 29 being within the NE 1/4 NW 1/4 Section 29 Tp. 39S R. 2W W. M.,
(N. or S.) (E. or W.) (No. N. or S.) (No. E. or W.)
 in the county of Upper Phillips & Lower Phillips
(Smallest legal subdivision) The name of the ditch to be used is (see attached sheet)

15. Are you the owner of the land on which the proposed point of diversion is to be located? Yes

16. If not the owner of the land on which the proposed point of diversion is to be located, give the name and address of owner and submit evidence of your right-of-way for your proposed ditch, canal, or pipe line.

17. Are there any diversions between your present point of diversion and the proposed point of diversion? NO

NOTE: Answer questions 18 and 19 if application is for change in use or place of use.

18. Are the lands from which you propose to transfer your water right free of all encumbrances, including taxes, mortgages, liens, etc.? No
(Answer Yes or No)

19. If not, give below a description of existing encumbrances:

NATURE OF ENCUMBRANCE	HELD BY	AMOUNT
Mortgage	1st National Bank of Oregon (Medford)	\$30,000.00

20. Reasons for the proposed changes are more economical use of water rights

10. Do you hold a water right certificate? Yes If so, give number of certificate 24479
(Yes or No)

11. Was your water right determined by State Engineer's order of Determination or Decree of Court?

Yes If so, give title of proceedings State Engineer Order of Determination
(Yes or No)

12. Is the water right recorded in your name? No, First National Bank of Ashland
(If not, give name)

13. I propose to transfer the water right to the following described lands: (Do not answer if your application is for change in point of diversion only.)

Twp.	Range	Sec.	NE 1-4				NW 1-4				SW 1-4				SE 1-4			
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$
39	2W	19						15.0	8.8	10.7	2.08					0.5		
39	2W	19									8.37							

(Attach separate sheet if necessary)

NOTE: Answer questions 14, 15, 16 and 17, if the application is for change in point of diversion.

14. The proposed point of diversion is located 215 ft. S and 790 ft. W from the N 1/4 corner of Sec 29 being within the NE 1/4 NW 1/4 Section 29 Tp. 39S R. 2W W. M.,
(Smallest legal subdivision) (N. or S.) (E. or W.) (No. N. or S.) (No. E. or W.)
 in the county of Jackson The name of the ditch to be used is Upper Phillips & Lower Phillips

15. Are you the owner of the land on which the proposed point of diversion is to be located?

16. If not the owner of the land on which the proposed point of diversion is to be located, give the name and address of owner and submit evidence of your right-of-way for your proposed ditch, canal, or pipe line.

17. Are there any diversions between your present point of diversion and the proposed point of diversion? no

NOTE: Answer questions 18 and 19 if application is for change in use or place of use.

18. Are the lands from which you propose to transfer your water right free of all encumbrances, including taxes, mortgages, liens, etc.? NO
(Answer Yes or No)

19. If not, give below a description of existing encumbrances:

NATURE OF ENCUMBRANCE	HELD BY	AMOUNT
Mortgage	1st National Bank of Oregon (Medford)	\$30,000.00

20. Reasons for the proposed changes are more economical use of water rights

AFFIDAVIT OF APPLICANT

STATE OF OREGON,

County of Jackson

} ss.

I, Stuart V. Hinson, the applicant herein, being first duly sworn, depose and say that I have read the above and foregoing application for transfer of water right; that I know the contents thereof and that the statements therein made are true and correct to the best of my knowledge and belief.

In Witness Whereof, I have hereunto set my hand this 15th day of November, 1972

[Signature of Stuart V. Hinson]

(Name of applicant)

Subscribed and sworn to before me this 15th day of November, 1972

[Notarial Seal]

[Signature of Charles Munnis]

NOTARY PUBLIC FOR OREGON

My commission expires 6-12-76

Remarks

THIS APPLICATION MUST BE ACCOMPANIED BY A MAP SHOWING THE LOCATION OF THE POINT OF DIVERSION, PLACE OF USE AND WORKS UTILIZED UNDER THE PRESENT WATER RIGHT. THE MAP SHOULD ALSO SHOW THE NEW POINT OF DIVERSION OR PLACE OF USE, AS THE CASE MAY BE.

Application for Transfer of Water Right

To the STATE ENGINEER OF OREGON:

I, Stuart V. Hinson
(Name of applicant)

of Route 2 Box 25 Jacksonville County of Jackson
(Postoffice)

State of Oregon do hereby make application for change in point of

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

1. The source of present water right is Little Applegate River
(Name of stream)

2. The use to which the water is applied is irrigation and domestic use
(Irrigation; Mining; Power; Manufacturing; etc.)

3. The name of the ditch, canal or pipe line is lower Phillips

4. The point of diversion is located 215 ft. S and 790 ft. W from the N 1/4
(N. or S.) (E. or W.)

corner of Sec. 29 being within the NE 1/4 NW 1/4
(Section or subdivision)

of Section 29 Tp. 39S R. 2W W. M., in the County of Jackson
(No. N. or S.) (No. E. or W.) (see attached sheets)

5. List the number of acres irrigated in each smallest legal subdivision (40-acre tract) involved in this transfer. If for any other use, indicate place of use.

Twp.	Range	Sec.	NE 1-4				NW 1-4				SW 1-4				SE 1-4			
			NE ¹ / ₄	NW ¹ / ₄	SW ¹ / ₄	SE ¹ / ₄	NE ¹ / ₄	NW ¹ / ₄	SW ¹ / ₄	SE ¹ / ₄	NE ¹ / ₄	NW ¹ / ₄	SW ¹ / ₄	SE ¹ / ₄	NE ¹ / ₄	NW ¹ / ₄	SW ¹ / ₄	SE ¹ / ₄
39	2W	19						10.3	9.0	10.6			1.5			5.7		

NOTE: If you own less than 40-acre tracts, attach a description of your land as it appears in your deed.

(Attach separate sheet if necessary)

6. Are you the legal owner of the above described lands? yes
(If not owner, explain your interest)

7. Has water been used beneficially for the purposes indicated herein during the past 5 years? yes

8. What is the date of priority of your water right? September 1, 1857

9. Was your water right acquired by State Engineer's Permit? yes If so, give number
(Yes or No)

of permit 9389

Application for Transfer of Water Right

To the STATE ENGINEER OF OREGON:

I, Stuart V. Hinson (Name of applicant)

of Route 2 Box 25 Jacksonville (Postoffice), County of Jackson

State of Oregon, do hereby make application for change in point of

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

1. The source of present water right is Little Applegate River (Name of stream)

2. The use to which the water is applied is irrigation and domestic use (Irrigation; Mining; Power; Manufacturing; etc.)

3. The name of the ditch, canal or pipe line is: Gin Lin Ditches

4. The point of diversion is located 1430 ft. N (N. or S.) and 1905 ft. W (E. or W.) from the E 1/4

corner of Sec 29 (Section or subdivision) being within the NW 1/4 NE 1/4

of Section 29 Tp. 39S R. 2W W. M., in the County of Jackson
(No. N. or S.) (No. E. or W.)

5. List the number of acres irrigated in each smallest legal subdivision (40-acre tract) involved in this transfer. If for any other use, indicate place of use.

Twp.	Range	Sec.	NE 1-4				NW 1-4				SW 1-4				SE 1-4			
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4
39	2W	19						10.3	9.0	10.6			1.5			5.7		

NOTE: If you own less than 40-acre tracts, attach a description of your land as it appears in your deed.

(Attach separate sheet if necessary)

6. Are you the legal owner of the above described lands? yes (If not owner, explain your interest)

7. Has water been used beneficially for the purposes indicated herein during the past 5 years? yes

8. What is the date of priority of your water right? September 1, 1857

9. Was your water right acquired by State Engineer's Permit? yes If so, give number (Yes or No)

of permit 9389

AFFIDAVIT OF APPLICANT

STATE OF OREGON,
County of Jackson } ss.

I, Stuart V. Hinson, the applicant herein, being first duly sworn, depose and say that I have read the above and foregoing application for transfer of water right; that I know the contents thereof and that the statements therein made are true and correct to the best of my knowledge and belief.

In Witness Whereof, I have hereunto set my hand this 15 day of November, 19 72

[Signature]
(Name of applicant)

Subscribed and sworn to before me this 15 day of November, 19 72

[Notarial Seal]

[Signature]
NOTARY PUBLIC FOR OREGON

My commission expires 6-12-76

Remarks

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.....

THIS APPLICATION MUST BE ACCOMPANIED BY A MAP SHOWING THE LOCATION OF THE POINT OF DIVERSION, PLACE OF USE AND WORKS UTILIZED UNDER THE PRESENT WATER RIGHT. THE MAP SHOULD ALSO SHOW THE NEW POINT OF DIVERSION OR PLACE OF USE, AS THE CASE MAY BE.

Application for Transfer of Water Right

To the STATE ENGINEER OF OREGON:

I, Stuart V. Hinson (Name of applicant)

of Route 2 Box 25 Jacksonville (Postoffice), County of Jackson

State of Oregon, do hereby make application for change in point of

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

1. The source of present water right is Little Applegate River
(Name of stream)

2. The use to which the water is applied is Irrigation and domestic use
(Irrigation; Mining; Power; Manufacturing; etc.)

3. The name of the ditch, canal or pipe line is Gin Lin Ditch

4. The point of diversion is located 1430 ft. N and 1905 ft. W from the E 1/4
(N. or S.) (E. or W.)

corner of Sec 29 being within the NW 1/4 NE 1/4
(Section or subdivision)

of Section 29 Tp. 39S R. 2W W. M., in the County of Jackson
(No. N. or S.) (No. E. or W.)

5. List the number of acres irrigated in each smallest legal subdivision (40-acre tract) involved in this transfer. If for any other use, indicate place of use.

Twp.	Range	Sec.	NE 1-4				NW 1-4				SW 1-4				SE 1-4			
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4
39	2W	19									1.0				1.0			

NOTE: If you own less than 40-acre tracts, attach a description of your land as it appears in your deed.

(Attach separate sheet if necessary)

6. Are you the legal owner of the above described lands? yes
(If not owner, explain your interest)

7. Has water been used beneficially for the purposes indicated herein during the past 5 years? yes

8. What is the date of priority of your water right? 1898

9. Was your water right acquired by State Engineer's Permit? Yes If so, give number ?
(Yes or No)

of permit 9389

App Ex D

0.06 cfs
among the lands
20 acres

38773 Vol. 30
 Vol. 13

10. Do you hold a water right certificate? Yes If so, give number of certificate 16400
(Yes or No)

11. Was your water right determined by State Engineer's order of Determination or Decree of Court?
No If so, give title of proceedings
(Yes or No)

12. Is the water right recorded in your name? No, as Kleinhammer
(If not, give name)

13. I propose to transfer the water right to the following described lands: (Do not answer if your application is for change in point of diversion only.)

Twp.	Range	Sec.	NE 1-4				NW 1-4				SW 1-4				SE 1-4			
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$
39	2W	19														2.0		

(Attach separate sheet if necessary)

NOTE: Answer questions 14, 15, 16 and 17, if the application is for change in point of diversion.

14. The proposed point of diversion is located 1430 ft. N and 1905 ft. W from the
(N. or S.) (E. or W.)
 corner of Sec 29 being within the NW 1/4 NE 1/4 Section 29 Tp. 39S R. 2W W. M.,
(Smallest legal subdivision) (No. N. or S.) (No. E. or W.)
 in the county of Jackson The name of the ditch to be used is Gin Lin Ditch

15. Are you the owner of the land on which the proposed point of diversion is to be located? Yes

16. If not the owner of the land on which the proposed point of diversion is to be located, give the name and address of owner and submit evidence of your right-of-way for your proposed ditch, canal, or pipe line.

17. Are there any diversions between your present point of diversion and the proposed point of diversion? No

NOTE: Answer questions 18 and 19 if application is for change in use or place of use.

18. Are the lands from which you propose to transfer your water right free of all encumbrances, including taxes, mortgages, liens, etc.? No
(Answer Yes or No)

19. If not, give below a description of existing encumbrances:

NATURE OF ENCUMBRANCE	HELD BY	AMOUNT
Mortgage	1st National Bank of Oregon (Medford)	\$30,000.00

20. Reasons for the proposed changes are More economical use of water rights

AFFIDAVIT OF APPLICANT

STATE OF OREGON,

County of Jackson } ss.

I, Stuart V. Hinson, the applicant herein, being first duly sworn, depose and say that I have read the above and foregoing application for transfer of water right; that I know the contents thereof and that the statements therein made are true and correct to the best of my knowledge and belief.

In Witness Whereof, I have hereunto set my hand this 15th day of November, 1972

[Signature]
(Name of applicant)

Subscribed and sworn to before me this 15th day of November, 1972

[Notarial Seal]

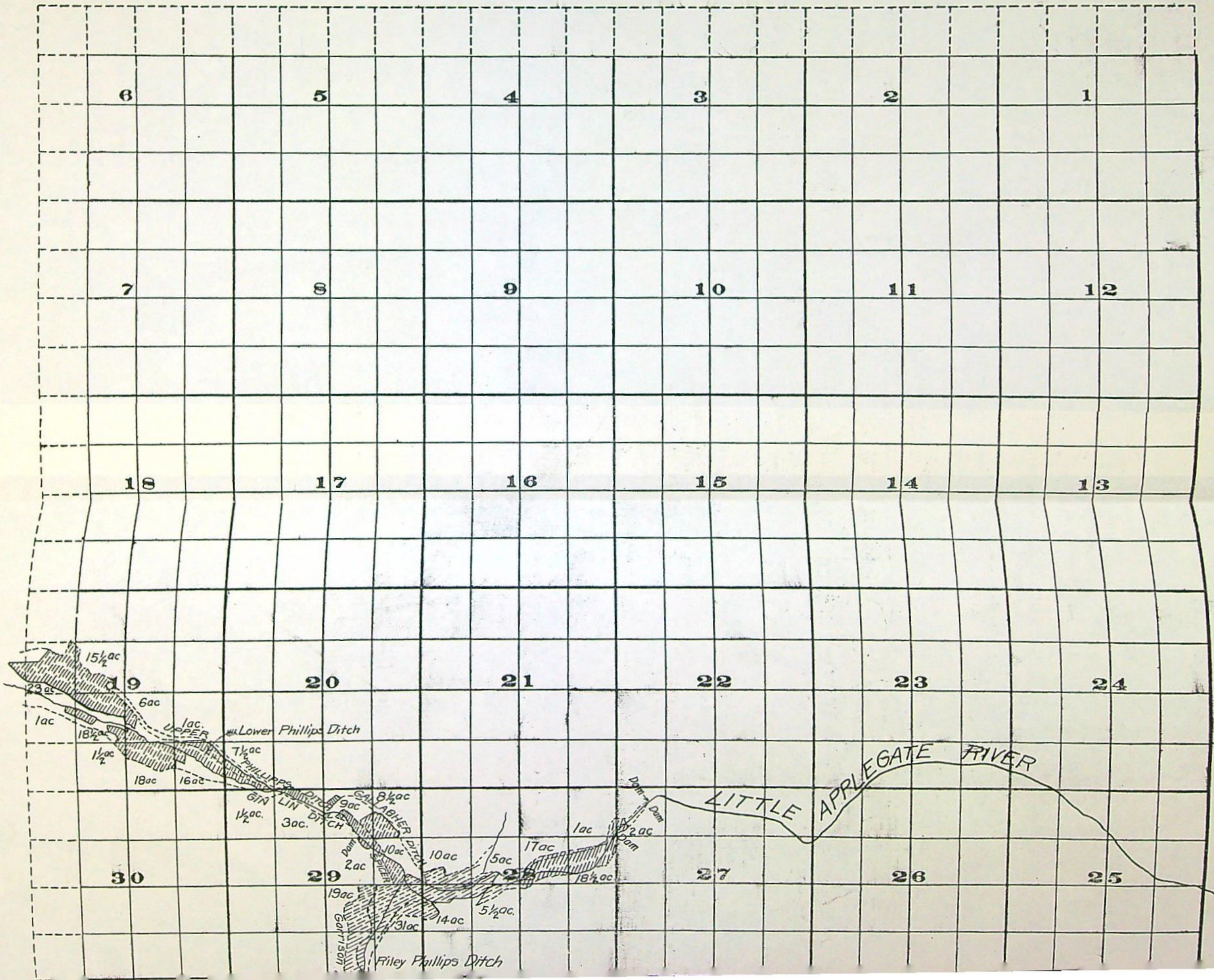
[Signature]
NOTARY PUBLIC FOR OREGON

My commission expires 6-12-76

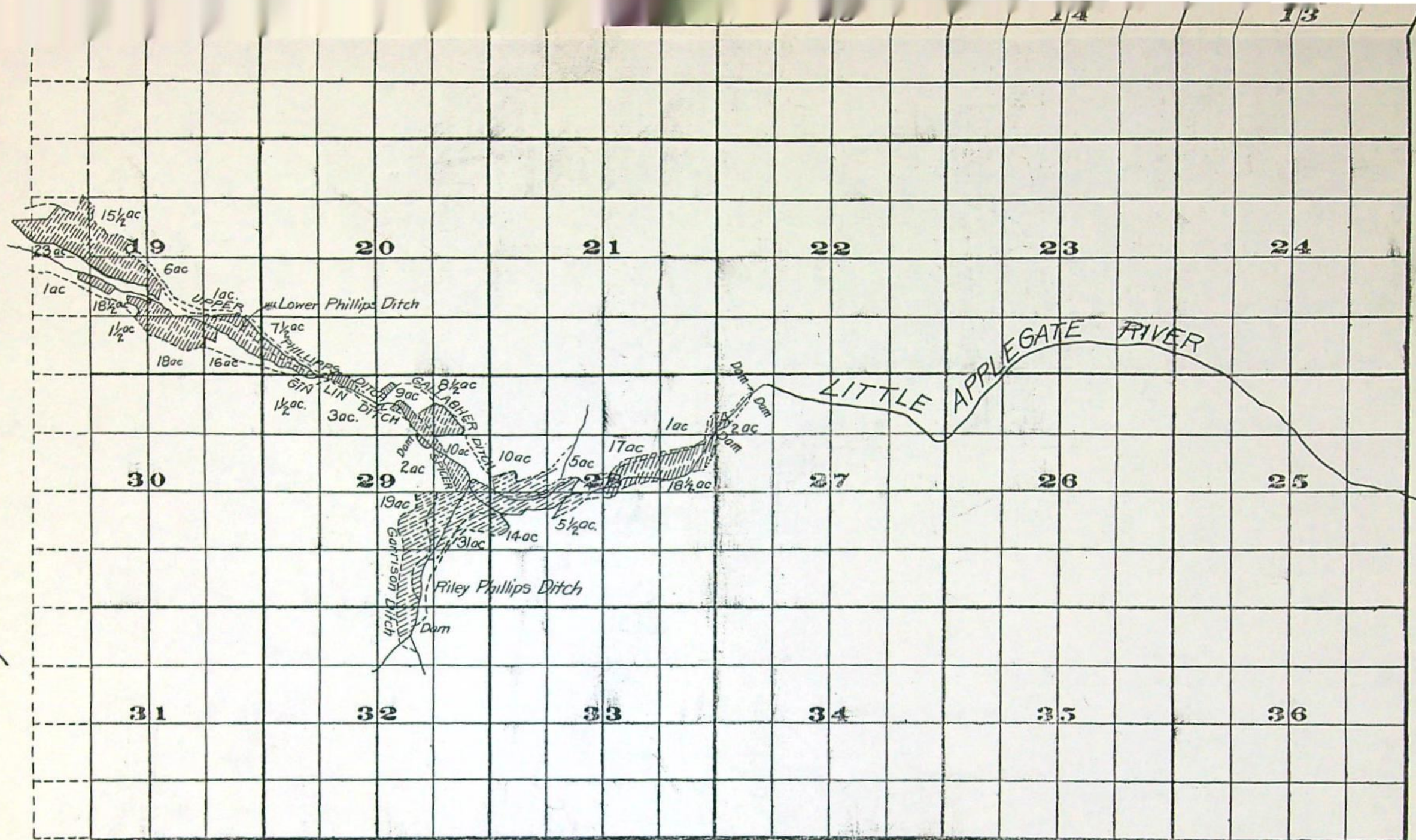
Remarks

THIS APPLICATION MUST BE ACCOMPANIED BY A MAP SHOWING THE LOCATION OF THE POINT OF DIVERSION, PLACE OF USE AND WORKS UTILIZED UNDER THE PRESENT WATER RIGHT. THE MAP SHOULD ALSO SHOW THE NEW POINT OF DIVERSION OR PLACE OF USE, AS THE CASE MAY BE.

Township 39 South, Range 2 West .W.M.



WRD #4



Survey By Rhea Luper September 3, 4, & 5, 1914

FROM OFFICE OF THE STATE ENGINEER, SALEM, OREGON

SEP 17 1976

RESTRICTED

392W29-100
200

18.00

76-16305

CT. 339 34

39-20-19

500	901	1000	100	202	(34)
600	902		200	209	207
500	903		201	205	208
			202	206	209

WARRANTY DEED

209 ✓

STUART V. HINSON, as Grantor, hereby conveys and warrants to GLEN F. WEGNER AND HELEN A. WEGNER, as Grantee the following described property free of encumbrances except as specifically set forth herein: **39-20-19 72 209**

Commencing at the point of beginning, from which the West quarter corner of Section 19, Township 39 South, Range 2 West, Willamette Meridian, Jackson County, Oregon, bears South 77° 07' 31" West, 1393.05 feet, also being on the North line of the County Road, and on the center line of a 40 foot way; thence along said center line, as follows: North 04° 26' 40" East, 385.60 feet, to a 1/2" iron pin, at point R-1; thence North 35° 50' 40" East, 343.95 feet, to a 1/2" iron pin; thence North 16° 09' 05" East, 104.42 feet, to the beginning of a curve right, having a radius of 215.06 feet, and a central angle of 94° 08' 30"; thence along said curve, 353.36 feet, to the beginning of a compound curve having a radius of 35 feet, and central angle of 78° 08' 00"; thence along said curve, 47.73 feet; thence South 08° 25' 35" West, 37.92 feet, to a curve left, having a radius of 160 feet; thence along said curve, 79.513 feet, with a central angle of 28° 28' 25"; thence South 20° 02' 50" East, 46.93 feet, to the beginning of a curve left, having a radius of 300 feet, with a central angle of 27° 06' 44"; thence along said curve, 141.959 feet; thence leaving said way, South 17° 34' 42" West, 430.72 feet, to an iron pin; thence South 30° 51' 15" West, 424.73 feet, to a 5/8" iron pin, on the North line of the County Road; thence North 59° 23' 50" West, along said line, 362.96 feet, to the point of beginning.

SUBJECT TO AND EXCEPTING covenants, conditions, restrictions, liens, encumbrances, and easements of record, and the usual printed exceptions, conditions, and stipulations appearing in the Purchaser's Policy form of title insurance and also the following:

1. The assessment roll and the tax roll disclose that the within described premises were specially assessed as farm land. If the land has become or becomes disqualified for the special assessment under the statute, and additional tax and interest and/or penalty may be levied retroactively.
2. Rights of the public in and to that portion of the herein described property lying within the boundaries of roads and highways.
3. The effect of the herein described property being within

WARRANTY DEED -1-

APP Ex. "H"

76-16305

the boundaries of the Applegate Valley Irrigation District, organized pursuant to and with the powers vested in such Irrigation District, by virtue of the laws of the State of Oregon, as proclaimed and declared by Proclamation of the County Court of the State of Oregon, for the County of Josephine, recorded as Document No. 68-12013, Official Records of Jackson County, Oregon.

4. Easement for transmission and distribution of electricity granted the California Oregon Power Company, as set forth in Volume 371, Page 499, Jackson County, Oregon, Deed Records.
5. Easement for transmission and distribution of electricity granted The Pacific Power and Light Company, as set forth in Document No. 73-12911, Official Records of Jackson County, Oregon.
6. A perpetual non-exclusive easement and right of way, for road purposes, and public utilities, 40 feet in width, as more particularly described in Creation of Way, recorded October 18, 1973, as Document No. 73-16060, Official Records of Jackson County, Oregon.
7. Also: Subject to said 40 foot way with an additional width to said way on a portion along the Easterly line being on a curve with a 220 foot radius curve as described: Commencing at point R-3, in the above described tract; thence South 04° 26' 40" West, 67.46 feet; thence South 85° 33' 20" East, on radius line extension, 20 feet, to the point of beginning; thence Northeasterly, along said curve, 120.566 feet, to a point on the Easterly line of said 40 foot way.
8. Road Maintenance and Greenbelt Agreement between Stuart V. Hinson and Glen F. Wegner and Helen A. Wegner wherein Glen F. Wegner and Helen A. Wegner agreed to pay 1/4 of cost of maintaining said existing way.

76-16305

9. Water Use Agreement between Stuart V. Hinson and Glen F. Wegner and Helen A. Wegner wherein Glen F. Wegner and Helen A. Wegner agreed to pay 1/6 of the cost of maintaining a well and water distribution system to provide domestic water to the herein described property.

ALSO: Seller reserves the right to use the existing irrigation ditches and an easement for an access to the property to maintain and repair said ditches.

ALSO: Subject to the following restrictions:

(a) No trailers except while permanent home is under construction and no longer than a six month period during construction.

(b) Minimum size of house shall be 1,200 square feet, living area; 500 square feet garage area with doors and the house shall be ranch style with shake roof.

(c) Any building shall be set back 75 feet from the side boundaries.

(d) Owner must provide and maintain fences on the side lines and edges of property in a neat manner. Fences shall be high enough to keep livestock off adjacent properties.

(e) No storing of trailers, campers, boats, trucks, tractors, cars, motorcycles, commercial trucks, loggers, or like equipment that can be seen from highway or any neighbors' property. Must have equipment shed for such storing which shed shall match the style of the house.

(f) Any irrigation shall be in conjunction with neighboring irrigation, and the priority water rights system administered by the Watermaster.

(g) No commercial kennels, chickens, rabbits, or any other animals except cattle and a brood mare can be kept for commercial purposes. No commercial crops shall be grown

SEP 17 1976

76-16305

other than hay or alfalfa.

(h) One horse per family member. No stallions shall be kept on the property.

(i) Any sheep, pigs, chickens, ducks, or the like shall be kept for the owners own consumption purposes only or for 4H or FFA projects.

(j) No more than one permanent residence shall be constructed on the property. A guest house, containing a maximum of 800 square feet, without kitchen facilities is allowable; however such guest house shall not be rented as a separate unit from the main, permanent residence.

(k) No subdivision, partition or sale of a portion of the property shall be made, unless the property exceeds 20 acres in size.

(l) Unless irrigation water is cut off by the Watermaster, as long as irrigation water is available, sufficient water shall be applied to the property to keep the vegetation green.

ALSO EXCEPTING THEREFROM THE following easement:

In the event that a violation of restriction (l) above occurs, any person entitled to enforce said restriction shall have an easement to enter upon the herein-described property and a right to apply the required water to the vegetation.

In the event that restriction (l) above is violated, and if any person entitled to enforce said restriction incurs costs in utilizing the easement above granted for irrigating the land, said costs shall be reimbursed to any such person, by Purchaser, his successor or assigns.

It is the intent of the undersigned party that the restrictions set forth above shall burden the herein-described real property and shall run with the land. It is the intent of the undersigned party that the restrictions set forth above

SEP 17 1976

76-16305

200
300

shall benefit all of the following described real property and shall run with the land:

100
200
200

sec 19
1000
100
200
200
200
300
300
300

West 1/4 Section 20; and North 1/2 of Northwest 1/4 of Section 29; and Southeast 1/4 of Southeast 1/4 of Section 19; and West 1/2 of East 1/2 of Section 19; and North 1/2 of Southwest 1/4 of Section 19; and South 1/2 of Northwest 1/4 of Section 19, all in Township 39 South, Range 2 West, Willamette Meridian, Jackson County, Oregon.

Grantor conveys unto grantees, their heirs and assigns, an easement and right, use and privilege, to draw and use from a well located on the following described tract for the purposes of interior domestic use 1/6th of all water produced from the well on this described premises with the right to grantees, their heirs, and assigns, ingress and egress to grantees, their heirs and assigns, of ingress and egress over and upon the lands of grantor for the purpose of keeping in repair the pipe as aforesaid, the well property, more particularly described as follows:

TRACT 13:

200

Commencing at the point of beginning being at the 5/8 inch iron pin at the Northeast corner of the Southeast quarter of the Northwest quarter of Section 19, Township 39 South, Range 2 West, Willamette Meridian, Jackson County, Oregon; thence South 89° 57' 00" West along the North line thereof 377.01 feet; thence South 32° 33' 20" West 205.74 feet; thence South 40° 05' 15" East 20.00 feet to the center of a 40 foot way; thence South 49° 54' 45" West along said way 118.00 feet; thence South 32° 30' 45" West 98.80 feet; thence leaving said center line South 57° 29' 15" East 76.32 feet; thence South 09° 42' 40" East 102.59 feet to the beginning of a curve left having a radius of 200 feet; thence along said curve 86.514 feet having a central angle of 24° 47' 04"; thence South 34° 29' 44" East 152.87 feet to the beginning of a curve left having a radius of 100 feet; thence along said curve 84.898 feet having a central angle of 48° 38' 36"; thence South 83° 08' 20" East 28.99 feet to the beginning of a curve right having a radius of 120 feet; thence along said curve 84.578 feet having a central angle of 40° 23' 00"; thence South 42° 45' 20" East 132.07 feet; thence South 62° 55' 24" East 256.18 feet; thence North 31° 57' 22" East 462.04 feet; thence North 24° 23' 53" East 333.99 feet; thence North 56° 53' 06" West 543.98 feet to the point of beginning.

76-16305

Grantor will warrant and defend the same against all persons who may lawfully claim by, through, or under Grantor.

The true consideration for this conveyance is \$27,500.00.

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

John F. Wegner
190 Belmont Lane
Longport, OR 97336

Dated this 7th day of September, 1976.


 STUART V. HINSON

STATE OF OREGON)
) ss.
 County of Jackson)

Personally appeared the above-named STUART V. HINSON who is known to me to be such person and who acknowledged the foregoing Warranty Deed to be his voluntary act and deed.

Before me this 7th day of September, 1976.

Robert B. Linkham
 Notary Public for Oregon
 My Commission Expires: 12-7-79



Jackson County, Oregon
 Recorded
 OFFICIAL RECORDS
 8:30 SEP 17 1976 A.M.
 HARRY CHIPMAN
 CLERK and RECORDER
Edith M. McLaughlin Deputy

9-30-74

39-2W-19

207

8.00

(31)

28573

392W19-30 East

30-10 ✓

74-12663

WARRANTY DEED

STUART V. HINSON conveys to EDWARD H. LEWIS and RACHEL LEWIS, husband and wife, grantees, the following described real property free of encumbrances except as specifically set forth herein:

TRACT 12-A

Commencing at the Northeast corner of the Southeast quarter of the Northwest quarter of Section 19, Township 39 South, Range 2 West, Willamette Meridian, Jackson County, Oregon; thence South 89° 57' West along the North-line thereof 377.01 feet to a 5/8" iron pin being the point of beginning; thence continuing South 89° 57' West, 956.41 feet to a 5/8" iron pin; thence South 29° 45' 15" East, 196.00 feet to a point on a curve being on a centerline of a 40 foot way from which its radius point bears South 52° 18' 09" East, 215.06 feet; thence North-easterly along said curve and way 272.486 feet with a central angle of 72° 35' 43" to the beginning of a compound curve having a radius of 35 feet and central angle of 78° 08' 00"; thence along said curve 47.73 feet; thence South 08° 25' 35" West, 37.92 feet to the beginning of a curve left having a radius of 160.0 feet; thence along said curve 79.513 feet with a central angle of 28° 28' 25"; thence South 20° 02' 50" East, 46.93 feet to the beginning of a curve left having a radius of 300 feet; thence along said curve 207.745 feet with a central angle of 39° 40' 35"; thence South 59° 43' 25" East, 54.96 feet to Point 'A' also being the beginning of a curve left having a radius of 60 feet; thence along said curve 91.906 feet with a central angle of 87° 45' 50"; thence North 32° 30' 45" East, 235.19 feet; thence North 49° 54' 45" East, 118 feet to the termination of said 40 foot way; thence North 40° 05' 15" West, 20 feet to an iron pin; thence North 32° 33' 20" East, 205.74 feet to the point of beginning.

CONTAINS 5.25 acres more or less.

TRACT 12 Extension

Commencing at the point of beginning from which the Northeast corner of the South half of the Northwest quarter of Section 19, Township 39 South, Range 2 West, Willamette Meridian, Jackson County, Oregon, bears North 51° 27' 34" East, 732.37 feet; thence South 09° 42' 40" East, 39.74 feet to the beginning of a curve left having a radius of 230.00 feet; thence along said curve 99.502 feet with a central angle of 24° 47' 14"; thence leaving said curve South 17° 53' 45" West, 484.94 feet to a 5/8" iron pin; thence South 30° 50' 30" West, 399.12 feet to a 5/8" iron pin on the North-line of the County Road; thence North 59° 23' 50" West along said line 392.55 feet to a 5/8" iron pin; thence North 30° 51' 15" East, 424.73 feet to an iron pin; thence North 17° 34' 42"

-1- WARRANTY DEED

App Ex G

74-12663

East, 430.72 feet to a point on the center line of a 40 foot way being on a curve from which its radius point bears North 42° 50' 26" East, 300.00 feet; thence South-easterly on said way and curve 65.785 feet with a central angle of 12° 33' 51"; thence South 59° 43' 25" East, 54.96 feet to the beginning of a curve having a radius of 60 feet; thence along said curve 45.953 feet with a central angle of 43° 52' 55"; thence leaving said curve and center line of way South 13° 36' 20" East, 20.00 feet; thence North 70° 45' 12" East, 159.37 feet to the point of beginning.

CONTAINS 7.84 acres more or less.

Grantor conveys unto grantees, their heirs and assigns, an easement and right, use and privilege, to draw and use from a well located on the following described tract for the purposes of interior domestic use 1/6th of all water produced from the well on this described premises with the right to grantees, their heirs and assigns, ingress and egress to grantees, their heirs and assigns, of ingress and egress over and upon the lands of grantor for the purpose of keeping in repair the pipe as aforesaid, the well property, more particularly described as follows:

TRACT 13:

Commencing at the point of beginning being at the 5/8 inch iron pin at the Northeast corner of the Southeast quarter of the Northwest quarter of Section 19, Township 39 South, Range 2 West, Willamette Meridian, Jackson County, Oregon; thence South 89° 57' 00" West along the North line thereof 377.01 feet; thence South 32° 33' 20" West 205.74 feet; thence South 40° 05' 15" East 20.00 feet to the center of a 40 foot way; thence South 49° 54' 45" West along said way 118.00 feet; thence South 32° 30' 45" West 98.80 feet; thence leaving said center line South 57° 29' 15" East 76.32 feet; thence South 09° 42' 40" East 102.59 feet to the beginning of a curve left having having a radius of 200 feet; thence along said curve 86.514 feet having a central angle of 24° 47' 04"; thence South 34° 29' 44" East 152.87 feet to the beginning of a curve left having a radius of 100 feet; thence along said curve 84.898 feet having a central angle of 48° 38' 36"; thence South 83° 08' 20" East 29.99 feet to the beginning of a curve right having a radius of 120 feet; thence along said curve 84.578 feet having a central angle of 40° 23' 00"; thence South 42° 45' 20" East 132.07 feet; thence South 62° 55' 24" East 256.18 feet; thence North 31° 57' 22" East 462.04 feet; thence North 24° 23' 53" East 333.99 feet; thence North 56° 53' 06" West 543.98 feet to the point of beginning.

38-13

74-12663

Subject to the usual printed stipulations and exceptions appearing in a form title insurance policy and also the following:

1. The assessment roll and the tax roll disclose that the within described premises were specially assessed as farm land. If the land has become or becomes disqualified for the special assessment under the statute, an additional tax and interest and/or penalty may be levied retroactively.
2. The herein described property has been assessed as Forest Land Use value by the Jackson County, Oregon, Assessor. If said property should become disqualified thereunder at a later date, it will become liable for the amount of taxes deferred during the last five, or lesser, number of years, in which forest land use assessment was in effect, together with interest thereon.
3. Rights of the public in and to that portion of the herein described property lying within the boundaries of roads and highways.
4. The effect of the herein described property being within the boundaries of the Applegate Valley Irrigation District, organized pursuant to and with the powers vested in such Irrigation District by virtue of the laws of the State of Oregon, as proclaimed and declared by Proclamation of the County Court of the State of Oregon, for the County of Josephine, recorded as Document No. 68-12013, Official Records of Jackson County, Oregon.
5. Easement for transmission and distribution of electricity, granted the California Oregon Power Company, as set forth in Volume 371, Page 499, Jackson County, Oregon, Deed Records.
6. A mortgage, including the terms and provisions thereof, executed by Armin C. Richter and Ruth P. Richter, husband and wife, to The First National Bank of Portland, a national banking association, dated May 16, 1962, recorded May 17, 1962, in Volume 410, Page 405, Jackson County, Oregon, Mortgage Records, given to secure payment of a note for \$80,000.00, with interest thereon. (Affects additional property.)
7. Modification Agreement of Mortgage, including the terms and provisions thereof, dated December 11, 1973, and executed by and between Stuart V. Hinson and First National Bank of Oregon, recorded December 12, 1973, as Document No. 73-18368, Official Records of Jackson County, Oregon.
8. Easement for transmission and distribution of electricity, granted The Pacific Power and Light Company, as set forth in Document No. 73-12911, Official Records of Jackson County, Oregon.
9. Grantor reserves the right to use the existing irrigation ditches and an easement for an access to the property to maintain and repair said ditches.

9-30-74

Jackson County, Oregon
Recorded
OFFICIAL RECORDS

8:30 SEP 30 1974 A.M.

HARRY CHAPMAN
CLERK and RECORDER
By Marcia A. Peppel Deputy

74-12663

10. Grantor retains and reserves an unlimited right to use the existing way which was created by deed recorded in Jackson County Official Records as document number 73-16060 for all purposes of access, ingress and egress for the use of the property of grantor beyond the presently existing use allowed by the way and for the use of his successors and assigns.

11. Also subject to the following restrictions:

- (a) No trailers except while permanent home is under construction and no longer than a six month period during construction.
- (b) Minimum size of house shall be 1,200 square feet, living area; 500 square feet garage area with doors and the house shall be ranch style with shake roof.
- (c) Any building shall be set back 75 feet from the side boundaries.
- (d) Owner must provide and maintain fences on the side lines and edges of property in a neat manner. Fences shall be high enough to keep livestock off adjacent properties.
- (e) No storing of trailers, campers, boats, trucks, tractors, cars, motorcycles, commercial trucks, loggers, or like equipment that can be seen from highway or any neighbors property. Must have equipment shed for such storing which shed shall match the style of the house.
- (f) Any irrigation shall be in conjunction with neighboring irrigation.
- (g) No commercial kennels, chickens, rabbits, or any other animals except cattle and a brood mare can be kept for commercial purposes.
- (h) One horse per family member. No stallions shall be kept on the property.
- (i) Any sheep, pigs, chickens, ducks, or the like shall be kept for the owners own consumption purposes only or for 4H or FFA projects.
- (j) No more than one permanent residence shall be constructed on the property. A guest house without kitchen facilities is allowable.

UNTIL EXCHANGE IS REQUESTED, ALL
INSTRUMENTS MUST BE SENT TO Escante
4035 Little Coyote Trail
Jacksonville Oregon

The true and actual consideration paid for this transfer is \$50,000.00.

Stuart V. Hinson
STUART V. HINSON

STATE OF OREGON)
County of Jackson) ss.

September 5, 1974

Personally appeared the above named Stuart V. Hinson who is known to me to be such individual and who acknowledged the foregoing instrument as his voluntary act and deed. Before me:



Harry Chapman
Notary Public for Oregon
My Commission Expires: 11-20-75

①
Until a Change Requested, Send
All Tax Statements to the Following Address.

392W19

79-15063

SPECIAL WARRANTY DEED

STUART V. HINSON, an unmarried man, as Grantor, conveys
and specially warrants to ROBERT START, an unmarried man, as
Grantee, the following described real property free of encumbrances
created or suffered by the Grantor except as specifically set forth:

Commencing at an iron pin at the center of Section 19,
Township 39 South, Range 2 West, Willamette Meridian,
Jackson County, Oregon; thence North $89^{\circ}49'43''$ West,
75.50 feet, to an iron pin, being the point of beginning;
thence South $37^{\circ}32'35''$ West, 466.27 feet, to a $5/8''$
iron pin, on the Northerly line of the County Road;
thence North $59^{\circ}23'50''$ West, along said North line
thereof, 596.93 feet, to a $5/8''$ iron pin; thence North
 $30^{\circ}50'30''$ East, 399.12 feet, to a $5/8''$ iron pin; thence
North $17^{\circ}53'45''$ East, 484.94 feet, to the beginning
of a curve from which its radius point bears North
 $55^{\circ}30'16''$ East, 230 feet; thence Northwesterly, along
said curve, 99.502 feet, with a central angle of 24°
 $47'14''$; thence North $09^{\circ}42'40''$ West, 39.79 feet;
thence South $70^{\circ}45'12''$ West, 159.37 feet; thence
North $13^{\circ}36'20''$ West, 20.0 feet, to the center of a
way, being 40 feet in width, being on a curve from
which its radius point bears North $13^{\circ}36'20''$ West,
60.0 feet; thence Northeasterly, along said curve,
45.953 feet, with a central angle of $43^{\circ}52'55''$;
thence North $32^{\circ}30'45''$ East, 136.39 feet; thence
leaving said way, South $57^{\circ}29'15''$ East, 76.32
feet, to a $5/8''$ iron pin; thence South $09^{\circ}42'40''$
East, 102.59 feet, to the beginning of a curve left,
having a radius of 200 feet; thence along said curve,
86.514 feet, with a central angle of $24^{\circ}47'04''$; thence
South $34^{\circ}29'44''$ East, 152.87 feet, to the beginning
of a curve left, having a radius of 100 feet; thence
along said curve, 84.898 feet, with a central angle
of $48^{\circ}38'36''$; thence South $83^{\circ}08'20''$ East, 28.99
feet, to the beginning of a curve right, having a
radius of 120 feet; thence along said curve, 84.578
feet, with a central angle of $40^{\circ}23'00''$; thence
South $42^{\circ}45'20''$ East, 132.07 feet, to an iron pin;
thence South $62^{\circ}55'24''$ East, 256.18 feet; thence
South $23^{\circ}41'35''$ West, 322.34 feet, to an iron pin;
thence South $37^{\circ}32'35''$ West, 46.42 feet, to the
point of beginning.

-1- SPECIAL WARRANTY DEED

39.2W.19

T2 210

APP. Ex "I"

SUBJECT TO:

- 1.) 1976-77 real property taxes due for the period July 20, 1976 to June 30, 1977.
- 2.) The assessment roll and the tax roll disclose that the within described premises were specially assessed as farm land. If the land has become or becomes disqualified for the special assessment under the statute, an additional tax and interest and/or penalty may be levied retroactively.
- 3.) The herein described property has been assessed at Forest Land Use value by the Jackson County, Oregon, Assessor. If said property should become disqualified thereunder at a later date, it will become liable for the amount of taxes deferred during the last five, or lesser, number of years, in which forest land use assessment was in effect, together with interest thereon.
- 4.) Rights of the public in and to that portion of the herein described property lying within the boundaries of roads and highways.
- 5.) Seller reserves for water line purposes, the following described easement:

A water line easement being 20 feet in width, over and across, running from the County Road, to the Northerly line thereof, the Westerly line of said easement more fully described as follows:

Commencing at the point of beginning, being at the most Southwesterly corner of the herein above described tract; thence North $30^{\circ}50'30''$ East, 398.12 feet, to a $5/8''$ iron pin; thence North $17^{\circ}53'45''$ East, 484.94 feet, to a $5/8''$ iron pin; thence North $55^{\circ}52'46''$ East, 30.01 feet, to the termination on the Northerly line of said tract.

Said easement shall be appurtenant to each and every portion of the following described property:

All that real property owned by Grantor as an individual or as a trustee on November 15, 1976, in Section 19, Township 39 South, Range 2 West, Willamette Meridian, Jackson County, Oregon, lying Southerly of Little Applegate Road.

- 6.) The effect of the herein described property being within the boundaries of the Applegate Valley Irrigation District, organized pursuant to and with the powers vested in such Irrigation District by virtue of the laws of the State of Oregon, as proclaimed and declared by Proclamation of the County Court of the State of Oregon for the County of Josephine, as recorded as Document No. 68-12013, Official Records of Jackson County, Oregon.
- 7.) Easement for transmission and distribution of electricity, granted the California Oregon Power Company, as set forth in Volume 371, Page 499, Jackson County, Oregon, Deed Records.
- 8.) Easement for transmission and distribution of electricity, granted The Pacific Power and Light Company, as set forth in Document No. 73-12911, Official Records of Jackson County, Oregon.
- 9.) A perpetual, non-exclusive easement and right-of-way for road purposes, and public utilities, 40 feet in width, as more particularly described in Creation of Way, recorded October 18, 1973, as Document No. 73-16060, Official Records of Jackson County, Oregon.
- 10.) This contract of sale between STUART V. HINSON, as Seller, and ROBERT START as Purchaser, containing an agreement to pay 1/4 cost of maintaining said existing way.
- 11.) Water Use Agreement between STUART V. HINSON and ROBERT START wherein ROBERT START agreed to pay 1/6 of the cost of maintaining a well and water distribution system to provided domestic water to the herein described property.
- 12.) Seller reserves the right to use the existing irrigation ditches and an easement for an access to the property to maintain and repair said ditches.
- 13.) Seller reserves an easement and right of use for ingress and egress purposes of a southeasterly portion of the above-described tract, described as follows:

17700
 Commencing at the point of beginning being the most southeasterly corner of the above-described tract; thence North $59^{\circ}23'50''$ West, 52.51 feet; thence North $30^{\circ}36'10''$ East, 15 feet; thence North $83^{\circ}53'33''$ East, 74.54 feet; thence South $37^{\circ}32'35''$ West, 60 feet to the point of beginning.

Said easement and right-of-use shall be apportioned to each and every portion of the following described property:

All that real property owned by Seller on November 15, 1976, lying Northerly of Little Applegate Road in Section 19, Township 39 South, Range 2 West, Willamette Meridian, Jackson County, Oregon.

14.) Also subject to the following restrictions:

(a) No trailers except while permanent home is under construction and no longer than a six month period during construction.

(b) Minimum size of house shall be 1,200 square feet living area; 500 square feet garage area with doors and the house shall be ranch style with shake roof.

(c) Any building shall be set back 75 feet from side boundaries.

(d) Owner must provide and maintain fences on the side lines and edges of property in neat manner. Fences shall be high enough to keep livestock off adjacent properties.

(e) No storing of trailers, campers, boats, trucks, tractors, cars, motorcycles, commercial trucks, loggers, or like equipment that can be seen from the highway or any neighbor's property. Must have equipment shed for such storing which shed shall match the style of the house.

(f) Any irrigation shall be in conjunction with neighboring irrigation, and the priority water rights system administered by the Watermaster.

(g) No commercial kennels, chickens, rabbits, or any other animals except cattle and a brood mare can be kept for commercial purposes. No commercial crops shall be grown other than hay or alfalfa.

(h) One horse per family member. No stallions shall be kept on the property.

(i) Any sheep, pigs, chickens, ducks, or the like shall be kept for the owner's own consumption purposes only or for 4H or FFA projects.

(j) No more than one permanent residence shall be constructed on the property. A guest house, containing a maximum of 800 square feet, without kitchen facilities is allowable; however such guest house shall not be rented as a separate unit from the main, permanent residence.

(k) No subdivision, partition, or sale of a portion of the property shall be made, unless the property exceeds 20 acres in size.

(l) Unless irrigation water is cut off by the Watermaster, as long as irrigation water is available, sufficient water shall be applied to the property to keep the vegetation green.

15.) ALSO EXCEPTING THEREFROM the following easement:

In the event that a violation of restriction 14(1) above occurs, any person entitled to enforce said restriction shall have an easement to enter upon the property described herein and a right to apply the required water to the vegetation.

In the event that restriction 14(1) is violated, it is agreed that if any person entitled to enforce said restriction incurs costs in utilizing the easement above granted for irrigating the land, said costs shall be reimbursed to any such person, by Grantee, his successor or assigns.

It is the intent of the Grantor and Grantee that the covenants and restrictions set forth in paragraphs above shall burden the herein-described real property and shall run with the land. It is the intent of the parties that the covenants and restrictions set forth above shall benefit all of the following described real property and shall run with the land:

West 1/4 Section 20; and North 1/2 of Northwest 1/4 of Section 29; and Southeast 1/4 of Southeast 1/4 of Section 19; and West 1/2 of East 1/2 of Section 19; and North 1/2 of Southwest 1/4 of Section 19; and South 1/2 of Northwest 1/4 of Section 19, all in Township 39 South, Range 2 West, Willamette Meridian, Jackson County, Oregon.

The true consideration for this conveyance is \$24,000.00.

DATED: May 5, 1999


STUART V. HINSON, Grantor

79-15063

STATE OF OREGON)
) ss.
County of Jackson)

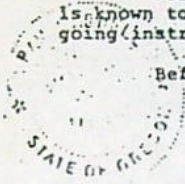
5/5, 1977

Personally appeared the above named Stuart V. Hinson, who is known to me to be such individual, and who acknowledged the foregoing instrument to be his voluntary act and deed.

Before me:

Dane Hardell
Notary Public for Oregon

My Commission Expires: 9/6/80



Jackson County, Oregon
Recorded
OFFICIAL RECORDS

10:57 JUL 20 1979 A.M.

WALDENE TERRY
CLERK and RECORDER

By Betty Kay Deputy

And grantor hereby c[on]veys to and with grantees and their heirs of the surv[iv]ors and their assigns, that grantor is lawfully seized in fee simple of the above granted premises free from all encumbrances, except:

- 1) The fact that the herein described premises were specially assessed as farm land. If the land has become or becomes disqualified for the special assessment under the Statute, an additional tax and interest and/or penalty may be levied retroactively.
- 2) Rights of the public in and to that portion of the herein described property lying within the boundaries of roads and highways.
- 3) Rules & regulations of the Applegate Valley Irrigation District.
- 4) Easements of record.
- 5) The right to use existing irrigation ditches, and an easement for access for maintenance and repair of said ditches, as reserved in instrument dated September 5, 1974, recorded September 30, 1974, as Document No. 74-12663, Official Records of Jackson County, Oregon.
- 6) An unlimited right to use existing way created by Document No. 73-16060, Official Records of Jackson County, Oregon, for all purposes of access, ingress, and egress as more fully set forth and reserved in instrument recorded September 30, 1974, as Document No. 74-12663, Official Records of Jackson County, Oregon.
- 7) Conditions and restrictions, as set forth in instrument recorded September 30, 1974, as Document No. 74-12663, Official Records of Jackson County, Oregon.
- 8) Water use agreement, including the terms and conditions in connection therewith, recorded September 30, 1974, as Document No. 74-12664, Official Records of Jackson County, Oregon.
- 9) Mortgage, including the terms and provisions thereof, to Jackson County Federal Savings and Loan Association, recorded September 3, 1974, as Document No. 74-11378, Official Records of Jackson County, Oregon, which Grantee assumes and agrees to pay,

And that grantor will warrant and forever defend the above granted premises and every part and parcel thereof against the lawful claims and demands of all persons whomsoever, except those claiming under the above described encumbrances.

The true and actual consideration paid for this transfer, stated in terms of dollars is \$69,000.00.

In construing this deed and where the context so requires, the singular includes the plural, the masculine includes the feminine and the neuter and, generally, all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to corporation and to individuals.

WITNESS OUR HANDS and seal this 18th day of January, 1977.

Edward M. Lewis
Edward M. Lewis

Rachel Lewis
Rachel Lewis

STATE OF OREGON)
County of Jackson)

ss.

January 18, 1977

BEFORE ME PERSONALLY appeared the above named Edward M. Lewis and Rachel Lewis, and acknowledged the foregoing instrument to be their voluntary act and deed.



Jackson County, Oregon
Recorded
OFFICIAL RECORDS

8:30 JAN 19 1977 A M
HARRY CHIPMAN
CLERK and RECORDER
Sublette Street, Medford, Oregon

Annabelle S. Porter
Notary Public for Oregon

My commission expires 7-9-79

Mail tax statements to:
Grantee:

4035 Little Applegate Rd.
Jacksonville, Or. 97530

JAN 19 1977

JAN 19 1977

KNOW ALL MEN BY THESE PRESENTS, that EDWARD M. LEWIS and RACHEL LEWIS, husband and wife, hereinafter called the grantor, for the consideration hereinafter stated to the grantor paid by RALPH J. RICHARDS and JUNE L. RICHARDS, husband and wife, hereinafter called the grantees, does hereby grant, bargain, sell and convey unto the grantees, as tenants by the entirety, the heirs of the survivor and their assigns, that certain real property, with the tenements, hereditaments and appurtenances thereunto belonging or appertaining, situated in the County of Jackson, State of Oregon, described as follows, to-wit:

PARCEL NO. 1:

Commencing at the point of beginning from which the Northeast corner of the South half of the Northwest quarter of Section 19, Township 19 South, Range 2 West, Willamette Meridian, Jackson County, Oregon, bears North 51° 27' 34" East, 732.37 feet; thence South 09° 42' 40" East, 39.74 feet, to the beginning of a curve left, having a radius of 230.00 feet; thence along said curve, 99.502 feet, with a central angle of 24° 47' 14"; thence leaving said curve South 17° 53' 45" West, 484.94 feet, to a 5/8" iron pin; thence South 30° 50' 30" West, 399.12 feet, to a 5/8" iron pin, on the North line of the County Road; thence North 59° 23' 50" West, along said line, 392.55 feet, to a 5/8" iron pin; thence North 30° 51' 15" East, 424.73 feet, to an iron pin; thence North 17° 34' 42" East, 430.72 feet, to a point on the center line of a 40 foot way, being on a curve, from which its radius point bears North 42° 50' 26" East, 300.00 feet; thence Southeasterly, on said way and curve, 65.785 feet, with a central angle of 12° 33' 51"; thence South 59° 43' 25" East, 54.96 feet, to the beginning of a curve, having a radius of 60 feet; thence along said curve, 45.953 feet, with a central angle of 43° 52' 55"; thence leaving said curve and center line of way, South 13° 36' 20" East, 20.00 feet; thence North 70° 45' 12" East, 159.37 feet, to the point of beginning.

PARCEL NO. 2:

Commencing at the Northeast corner of the Southeast quarter of the Northwest quarter of Section 19, Township 19 South, Range 2 West, Willamette Meridian Jackson County, Oregon; thence South 89° 57' West, along the North line thereof, 377.01 feet, to a 5/8" iron pin, being the point of beginning; thence continuing South 89° 57' West, 956.41 feet, to a 5/8" iron pin; thence South 29° 45' 15" East, 196.00 feet, to a point on a curve being on a center line of a 40 foot way, from which its radius point bears South 52° 10' 08" East, 215.06 feet; thence Northeasterly, along said curve and way, 272.486 feet, with a central angle of 72° 35' 43", to the beginning of a compound curve having a radius of 35 feet, and central angle of 78° 08' 00"; thence along said curve, 47.73 feet; thence South 08° 25' 35" West, 37.92 feet, to the beginning of a curve left, having a radius of 160.0 feet; thence along said curve, 79.513 feet, with a central angle of 28° 28' 2"; thence South 20° 02' 50" East, 46.93 feet, to the beginning of a curve left, having a radius of 300 feet; thence along said curve, 207.745 feet, with a central angle of 39° 40' 35"; thence South 59° 43' 25" East, 54.96 feet, to Point "A", also being the beginning of a curve left, having a radius of 60 feet; thence along said curve, 91.906 feet, with a central angle of 87° 45' 50"; thence North 32° 30' 45" East, 235.19 feet; thence North 49° 54' 45" East, 118 feet, to the termination of said 40 foot way; thence North 40° 05' 15" West, 20 feet, to an iron pin; thence North 32° 33' 20" East, 205.74 feet, to the point of beginning.

To Have and to Hold the above described and granted premises unto the said grantees, as

APP Ex "L"

TA

79-15064

WARRANTY DEED—STATUTORY FORM
INDIVIDUAL GRANTEE

210 10.51

450

Robert Start

conveys and warrants to David A. Willard and Anita C. Willard, husband and wife

Grantee, the following described real property

Free of encumbrances except as specifically set forth herein situated in Jackson County, Oregon, to-wit:

Commencing at an iron pin at the center of Section 19, Township 39 South, Range 2 West, Willamette Meridian, Jackson County, Oregon; thence North 89° 49' 43" West, 75.50 feet, to an iron pin, being the point of beginning; thence South 37° 32' 35" West, 466.27 feet, to a 5/8" iron pin, on the Northerly line of the County Road; thence North 59° 23' 50" West, along said North line thereof, 596.93 feet, to a 5/8" iron pin; thence North 30° 50' 30" East, 399.12 feet, to a 5/8" iron pin; thence North 17° 53' 45" East, 484.94 feet, to the beginning of a curve from which its radius point bears North 55° 30' 16" East, 230 feet; thence Northwesterly along said curve, 99.502 feet with a central angle of 24° 47' 14"; thence North 09° 42' 40" West, 39.79 feet; thence South 70° 45' 12" West, 159.37 feet; thence North 13° 36' 20" West 20.0 feet, to the center of a way, being 40 feet in width, being on a curve from which its radius point bears North 13° 36' 20" West, 60.0 feet; thence Northeasterly, along said curve, 45.953 feet, with a central angle of 43° 52' 55"; thence North 32° 30' 45" East, 136.39 feet; thence leaving said way, South 57° 29' 15" East, 76.32 feet, to a 5/8" iron pin; thence South 09° 42' 40" East, 102.59 feet, to the beginning of a curve left, having a radius of 200 feet; thence along said curve, 86.514 feet, with a central angle of 24° 47' 04"; thence South 34° 29' 44" East, 152.87 feet, to the beginning of a curve left, having a radius of 100 feet; thence along said curve, 84.898 feet, with a central angle of 48° 38' 36"; thence South 83° 08' 20" East, 28.99 feet, to the beginning of a curve right, having a radius of 120 feet; thence along said curve, 84.578 feet, with a central angle of 40° 23' 00"; thence South 42° 45' 20" East, 132.07 feet, to an iron pin; thence South 62° 55' 24" East, 256.18 feet; thence South 23° 41' 35" West, 322.34 feet, to an iron pin; thence South 37° 32' 35" West, 46.42 feet, to the point of beginning.

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

Before me:

Dixie S. Bunge

Notary Public for Oregon—My commission expires: 9/24/80

(OFFICIAL SEAL)

WARRANTY DEED

START, Robert
D.A. Willard & Anita C. Willard

GRANTEE

GRANTER'S ADDRESS ZIP

After recording return to:

D.A. Willard and
Anita C. Willard

NAME ADDRESS ZIP

Until a change is requested, all tax statements
shall be sent to the following address:D. A. Willard and
Anita C. Willard

NAME ADDRESS ZIP

STATE OF OREGON

Jackson County, Oregon
Recorded
OFFICIAL RECORDS

10:51 JUL 20 1979 A.M.

WALDENE TERRY
CLERK and RECORDERBy *Betty Kay* Deputy

39.2W-19

TL 210

APP EX "M"

"ATTACHED HERETO AND MADE A PART HEREOF"


The said property is free from encumbrances except:

As disclosed by the tax roll the premises herein described are classified as forest lands. In the event of declassification, said premises will be subject to additional taxes and interest; As disclosed by the tax roll the premises herein described have been zoned or classified for farm use. At any time that said land is disqualified for such use, the property will be subject to additional taxes or penalties and interest; Rights of the public in streets, roads and highways, existing rights of way for ditches and canals, disclosed by deed to Kenneth Combs, et ux, recorded April 8, 1966 as instrument No. 65-04348; Subject to statutory powers including the power of assessment of the Little Applegate Improvement District Company; Right of way for transmission and distribution of electricity and for other purposes, granted to ~~the Oregon Power Company~~ The California Oregon Power Company by instrument recorded in Volume 371 page 499; Easement for road and utility purposes disclosed by instrument recorded October 18, 1973 as instrument 73-16080; Easement from S.V. Hinson to Pacific Power and Light Company recorded August 1, 1974 as instrument No. 74-12911; Water use agreement and easement between Stuart V. Hinson and Edward M. Lewis et al, recorded Sept. 30, 1974 as instrument No. 74-12664.

The true consideration for this conveyance is \$ 42,000.00. (Here comply with the requirements of ORS 93.030)

Dated this 9th day of November, 1977.

X

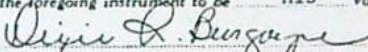

 Robert M. Start


STATE OF OREGON, County of Jackson,) ss. November 9, 1977.

Personally appeared the above named Robert Start

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

Before me:



Notary Public for Oregon—My commission expires: 9/24/80

WARRANTY DEED

START, Robert
D.A. Willard & Anita C. Willard

GRANTEE

GRANTOR'S ADDRESS, ZIP

After recording return to:

D.A. Willard and
Anita C. Willard

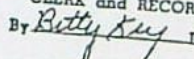
NAME, ADDRESS, ZIP

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

D. A. Willard and
Anita C. Willard

NAME, ADDRESS, ZIP

STATE OF OREGON

Jackson County, Oregon
Recorded
OFFICIAL RECORDS10:51 JUL 20 1979 A.M.
WALDENE TERRY
CLERK and RECORDER
By  DeputySPACE RESERVE
FOR
RECORDER'S USE

39-2W-19

72-00751

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that Carolyne Hinson, Trustee under that Will of Victor Hinson, deceased, hereinafter called the grantor, for the consideration hereinafter stated, to grantor paid by Stuart V. Hinson, hereinafter called the grantee, does hereby grant, bargain, sell and convey unto the said grantee and grantee's successors and assigns, that certain real property, with the tenements, hereditaments and appurtenances thereunto belonging or appertaining, situated in the County of Jackson and State of Oregon, described as follows, to-wit:

The South Half of the Northwest Quarter, the North Half of the Southwest Quarter, the West Half of the Northeast Quarter, the West Half of the Southeast Quarter, and the Southeast Quarter of the Southeast Quarter of Section 19 of the West Half of the Southwest Quarter and the Southwest Quarter of the Northwest Quarter of Section 20, and the North Half of the Northwest Quarter of Section 29, all in Township 39 South, Range 2 West of the Willamette Meridian, Jackson County, Oregon.

less and excepting the following described property which has been transferred to Jackson County for roadway purposes:

That portion of a strip of land of variable feet in width on each side of the centerline of a road as surveyed over and across lands described in Jackson County Deed Records, No. 70-06392, said centerline being more particularly described as follows:

Beginning at a point located 630.73 feet North and 167.67 feet west of the 1/4 section corner common to section 19, Township 39 South, Range 2 West and Section 24, Township 39 South, Range 3 West, Willamette Meridian, Jackson County, Oregon, said point of beginning being Engineer's Centerline Station 200+00; thence South 53°14'40" East 77.38 feet; thence along the arc of a 636.62 foot radius curve to the left for a distance of 499.97 feet (the long chord of which curve bears South 75°44'35" East, 487.22 feet); thence North 81°45'30" East 259.20 feet; thence along the arc of an 818.51 foot radius curve to the right for a distance of 555.83 feet (the long chord of which curve bears South 78°47'15" East, 545.21 feet); thence South 59°20'00" East 1861.43 feet; thence along the arc of an 1145.92 foot radius curve to the right for a distance of 375.28 feet (the long chord of which curve bears South 49°57'05" East, 373.60 feet), to Engineer's Centerline Equation Station 236+29.09 P.T. Back equals 236+06.03 P.O.T. Ahead; thence South 40°34'10" East 212.61 feet; thence along the arc of a 954.93 foot radius curve to the left for a distance of 416.34 feet (the long chord of which curve bears South 53°03'35" East, 413.05 feet); thence South

APP EX F

72-00751

65°33'00" East 421.90 feet; thence along the arc of a 520.87 foot radius curve to the left for a distance of 487.02 feet (the long chord of which curve bears North 87°39'50" East, 470.37 feet); thence North 60°52'40" East 4.09 feet; thence along the arc of a 572.96 foot radius curve to the right for a distance of 320.42 feet (the long chord of which curve bears North 76°53'55" East, 316.26 feet); thence South 87°04'50" East 199.28 feet; thence along the arc of a 572.96 foot radius curve to the right for a distance of 287.53 feet (the long chord of which curve bears South 72°42'15" East, 284.52 feet); thence South 58°19'40" East 462.53 feet; thence along the arc of a 954.93 foot radius curve to the right for a distance of 412.59 feet (the long chord of which curve bears South 45°57'00" East, 409.39 feet); thence South 33°34'20" East 154.37 feet; thence along the arc of a 716.20 foot radius curve to the left for a distance of 349.97 feet (the long chord of which curve bears South 47°34'15" East, 346.50 feet); thence South 61°34'10" East 278.29 feet; thence along the arc of a 1432.40 foot radius curve to the right for a distance of 105.76 feet (the long chord of which curve bears South 59°27'15" East, 105.74 feet); thence South 57°20'20" East 131.49 feet; thence along the arc of a 954.93 foot radius curve to the left for a distance of 415.05 feet (the long chord of which curve bears South 69°47'25" East, 411.79 feet); thence South 82°14'30" East 368.95 feet; thence along the arc of a 716.20 foot radius curve to the right for a distance of 316.70 feet (the long chord of which curve bears South 69°34'25" East, 314.13 feet); thence South 56°54'20" East 588.90 feet; thence along the arc of a 477.46 foot radius curve to the left for a distance of 306.04 feet (the long chord of which curve bears South 75°16'05" East, 300.83 feet); thence North 86°22'10" East 54.14 feet.

The widths in feet of the strip of land above referred to are

as follows:

<u>Station to Station</u>	<u>Width on Easterly Side of Centerline</u>	<u>Width on Westerly Side of Centerline</u>
200+00.00 -261+00.00	30.00'	30.00'
261+00.00 -262+00.00	30.00' in a straight line to 32.00'	
261+00.00 -268+00.00		30.00'
262+00.00 -268+30.34	32.00'	
268+00.00 -269+50.00		30.00' in a straight line to 50.00'
268+30.34 -269+84.71	32.00' in a straight line to 35.00'	
269+50.00 -271+00.00		50.00' in a straight line to 35.00'
269+84.71 -273+34.68	35.00'	
271+00.00 -273+34.68		35.00'
273+34.68 -274+00.00	35.00' in a straight line to 30.00'	35.00' in a straight line to 30.00'
274+00.00 -282+50.00	30.00	
274+00.00 -283+00.00		30.00'
283+00.00 -284+00.00		30.00' in a straight line to 35.00'
284+00.00 -289+50.92		35.00'
288+50.00 -289+50.92	30.00' in a straight line to 40.00'	
289+50.92 -294+00.00	40.00	
289+50.92 -290+50.00		35.00' in a straight line to 30.00'

'72-00751

290+50.00 -299+00.00		30.00'
294+00.00 -297+00.00	40.00' in a straight line to 60.00'	
297+00.00 -298+45.86	60.00' in a straight line to 50.00'	
298+45.86 -299+00.00	50.00'	

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

And said grantor hereby covenants to and with said grantee and grantee's successors and assigns, that grantor is lawfully seized in fee simple of the above granted premises, and conveys the same subject to all easements, restrictions and encumbrances of record, and that grantor will warrant and forever defend the above granted premises and every part and parcel thereof against the lawful claims and demands of all persons whomsoever.

The true and actual consideration paid for this transfer, stated in terms of dollars, is zero, but the consideration consists of and includes other property or value given or promised which is the total consideration.

WITNESS grantor's hand this 31 day of December, 1971.

Carolyn Hinson

 CAROLYNE HINSON
 Trustee Under the Will of Victor Hinson,
 Deceased.

STATE OF CALIFORNIA,)
) SS.
 COUNTY OF LOS ANGELES)

Personally appeared the above named Carolyn Hinson, Trustee Under the Will of Victor Hinson, deceased, and acknowledged the foregoing instrument to be her voluntary act and deed.

Before me:

Ethel A. Ringe

 Notary Public for California
 My Commission expires March 27, 1975



RECORDED - FILED
Official Records

1972 JAN 17 PM 4 53

A person appealing from a conviction in a municipal court for violation of a city ordinance can not be required to pay a fee for filing a transcript on appeal.

June 7, 1930.

Hon. Ross Farnham,
District Attorney.

Dear Sir: In your letter of June 3 you state that the charter of the city of Bend, Oregon, authorizes appeals from convictions in the municipal court and ask to be advised as to whether or not a party appealing from conviction in municipal court for violation of a city ordinance is required to pay a fee to the county clerk for filing a transcript on appeal.

Chapter 196, Laws of 1929, provides:

"Whenever any person shall be convicted in the municipal court of any city of the state of Oregon of any offense defined and made punishable by any city charter or ordinance, unless the charter of such city prohibits appeals from such court, such person shall have the same right of appeal to the circuit court of the state of Oregon within whose jurisdiction such city lies, as now obtains from a conviction from courts of justice of the peace, which appeal shall be taken and perfected in the same manner as is provided by law for taking appeals from justices' courts."

Section 2508, et seq., provides the procedure for taking appeals from justices' courts, and I am not aware of any statutory authority in this state whereby a party appealing from a conviction in a justices' court is compelled to pay a fee for filing a transcript on appeal.

Upon the principle that a defendant whose freedom is in jeopardy has the constitutional right of every legitimate defense without being forced to pay for same, I am of the opinion that the fee in question can not be collected.

I. H. VAN WINKLE,
Attorney-General.
By Arch MacDonald, Assistant.

A water right is not created by merely filing an application for such water right with the State Engineer, where no action has been taken on the application by the State Engineer.

Such applications pending before the State Engineer at the time of the enactment of ch. 287, L. 1929, may not now be perfected and the applicants may not construct the dam proposed therein.

June 7, 1930.

Mr. Rhea Luper,
State Engineer.

Dear Sir: In your letter of May 27 you state that there are six applications for permits to appropriate water from the Rogue river, which are on file in your office. Two of these were filed August 2, 1926, and four on November 25, 1927, all of which were filed before the enactment of chapter 287, General Laws of Oregon,

1929. It is my understanding that no action has been taken by your department relative to allowing any of these applications. You ask whether or not these applications should be denied on account of the provisions of said chapter 287.

Said chapter 287 reads as follows:

"Section 1. Subject to such water rights as are existing at the time of taking effect of this act, the waters flowing in the main channel of the Rogue river from its source to section with the south line of section 33 township 33 south, range 1 east of the Willamette meridian in Jackson county, Oregon, to its confluence with the Pacific ocean, hereby are withdrawn from appropriation; provided, that this act shall not prevent the appropriation and use of such water for domestic, stock, irrigation and municipal purposes; and provided further, that it shall not prevent the appropriation, diversion and use of the waters of any tributary streams.

"Section 2. It shall be unlawful for any person, firm or corporation to build any dam or hydraulic structure in the channel of the Rogue river below its intersection with the south line of section 27, township 33 south, range 1 east, Willamette meridian, in Jackson county, Oregon, to its confluence with the Pacific ocean, which will interfere with the free passage, either up or down stream, of migratory fish."

It is provided in section 1 of chapter 287, that the right to appropriate water in certain portions of the Rogue river is withdrawn, subject to such water rights as were in existence at the time of taking effect of this act. The question arises as to whether or not any water rights exist by virtue of either of the six applications discussed in your letter.

All six applications are for the appropriation of water within that portion of the Rogue river withdrawn from appropriation, under the provisions of said chapter 287. Four of the applications are for the appropriation of water for power, mining and manufacturing purposes. One, application No. 11854, is for the construction of a dam for the storage of a certain quantity of water for the development of hydro-electric power; the sixth is for the appropriation of a certain quantity of water from the Rogue river to be stored in the dam covered by said application No. 11854. Therefore, none of the applications are for purposes which are exempted from the provisions of said chapter 287.

Sections 5721 to 5730, Oregon Laws, as amended, provide for the filing of applications for appropriating water of the state, and for permits for the construction of reservoirs. Provision is made for the approval or refusal of any such applications by the State Engineer.

Section 5724, Oregon Laws, provides that if the application is approved,

"... the applicant shall be authorized, on receipt thereof, to proceed with the construction of the necessary works, and to take

all steps required to apply the water to a beneficial use, and to perfect the proposed appropriation. If the application is refused, the applicant shall take no steps toward the construction of the proposed work or the diversion and use of water so long as such refusal shall continue in force."

Section 5728, as amended by chapter 87, General Laws of 1927, provides:

"Upon it being made to appear to the satisfaction of the state engineer that any appropriation has been perfected in accordance with the provisions of this act, it shall be the duty of the state engineer to issue to the applicant a certificate of the same character as that described in section 5744, Oregon Laws. Said certificate shall be recorded and transmitted to the applicant as provided in said section. Rights to the use of water acquired under the provisions of this act, as set forth in any such certificate, shall continue in the owner thereof so long as such water shall be applied to a beneficial use under and in accordance with the terms of said certificate. * * *"

Section 5744, Oregon Laws, provides for the issuance of a certificate setting forth, among other things, the priority of the date, extent and purpose of a water right.

Section 5729, Oregon Laws, provides:

"The right acquired by such appropriation shall date from the filing of the application in the office of the state engineer."

The term "water right," is defined in Wiel, Water Rights, Third Edition, page 304, as follows:

"A water-right of appropriation is real estate, independent of the ditch for carrying the water, and independent of place of use or mode of enjoyment, whereby the proprietor is granted by the government the exclusive use of the water anywhere so long as he applies it to any beneficial purpose; and it is an incorporeal hereditament, solely usufructuary, not conferring ownership in the corpus of the water or in the channel of the stream."

The question arises as to whether or not a water right is created by merely filing an application for such water right with the State Engineer, where no action has been taken on the application by the State Engineer.

It will be noted that our statute provides that after the application has been approved the applicant is authorized to proceed with the construction of the necessary work and to take all steps required to apply the water to a beneficial use to perfect the proposed appropriation; (see section 5724, Oregon Laws) and that upon it appearing to the satisfaction of the State Engineer that any appropriation has been perfected in accordance with the provisions of the act it shall be the duty of the State Engineer to issue to the applicant a certificate, giving the priority of the date, extent and purpose of the water right. (See sections 5728 and 5744, Oregon Laws, as amended.)

In Washington State Sugar Company v. Goodrich et al., (Idaho) 147 Pac. 1073,

the statute provided for applications for water rights being filed in a similar manner as provided in the statute of this state. The court held that the evidence was conclusive that neither of the applicants had, at any time subsequent to the date of the issuance of the permit by the State Engineer, even attempted to comply with the conditions therein contained. At page 1076 the court says:

"... A water right claim is not a water right. A water right claim is a declaration of intention, made in a written form prescribed by statute, to give public notice of intention to create water rights identical with descriptions stated in the writing, commonly referred to as a water right. Although they are not, water right claims have become commonly regarded as being the same thing as water rights. One is a mere declaration of intention to create a water right which may never be anything more than an intention. By a compliance with conditions of the permit, the water right claim then becomes a water right."

At page 1077 the court says:

"The granting by the state engineer of a permit for the right to use the waters of this state, in and of itself secures to the applicant no right to the use of the waters applied for in said permit, unless there be a substantial compliance with each and every provision of the statute relating to or in any manner affecting the issuance of such permit and a fulfillment of the conditions and limitations therein, but a compliance with the conditions and limitations prescribed in such permit initiates a right to the use of the water in the applicant, and said right then becomes a vested one and dates back to the issuance of said permit."

The purpose of the Legislature in enacting said chapter 287, General Laws of Oregon, 1929, was to close certain portions of the Rogue river from the appropriation of water, and to prevent the construction of any dams or other hydraulic structures in the channel of that portion of the Rogue river covered by the act, which would interfere with the free passage, either up or down the stream, of migratory fish. At the time this act was passed by the Legislature, the applications in question were pending before the State Engineer, and undoubtedly the Legislature had knowledge of these applications in enacting this statute. To hold that these applications may be perfected and the applicants may construct the dam proposed in these applications, would defeat the purpose of said chapter 287.

It is my opinion that the reasoning of the supreme court of Idaho in Washington State Sugar Company v. Goodrich, supra, is applicable to our statute, and that the applicants discussed in your letter merely have a water right claim pending with the State Engineer. This claim is not a water right. A water right does not come into existence until the application has been approved and the applicant has, subject to such approval,

76-22510

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61-33934 31-24-19 (209) T

Minon 601-510066

DEC 21 1976

KNOW ALL MEN BY THESE PRESENTS That FIRST NATIONAL BANK OF OREGON, a national banking

association, being the identical association heretofore known as The First National Bank of Oregon, Portland,
does hereby certify and declare that that certain Real mortgage, bearing date the 16th
day of May, 19 62, made and executed by

ARMIN C. RICHTER and EVELYN P. RICHTER,

husband and wife,

to FIRST NATIONAL BANK OF OREGON, securing the payment of the sum of Eighty thousand and No/100 (\$ 80,000.00) DOLLARS,
and recorded on the 17th day of May, 19 62, in Book 410 at page 405
of Records of Real Mortgages in and for the County of Jackson State of
Oregon, together with the debt secured thereby, has been fully paid, satisfied and discharged, and the
County Clerk or Recorder of said County is hereby authorized and requested to cancel the same of record.

IN WITNESS WHEREOF, FIRST NATIONAL BANK OF OREGON, has caused these presents to be executed
on its behalf by its duly authorized representative this 14th day of December, 19 76

FIRST NATIONAL BANK OF OREGON

By Louise Labach
Louise Labach, Assistant Cashier

STATE OF OREGON,)
COUNTY OF Multnomah) SS December 14, A. D. 19 76

Personally appeared Louise Labach,

who, being duly sworn did say that he is the Assistant Cashier
of FIRST NATIONAL BANK OF OREGON, and that the said instrument was signed in behalf of said
corporation by authority of its Board of Directors; and he acknowledged said instrument to be its

solely authorized. Before me:



Mildred L. Anderson
Notary Public for Oregon

My Commission Expires My Commission Expires May 15, 1980

SATISFACTION OF MORTGAGE
FIRST NATIONAL BANK OF OREGON
TO

Armin C. Richter, et ux

Jackson County, Oregon
Recorded
OFFICIAL RECORDS

8:30 DEC 21 1976 H.L.
HARRY CHIPMAN
CLERK & RECORDER
E. Hubert M. Emery Deputy

WHEN RECORDED, MAIL TO:

NOTARY PUBLIC SATISFACTION OF RECORDED MORTGAGE (REAL OR CHATTEL)

Protestants Ex D-D

Prot Ex "C-C"

Already on

Application For Special Assessment Of Unzoned Farm Land

And Additional Tax Deferral as Provided by ORS 308.370 to 308.395
An Application Must Be Filed On or Before April 1 of The First Year In Which Such Assessment Is Requested

Filed with the JACKSON County Assessor for Assessments beginning January 1, 1977

CODE AND ACCT. NOS.

Enter Applicant's Name and Address Below

RALPH J. RICHARDS
JUNE L. RICHARDS
4035 LITTLE APPLGATE RD
JACKSONVILLE, OREGON 97530

THIS SPACE FOR ASSESSOR'S USE ONLY

Date Received	Clerk	Approved	Denied
Late Value Notice Filing date extended _____ days.		J.V. No. _____	

INSTRUCTIONS TO TAXPAYER

1. Application must be filed on or before April 1 of the first year in which such assessment is requested.
2. File 1st copy with the county assessor of your county.
3. Retain 2nd copy for your files.
4. This application does not require the use of carbon paper.

Applicant's Phone No.:

Code Number	Account Number	Acres	Complete Only if Account Number Does Not Describe Property			
			Deed or Inst. No.	Section	Twp.	Rge.
49-16	342W19-207 1-47797-3	12ac	77-01187			

BECAUSE OF SMALL ACREAGE YOUR OPERATION IS MARGINAL. WE WILL CHECK FROM TIME TO TIME TO SEE HOW LAND IS USED. PLEASE KEEP RECEIPTS FOR WHAT YOU SELL. P.E.C.

The undersigned do hereby make application to the county assessor for the special assessment of the above-described unzoned farm land as provided by ORS 308.370 to 308.395 and affirm that:

- There are no outstanding leases or options to buy the surface rights for non-farm use.
- There are no outstanding leases for the exploration of geothermal resources as defined by subsection (7) of ORS 522.005, mineral resources or other subsurface resources which interfere with the farm use of the land. (See back for copy of law.)

1. The ownership interest of the applicant(s) in the above-described property is:
 Fee Owner Life Estate Contract Purchaser Other (explain) _____
2. The names of the owners of record, if different from the undersigned applicants, are: (See General Information, Item 2 over.) _____
3. The above-described land is being used and has been used during the preceding two years as a bona fide farm; that is, for the raising, harvesting and selling of crops to produce a profit in money or for the feeding, breeding, management and sale of livestock to produce a profit in money.
A. The farm use of the land has been as follows as shown below:

LAND USE	ACRES		
	This Year (Planned)	First Prior Year	Second Prior Year
Cropland—Irrigated	7	7	7
Cropland—Non-Irrigated	6	6	6
Farm Woodlot			
Non-tillable Pasture			
Other			
Total Acres	13	13	13

LIVESTOCK OR POULTRY (List by Type)	MAXIMUM NUMBER		
	This Year (Planned)	First Prior Year	Second Prior Year
CATTLE	7	6	6
HORSE	0	1	1

B. The major crops grown during the last crop year and the acres of each are as follows:

CATTLE

WARNING. A. Unzoned farm land, when specially assessed at farm-use value and later disqualified, becomes liable for additional taxes during the last 10 or lesser number of years in which the farm-use assessment was in effect, together with interest of 6%. (See General Information, Item 3 over.)
B. When, for any reason, the land or any portion thereof ceases to be used exclusively for farm use, notice must be given to the assessor prior to the next January 1 assessment date. In addition to the taxes in "A" above, failure to give such notice will result in additional taxes for the assessment year in which the notice should have been given and each assessment year thereafter plus interest and penalty as provided by law. (See ORS 308.395(2), over.)

DECLARATION

I declare under the penalties for false swearing as contained in ORS 305.990(4) that this document, including any attached schedules, has been examined by me and to the best of my knowledge is true, correct and complete.

SIGNATURE X Ralph J. Richards 1 | 21 | '77 X

X _____ X

WITNESS(S) X _____ X

JACKSON COUNTY
ASSESSOR
05997
JAN 21 1977

July 5, 1973

First National Bank of Oregon
MORTgage Department
1 East Main
Medford, OR 97501

Gentlemen:

You are the holder of a mortgage on Stuart Hinson's property in the Little Applegate. The enclosed are applications for transfers of Water rights from one side of the ranch to the other. Would you please forward a letter to Trevor Jones, State Engineer's Office, Water Resources Department, 1178 Chemeta Street NE, Salem, Oregon 97310 indicating that you have no objection to this transfer of water rights. If you do have any questions on the matter, either ask Mr. Hinson at 773-7410 or call me at 779-4333. I will be back in my office on July 18, 1973.

Sincerely,

JOHN E. FERRIS

JEF:jc
Enc.

APPL Ex. "O"



FIRST NATIONAL BANK OF OREGON

MEDFORD BRANCH, 1 EAST MAIN STREET, MEDFORD, OREGON 97501. TELEPHONE: 773-4531

JULY 19, 1973

Collins, Ferris and Velure
Attorneys at Law
225 West Main Street
Medford, Oregon 97501

RE: Real Estate Loan No. 023-5180007 STUART HINSON

Gentlemen:

In reply to your letter of July 5, 1973 pertaining to Stuart Hinson's property, it is alright with the bank to transfer the water rights from one side of the ranch to the other. We have no objection to this. We have placed the photos you sent us of this application in Mr. Hinson's file.

Very truly yours,

Gloria Lewandowski
Real Estate Department
Medford Main Office
Per Jim Warinner Assistant Cashier

APPL Ex ~~III~~ "N"

MAIL TRIBUNE
Letters to
5-29-79
Dream over

To the Editor: This dream is over if your Jackson County Commissioners have their way. I've tried to prove to them that to run one 82 acre ranch, which holds about 45 acres of pasture, the balance of brush, will run 90 head of cattle (steers), whether one ranch, which is seven tax lots already, or seven family ranches, where they can live in the country with their children and provide their own food, irrigate the pastures with their children, showing them what country life is like.

The 45 acres of pastures will be divided up into seven small ranches. It will still hold 90 head of cattle but each family will have approximately 12 to 13 head, the same amount as one large ranch.

Mr. Schofield (4-21-79) indicated he could care less if I lost money running the ranch as is. Well he will have his way. I can't afford the 90 head or the help to run the ranch so I have chosen to let the ranch go to seed and dry up. OR will they come out and force me to do it? You had better check and see where your rights are. I've heard of this in other countries but not in the U.S.A.

Stuart V. Hinson
Jacksonville, Ore.

Prot. Ex A-A

STATE OF OREGON

COUNTY OF

JACKSON

CERTIFICATE OF WATER RIGHT

This Is to Certify, That **A. S. KLEINHAMMER**

of **Buncom**, State of **Oregon**, has a right
to the use of the waters of **Little Applegate River**

a tributary of **Applegate River** for the purpose of
irrigation of 116.8 acres, domestic, and stock use
and that said right has been confirmed by decree of the Circuit Court of the State of Oregon for
Jackson County, and the said decree entered of record at Salem, in the Order Record of
the STATE ENGINEER, in Volume **4**, at page **1**; that the priority of the right thereby
confirmed dates from **September 1, 1857** for **2.37 cubic feet per second** for the
irrigation of 94.8 acres; 1898 for **0.55 cubic foot per second** for the irrigation
of **22 acres; and for domestic and stock use;**
that the amount of water to which such right is entitled, for the purposes aforesaid, is limited to an
amount actually beneficially used for said purposes, and shall not exceed
2.92 cubic feet per second.

The point of diversion is located in the **NE $\frac{1}{4}$ NW $\frac{1}{4}$** , Section 29, T. 39 S., R. 2 W. W. M.

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

1.5 acres SE $\frac{1}{4}$ SW $\frac{1}{4}$
20.8 acres SW $\frac{1}{4}$ NW $\frac{1}{4}$
15.7 acres SE $\frac{1}{4}$ NW $\frac{1}{4}$
1.0 acre NW $\frac{1}{4}$ SW $\frac{1}{4}$
16.6 acres NE $\frac{1}{4}$ SW $\frac{1}{4}$
1.0 acre NE $\frac{1}{4}$ SE $\frac{1}{4}$
7.7 acres NW $\frac{1}{4}$ SE $\frac{1}{4}$
20.0 acres SW $\frac{1}{4}$ SE $\frac{1}{4}$
18.0 acres SE $\frac{1}{4}$ SE $\frac{1}{4}$
Section 19
8.0 acres SW $\frac{1}{4}$ SW $\frac{1}{4}$
Section 20
1.5 acres NW $\frac{1}{4}$ NW $\frac{1}{4}$
5.0 acres NE $\frac{1}{4}$ NW $\frac{1}{4}$
Section 29
T. 39 S., R. 2 W., W. M.

Certificate of water right issued to A. S. Kleinhammer and recorded at page 16400, Volume 13, State Record of Water Right Certificates, confirms the right to the use of water for irrigation of 121.5 acres. A change in the right to the use of water appurtenant to 4.7 acres was approved by order of the State Engineer entered April 21, 1972. This certificate is issued to confirm the remaining right to the use of water for irrigation and supersedes the certificate heretofore issued to A. S. Kleinhammer.

And said right shall be subject to all other conditions and limitations contained in said decree.
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 **January 11**, 1973 .

.....**CHRIS L. WHEELER**.....
State Engineer

Recorded in State Record of Water Right Certificates, Volume **30**, page **38773**

6

The subject real property now owned by Glen F. and Helen A. Wegner was conveyed from Stuart V. Hinson to Glen F. Wegner and Helen A. Wegner by a warranty deed dated September 7, 1976. (Applicant's exhibit "H")

Mr. Hinson testified that his first contact with the Wegners in regard to the subject property was nearly a year prior to the sale and at that time he explained to the Wegners that the water rights would have an 1857 priority on certain lands lying below the Lower Phillips Ditch and a 1929 priority on the lands lying between the Upper and Lower Phillips Ditches. Mr. Hinson stated that he does not recall whether he repeated the explanation about the subject water rights in later contacts just prior to the sale of the property.

Mr. Wegner testified that he does not recall Mr. Hinson having told him about the subject water right priorities. Mr. Wegner further testified that he inquired of the watermaster, David Hendrix, prior to his purchase of the subject property, as to the priority dates for the subject water rights appurtenant to the property and that Mr. Hendrix did give him the requested information as to the water rights of record, but does not recall Mr. Hendrix having told him anything about pending transfer applications that would affect the subject water rights.

Mr. Hendrix testified that while he recalls having talked with the Wegners about water rights on several occasions, but does not have a specific recollection of having discussed the subject water rights and their relative dates of priority prior to the date Mr. and Mrs. Wegner purchased the subject property from Mr. Hinson. Mr. Hendrix stated, "It is possible that I told him there was 1857 priority rights at the time that he was there, but I'm sure that if I advised him of this, I would have clarified it that there was a transfer pending, just like I did Mr. and Mrs. Richards. . . Since this transfer was filed, I've tried to go to quite a length, of anybody questioning me along these lines, to advise them that they might be affected one way or another."

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

Jackson County

IN THE MATTER OF WATER RIGHT)
TRANSFER APPLICATIONS NOS.)
2745 & 2746 IN THE NAME OF)
STUART V. HINSON FOR CHANGES)
IN PLACE OF USE AND POINTS)
OF DIVERSION OF WATERS OF)
LITTLE APPLGATE RIVER)

STATEMENT, FINDINGS
CONCLUSIONS & ORDER

STATEMENT

On December 18, 1972, two applications were filed in the office of the State Engineer (predecessor to the Water Resources Director) in the name of Stuart V. Hinson, for approval of changes in place of use and points of diversion of waters appropriated from Little Applegate River under the provisions of certain existing water rights of record, pursuant to ORS 540.510 to 540.530.

The said applications were examined and found to be defective in describing the specific portions of the subject water rights to be modified by the proposed changes in place of use and points of diversion. Over the period of time extending from December of 1972 until May of 1977, and with delays resulting in part from a backlog of pending applications in the Department, the applications were corrected and completed, using superseding copies of the applications, and notice of the proposed changes were published pursuant to ORS 540.520(2).

The said notice which was published in the June 10, 17 and 24, 1977 issues of the Medford Mail Tribune newspaper, provided:

NOTICE OF WATER RIGHT TRANSFER APPLICATIONS NOS. 2745 and 2746

Notice is given hereby that two applications have been filed in the office of the Water Resources Director by Stuart V. Hinson for approval of changes in place of use and point of diversion from Little Applegate River.

(1) The certificate recorded at Page 38773, Vol. 30, State Record of Water Right Certificates, in the name of A.S. Kleinhammer, describes a right which includes the use of not to exceed 0.41 cubic foot per second from Little Applegate River for irrigation of 8.4 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, 2.0 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ and 6.0 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 19, T. 39 S., R. 2 W., W.M., with a date of priority of Sept. 1, 1857.

Water for the said right is diverted through the Upper & Lower Phillips Ditches from points located (1) 680 ft. S. and 9 ft. W., (2) 215 ft. S. and 790 ft. W. from the N. $\frac{1}{4}$ corner of Sec. 29, both being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 29, T. 39 S., R. 2 W., W.M.

By application No. 2745, the applicant herein, owner of the lands above

described, proposes to change the place of use and point of diversion therefrom, and without loss of priority to irrigate a certain 0.6 acre in NE $\frac{1}{4}$ SW $\frac{1}{4}$ and 16.0 acres in Lot 3 (NW $\frac{1}{4}$ SW $\frac{1}{4}$) of Sec. 19, T. 39 S., R. 2 W., W.M., through the Gin Lin Ditch from a point of diversion located 1430 ft. N. and 1905 ft. W. from the E. $\frac{1}{4}$ corner of Sec. 29, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 29, T. 39 S., R. 2 W., W.M.

(2) The certificate recorded at Page 24479, Vol. 17, State Record of Water Right Certificates, in the names of First National Bank of Ashland & Armin Richter, describes a right which includes the use of not to exceed 0.21 cubic foot per second from Little Applegate River for irrigation of 0.6 acre in NE $\frac{1}{4}$ SW $\frac{1}{4}$ and 16.0 acres in Lot 3 (NW $\frac{1}{4}$ SW $\frac{1}{4}$) of Sec. 19, T. 39 S., R. 2 W., W.M., with a date of priority of Nov. 12, 1929.

Water for the said right is diverted through the Gin Lin Ditch as described above.

By application No. 2746, the applicant herein, owner of the lands above described, proposes to change the place of use and point of diversion therefrom, and without loss of priority to irrigate a certain 8.2 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ and 8.4 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Sec. 19, through the Upper Phillips Ditch as described above.

All persons interested are notified hereby that a hearing will be held at the county courthouse at Medford, Oregon, on August 5, 1977, at 9:30 a.m. All objections to the proposed change, if any there are, will be heard at said time and place. Any and all objections shall be prepared in writing, one copy to be served on Stuart V. Hinson, P.O. Box 579, Jacksonville, Oregon 97530, and one copy filed with the Water Resources Department, Salem, Oregon 97310, together with a \$10 filing fee, at least 10 days prior to the date set for hearing. IF NO OBJECTION IS FILED, THE APPLICATION MAY BE APPROVED BY THE WATER RESOURCES DIRECTOR WITHOUT A HEARING. Administrative rules pertaining to the filing of a protest will be furnished by the Water Resources Department upon request.

Dated at Salem, Oregon, this 24th day of May, 1977.

JAMES E. SEXSON
Director

On July 22, 1977 a protest in the names of Everette J. Bostwick and Jimmie F. Bostwick was filed in the office of the Water Resources Director through their attorney, Robert D. Heffernan, against approval of the pending applications numbered 2745 and 2746.

On July 26, 1977 a protest in the names of Glen F. Wegner and Helen A. Wegner and Ralph Richards and June Richards was filed in the office of the Water Resources Director through their attorney, Thomas C. Howser, against approval of the pending applications.

STATE OF OREGON

COUNTY OF JACKSON

CERTIFICATE OF WATER RIGHT

This Is to Certify, That FIRST NATIONAL BANK OF ASHLAND & ARMIN RICHTER

of Route 2, Box 25, Jacksonville, 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 Little Applegate River a tributary of _____ for the purpose of irrigation under Permit No. 9389 of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Oregon; that the priority of the right hereby confirmed dates from November 12, 1929

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 0.75 cubic foot per second

or its equivalent in case of rotation, measured at the point of diversion from the stream. The point of diversion ~~is located in the~~ of the Gallagher ditch is located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 26; the point of diversion of the Gin Lin ditch is in the NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 29, and the point of diversion of the Upper Phillips ditch is in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 29, all in Township 39 South, Range 2 West, 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-eightieth of one cubic foot per second per acre,

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:

2.08 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$
 12.70 acres in the NE $\frac{1}{4}$ S $\frac{1}{4}$
 30.67 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$
 1.02 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$
 Section 19,
 8.12 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$
 5.58 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$
 Section 29,
 Township 39 South, Range 2 West, W. M.

NOTE: This certificate is issued to confirm a change in point of diversion of water approved by an Order of the State Engineer entered September 30, 1958, pursuant to the provisions of ORS 540.510 to 540.530, and supercedes certificate of water right heretofore issued to the First National Bank of Ashland and recorded at Page 10651, Volume 10, State Record of Water Right Certificates.

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 24th day of November, 1958.

...../s/ LEWIS A. STANLEY

State Engineer

Recorded in State Record of Water Right Certificates, Volume 17, page 24479.

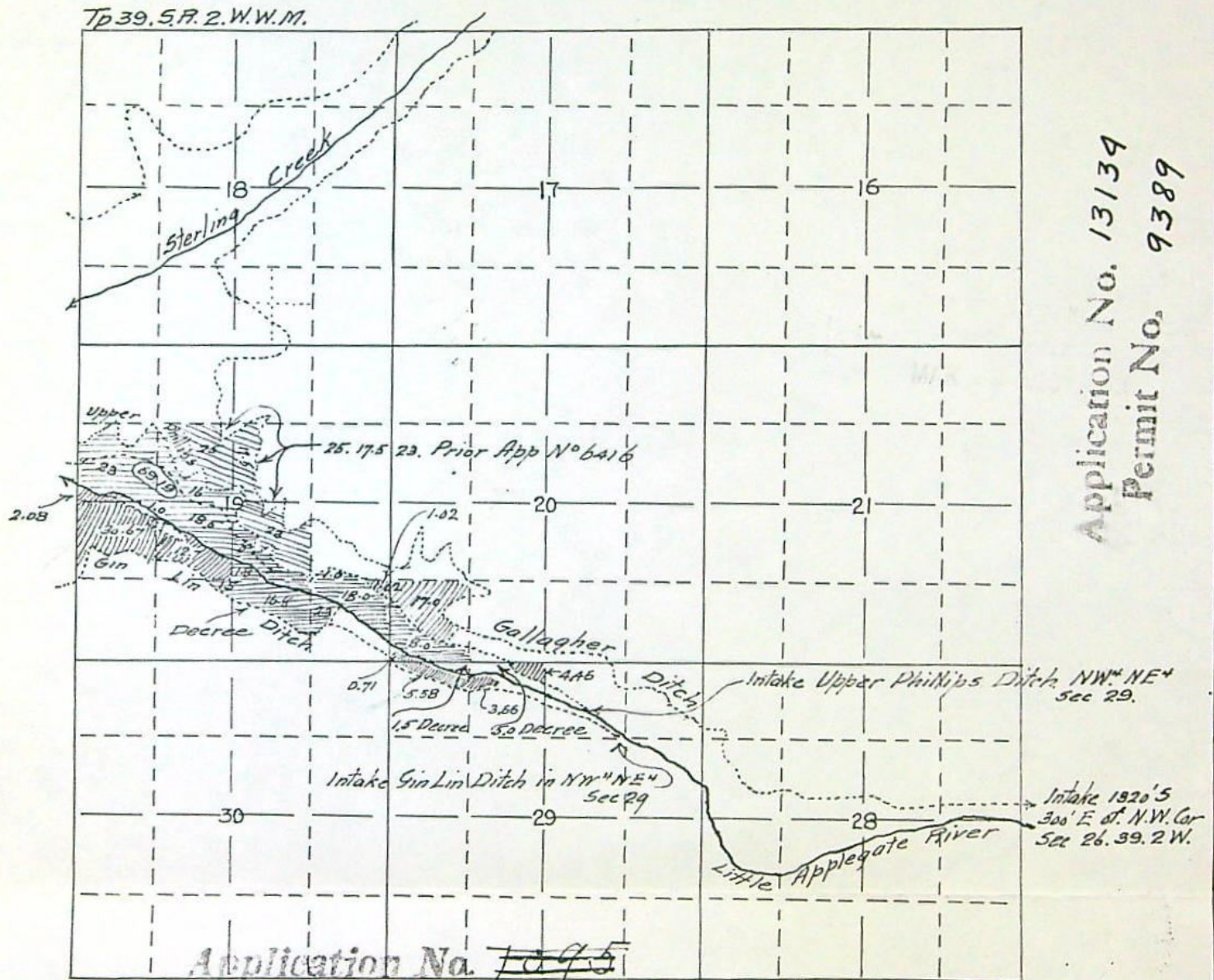
WRD #5

T # 2746

— MAP —

Accompanying application of A. S. KLEINHAMMER of Jacksonville, Oregon. for permit to the waters of Little Applegate River, tributary to Rogue River, through the Gallagher and Gin Lin ditches. Jackson County Oregon.

— March 1920. —



Application No. ~~1095~~

Permit No. ~~4493~~

Deceaded.

This Application

Map made from notes of an actual survey in the field, by C. Frank Rhodes, correctly showing lands to be irrigated, together with streams and ditches in immediate vicinity, compiled by.

Application No. 13134

Permit No.

— Fred. N. Cummings. C.E. —

WRD #6

STATE ENGINEER'S RECEIPT

STATE OF OREGON

Salem, Ore., December 18, 1972

Appl. 2745
 Per.
 Trsf.

Received from Stuart W. Hinson

\$ 35.25 Cash M.O. Check 105.00 Collins Redden Jarvis

Examination fees:
 Surface water \$ _____
 Ground water \$ _____
 Transfer \$ _____

Recording fees: Uelure

Miscellaneous fees:
 Blueprinting
 Copying
 Certification \$ _____
 Misc. Recording
 Protest
 Extension of time

Publication of notice \$ 35.25
 Quadrangle account \$ _____
 Adjudication fee \$ _____
 Power license fee \$ _____
 _____ \$ _____
 Hydroelectric license fee \$ _____
 _____ \$ _____
 _____ \$ _____

Water Well Construction:
 _____ Exam. \$ _____ _____ Lic. \$ _____

Certificate Recording fees:
 _____ \$ _____

All other.
 _____ \$ _____

STATE ENGINEER

By Betty J. Thouch

31800

APP EX "K"

STATE ENGINEER'S RECEIPT
STATE OF OREGON

Salem, Ore., December 18, 1972

Appl. 2746
Per.
Trsf.

Received from Stuart V. Hinson

\$ 32.40 Cash M.O. Check 105.00 Collins Redden, Lewis

Examination fees:

Surface water \$ _____
Ground water \$ _____
Transfer \$ 15.00

Recording fees:

1 Sure
\$ _____
\$ _____
17.40
\$ _____
\$ _____

Miscellaneous fees:

Blueprinting
Copying
Certification \$ _____
Misc. Recording
Protest
Extension of time

Publication of notice \$ _____

Quadrangle account \$ _____

Adjudication fee \$ _____

Power license fee \$ _____

Hydroelectric license fee \$ _____

Water Well Construction:

_____ Exam. \$ _____ _____ Lic. \$ _____

Certificate Recording fees:

_____ \$ _____

All other.

_____ \$ _____

STATE ENGINEER

31801

By Betty J. Straul

STATE ENGINEER'S RECEIPT
STATE OF OREGON

Salem, Ore., December 18, 1972

Appl.
Per. 2746
Trsf.

Received from Maart V. Hinson

\$ 3.00 Cash M.O. Check 105.00 Colting Redden Lewis

Examination fees: Recording fees: active

Surface water \$ _____ \$ _____
Ground water \$ _____ \$ _____
Transfer \$ _____ \$ _____

Miscellaneous fees: \$ _____

Blueprinting \$ _____
Copying
Certification \$ _____
Misc. Recording
Protest
Extension of time

Publication of notice \$ _____

Quadrangle account \$ _____

Adjudication fee \$ _____

Power license fee \$ _____

----- \$ _____

Hydroelectric license fee \$ _____

----- \$ _____

----- \$ _____

Water Well Construction:

----- Exam. \$ _____ Lic. \$ _____

Certificate Recording fees:

----- Transfer \$ 3.00

All other.

----- \$ _____

31802

STATE ENGINEER
By Betty Jathauk

STATE ENGINEER'S RECEIPT

STATE OF OREGON

Salem, Ore., December 18, 1972

Appl. 2745
 Per.
 Trsf.

Received from Stuart V. Hinson

\$ 31.35 Cash M.O. Check 105.00 Collins, Redden, Lewis

Examination fees: Recording fees: Structure

Surface water	\$ _____	\$ _____
Ground water	\$ _____	\$ _____
Transfer	\$ <u>15.00</u>	\$ <u>26.35</u>
		\$ _____
		\$ _____

Miscellaneous fees:

Blueprinting
 Copying
 Certification \$ _____
 Misc. Recording
 Protest
 Extension of time

Publication of notice \$ _____
 Quadrangle account \$ _____
 Adjudication fee \$ _____
 Power license fee \$ _____
 _____ \$ _____
 Hydroelectric license fee \$ _____
 _____ \$ _____
 _____ \$ _____

Water Well Construction:
 _____ Exam. \$ _____ Lic. \$ _____

Certificate Recording fees:
 _____ \$ _____

All other.
 _____ \$ _____

31798

STATE ENGINEER

By Betty J. Strouch

STATE ENGINEER'S RECEIPT
STATE OF OREGON

Salem, Ore.,

December 18 1972

Appl.

Per.

Trsf.

2745

Received from

Stuart V. Henson

\$ 3.00

Cash

M.O.

Check

105.00 Collins Redden Jarvis

Examination fees:

Recording fees:

7.00

Surface water \$ _____

\$ _____

Ground water \$ _____

\$ _____

Transfer \$ _____

\$ _____

Miscellaneous fees:

Blueprinting

\$ _____

Copying

Certification

\$ _____

Misc. Recording

Protest

Extension of time

Publication of notice \$ _____

Quadrangle account \$ _____

Adjudication fee \$ _____

Power license fee \$ _____

_____ \$ _____

Hydroelectric license fee \$ _____

_____ \$ _____

_____ \$ _____

Water Well Construction:

_____ Exam. \$ _____

_____ Lic. \$ _____

Certificate Recording fees:

_____ Transfer \$ 3.00

All other.

_____ \$ _____

31799

STATE ENGINEER

By

Betty J. Strauch

I, ~~Stuart~~ V. Hinson, will allow the Land Sales Contract held by me on the property known as Tax Lot 210 39S2W19, Code 49-16, to be assumed by David A. and Anita C. Willard with interest at the rate of 9 %.

TO BE KNOWN: THE WATER RIGHTS ON THIS PIECE OF PROPERTY ARE AS FOLLOWS 1857 FROM LOWER PHILLIPS TO THE COUNTY ROAD AND 1929 FROM THE UPPER PHILLIPS TO THE LOWER PHILLIPS AND ABOVE UPPER PHILLIPS.

about 17 feet

8/27
Hinson / Stacy

Willard

APP EX "J"



BEFORE THE STATE OF OREGON, WATER RESOURCES DEPARTMENT

In the Matter of the Application)
)
of)
)
STUART V. HINSON, for approval in)
change of place and use and point)
of diversion of waters for Little)
Applegate River.)
_____)

OBJECTION TO CHANGE IN PLACE
OF USE AND POINT OF DIVERSION

RECEIVED

JUL 22 1977

WATER RESOURCES DEPT
SALEM, OREGON

Comes now, Everette J. Bostwick and Jimmie F. Bostwick,
husband and wife, and protests the applications of Stuart V.
Hinson as designated, Nos. 2745 and 2746, and which are for the
purpose of causing a change in the place of use and point of
diversion of water from Little Applegate River, as such change
in place of use and point of diversion are described in such
application.

The basis of this protest is as follows:

1. That in August, 1973, "Protestants" entered into a
written contract with Stuart V. Hinson for the purpose of pur-
chasing certain real property of which approximately 6.2 acres
thereof is subject to the loss of use of water for and on account
of the terms of the application of Stuart V. Hinson. Thereafter,
Protestants paid for the real property subject to purchase and a
warranty deed conveying such premises unto Protestants was recorded
on October 13, 1975, as Instrument No. 75-13832, official records
of Jackson County, Oregon and a copy of such warranty deed is
marked Exhibit "A", attached hereto and by reference made a part
hereof.

2. That Protestants purchased the real property described

Objection -1-

HEFFERNAN & FOWLER

ATTORNEYS AT LAW
TELEPHONE (503) 779-4075
705 WEST TENTH STREET • P.O. BOX 1746
MEDFORD, OREGON 97501

#10 - Paid 7-22-77
Rec # 62673

PARK SQUARE BOND

1 in the deed which has been marked Exhibit "A" relying on the
2 fact that the same, in part, constituted pasture, and that the
3 6.2 acres heretofore described were entitled to the beneficial
4 application of water from the Little Applegate River under and
5 by virtue of a valid and existing water right and that Stuart V.
6 Hinson assured Protestants of the existence of such right and
7 their right to apply such water.

8 3. That Stuart V. Hinson is not the owner of the 6.2
9 acres of real property owned by Protestants and which are subject
10 to the application of Stuart V. Hinson to change a point of
11 diversion and place of use of such water and that until the
12 publication of "Notice of Water Right Transfer" in the Medford
13 Mail Tribune, a paper of general circulation in Jackson County,
14 Oregon, Protestants had received no Notice from Stuart V. Hinson
15 of his intent to attempt to remove the water rights which he
16 had sold unto Protestants, and cause the same to once more be made
17 his own.

18 4. That in the event that the 6.2 acres of real property
19 owned by Protestants and described in the application of Stuart V.
20 Hinson should be removed and separated from the existing water
21 right authorizing the application of water thereto, then the use
22 of such acreage shall be greatly diminished as pasture.

23 5. That the applicant, Stuart V. Hinson, is without
24 legal right or authority to seek to cause Protestant's land to
25 be deprived of its beneficial water right and therefore diminish
26 its use for pasture purposes all with a substantial loss of
27 market value.

HEFFERNAN & FOWLER
ATTORNEYS AT LAW
TELEPHONE (503) 779-4075
705 WEST TENTH STREET • P.O. BOX 1746
MEDFORD, OREGON 97501

①

392W19-30-7
8:30 6.00

75-13832

CT-Accom
WARRANTY DEED

STUART V. HINSON, herein called Grantor, conveys to EVERETT J. BOSTWICK and JIMMIE FAE BOSTWICK, husband and wife, all that real property situated in Jackson County, State of Oregon, described as:

A parcel of land in Section 19, Township 39 South, Range 2 West, Willamette Meridian, Jackson County, Oregon, more fully described as follows:

Commencing at the point of beginning, being the Southeast corner of the Northwest quarter of the Southeast quarter of Section 19, Township 39 South, Range 2 West, Willamette Meridian, Jackson County, Oregon; thence North $0^{\circ}0'21''$ East, 1337.11 feet, to the Northeast corner of said quarter-quarter; thence North $0^{\circ}16'53''$ East, along the East line of the West half of the Northeast quarter, 1329.18 feet, to an iron pin; thence South $89^{\circ}59'32''$ West, 615.95 feet, to an iron pin; thence South $27^{\circ}30'33''$ West, 606.83 feet, to an iron pin; thence South $9^{\circ}45'39''$ East, 119.72 feet, to an iron pin; thence South $29^{\circ}10'41''$ West, 328.63 feet, to an iron pin; thence South $38^{\circ}40'53''$ West, 489.28 feet, to an iron pin; thence South $37^{\circ}32'35''$ West, 504.79 feet, to an iron pin on the Northerly right of way of the County Road; thence along said road as follows: South $59^{\circ}23'50''$ East, 240.21 feet, to the beginning of a curve right with a radius of 1175.92 feet; thence along said curve, 385.102 feet with a central angle of $18^{\circ}45'50''$; thence continuing on said road line, South $40^{\circ}38'$ East, 212.61 feet, to the beginning of a curve left, having a radius of 924.93 feet; thence along said curve, 403.26 feet, with a central angle of $24^{\circ}58'50''$; thence South $65^{\circ}36'50''$ East, 421.90 feet, to the beginning of a curve left, having a radius of 490.87 feet; thence along said curve, 302.85 feet, with a central angle of $35^{\circ}20'58''$; thence North $0^{\circ}09'21''$ East, 38.25 feet, to the point of beginning.

EXCEPTING THEREFROM any portion heretofore conveyed to Jackson County, Oregon, by corrected deed recorded as Document No. 72-07478, Official Records of Jackson County, Oregon.

Subject to the usual printed stipulations and exceptions set forth on a standard title insurance policy form and:

1. Easement for transmission and distribution of electricity, granted the California Oregon Power Company, as set forth in Volume 371, Page 499, Jackson County, Oregon, Deed Records.
2. The effect of the herein described property being within the boundaries of the Applegate Valley Irrigation District organized pursuant to and with the powers vested in such Irrigation District by virtue of the laws of the State of Oregon, as proclaimed and declared by Proclamation of the

EXHIBIT "A"

Return to: Everett Bostwick,
2536 Cedar Lakes Ln.
Medford, OR

County Court of the State of Oregon, for the County of Josephine, recorded as Document No. 68-12013, Official Records of Jackson County, Oregon.

3. A mortgage, including the terms and provisions thereof, executed by Armin C. Richter and Ruth P. Richter, husband and wife, to The First National Bank of Portland, a national banking association, dated May 16, 1962, recorded May 17, 1962, in Volume 410, Page 405, Jackson County, Oregon, Mortgage Records, given to secure payment of a note for \$80,000.00, with interest thereon (Affects additional property).

4. Reservation to Grantor, his heirs and assigns, the right of way and right to use the existing road that runs northwesterly over and across the above tract.

and covenant that Grantor is the owner of the above described property free of all other encumbrances and will warrant and defend the same against all persons who may lawfully claim the same, except as shown above.

The true and actual consideration for this transfer is \$17,500.00.

The foregoing recital of consideration is true as I verily believe.

DATED this 22 day of August, 1973.

[Signature]
STUART V. HINSON

STATE OF OREGON)
County of Jackson) ss.

Personally appeared the above named Stuart V. Hinson who is known to me to be such individual and who acknowledged the foregoing instrument to be his voluntary act and deed.

Before me:

Jo Ann Dodge
Notary Public for Oregon
My Commission Expires: 2-11-77

JOANN DODGE
NOTARY PUBLIC — OREGON
My Commission Expires 2-11-77

Jackson County, Oregon
Recorded
OFFICIAL RECORDS
8:30 OCT 13 1975 A M
HARRY CHIPMAN
CLERK and RECORDER
By Thomas W Jewett Deputy

1 BEFORE THE STATE OF OREGON, WATER RESOURCES DEPARTMENT

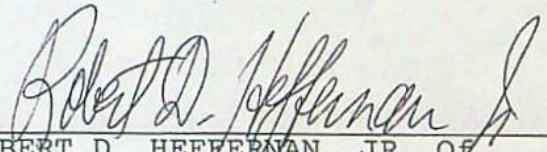
2 In the Matter of the Application)
3 of)
4 STUART V. HINSON, for approval in)
change of place and use and point)
5 of diversion of waters for Little)
Applegate River.)
6 _____)

PROOF OF MAILING

RECEIVED
JUL 26 1977
WATER RESOURCES DEPT
SALEM, OREGON

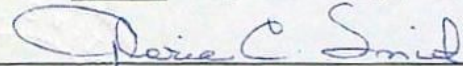
7 STATE OF OREGON)
) ss.
8 County of Jackson)

9 I, Robert D. Heffernan, Jr., being first duly sworn
10 on oath say that I served the Objection to Change in Place of Use
11 and Point of Diversion, on Stuart V. Hinson, P. O. Box 579,
12 Jacksonville, OR 97530, and also on Mr. James E. Sexson, Director
13 State of Oregon, Water Resources Department, Salem, OR 97310,
14 by depositing copies thereof, in the United States mail at Medford,
15 Oregon, on July 21, 1977. I further state that said copies were
16 enclosed in envelopes, addressed as indicated above, with postage
17 thereon prepaid for certified mail.



ROBERT D. HEFFERNAN, JR. OF
Attorneys for Jimmie F. Bostwick
and Everette J. Bostwick

18
19
20
21 Subscribed and sworn to before me
22 this 27 day of July, 1977.

23 

NOTARY PUBLIC for Oregon
24 My commission expires: 10-21-78

HEFFERNAN & FOWLER
ATTORNEYS AT LAW
TELEPHONE (503) 778-4075
705 WEST TENTH STREET • P.O. BOX 1746
MEDFORD, OREGON 97501

25
26
27

ROBERT D. HEFFERNAN, JR.
WILLIAM H. FOWLER

HEFFERNAN & FOWLER
ATTORNEYS AT LAW
705 WEST TENTH STREET
P. O. BOX 1746
MEDFORD, OREGON 97501

AREA CODE 503
TELEPHONE 779-4075

July 27, 1977

RECEIVED

JUL 28 1977

WATER RESOURCES DEPT
SALEM, OREGON

Mr. Jim Carver
State of Oregon
Water Resources Department
Salem, OR 97310

Re: Stuart V. Hinson
Application Nos. 2745 and 2746 (Objections)

Dear Mr. Carver:

As requested in your telephone call of earlier
this week, we have enclosed Affidavit of Mailing.

Very truly yours,



ROBERT D. HEFFERNAN, JR.

RDH:cc
Enclosure

ROBERT D. HEFFERNAN, JR.
WILLIAM H. FOWLER

HEFFERNAN & FOWLER
ATTORNEYS AT LAW
705 WEST TENTH STREET
P. O. BOX 1746
MEDFORD, OREGON 97501

AREA CODE 503
TELEPHONE 779-4075

July 21, 1977

RECEIVED

JUL 22 1977

WATER RESOURCES DEPT
SALEM, OREGON

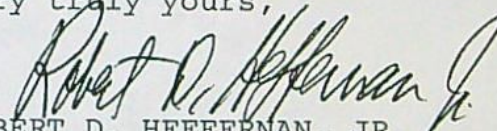
Mr. James E. Sexson, Director
State of Oregon
Water Resources Department
Salem, OR 97310

Re: Stuart V. Hinson
Application Nos. 2745 and 2746 (Objections)

Dear Mr. Sexson:

Enclosed is an executed copy of the objections of
Everette J. Bostwick and Jimmie F. Bostwick to the applications
Nos. 2745 and 2746 of Stuart V. Hinson. As you will notice, we
have likewise enclosed a check in the amount of \$10.00 repre-
senting the filing fee.

Very truly yours,


ROBERT D. HEFFERNAN, JR.

RDH:cc
Enclosure

Proof of Service ?

RECEIVED

JUL 21 1977

WATER RESOURCES DEPT
SALEM, OREGON

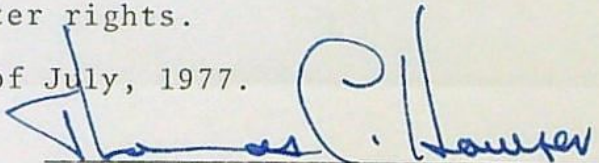
1 BEFORE THE WATER RESOURCES BOARD OF THE STATE OF OREGON

2 In the Matter of Application)
 3 for Approval of Changes of) Objections
 4 Use and Diversion from the)
 5 Little Applegate River)

6 COME NOW GLEN F. WEGNER and HELEN A. WEGNER and RALPH
 7 RICHARDS and JUNE RICHARDS and object to the proposed transfer of
 8 use and diversion under the application by STUART V. HINSON with
 9 respect to the waters of the Little Applegate River upon the
 10 following grounds:

- 11 1. Such proposed changes will have an adverse affect upon
 12 the Objectors.
 13 2. The Applicant is not the present owner of the properties
 14 affected.
 15 3. The Application for Transfer is not timely filed with
 16 respect to sales of property by the Applicant which are
 17 appurtenant to the water rights.

18 Dated this 20 day of July, 1977.



19
20 By COTTLE & HOWSER of the attorneys
21 for Objectors

486

7-26-77
 Rec 62742
 \$10.00

RECEIVED

JUL 21 1977

WATER RESOURCES DEPT
SALEM, OREGON

VERIFICATION

STATE OF OREGON, County of

ss.

I, _____ being first duly sworn, say that I am the
and that the foregoing
is true as I verily believe.

Subscribed and sworn to before me _____, 19

NOTARIAL
SEAL

Notary Public for Oregon.
My Commission expires

CERTIFICATE — TRUE COPY — WELL FOUNDED IN LAW

I hereby certify that the foregoing copy of _____ is a correct copy of
the original. That the said _____ in my opinion is well founded in law.
Dated _____, 19

Of Attorneys for
ACCEPTANCE OF SERVICE

Due service of the within _____ is hereby accepted in
County, State of _____, on _____, 19 _____, by receiving a duly certified copy thereof.

Of Attorneys for
CERTIFICATES OF SERVICE

PERSONAL

I certify that on _____, 19 _____, I served the within _____
on _____
attorney of record for the _____ by personally delivering to him a correct copy thereof.

Of Attorneys for

AT OFFICE

I certify that on _____, 19 _____, I served the within _____
on _____
attorney of record for the _____, during his absence from his office by leaving a correct copy thereof with
his clerk therein, or with a person having charge thereof, at _____, Oregon.

Of Attorneys for

MAILING

I hereby certify that I served the foregoing Objections
on _____
attorney(s) for Stuart V. Hinson on July 20, 19 77, by mailing to said attorney(s)
a correct copy thereof, certified by me as such, contained in a sealed envelope, with postage paid, addressed to said attorney(s) at his or their
regular office address, to-wit: P.O. Box 579, Jacksonville, OR 97530

and deposited in the post office at Ashland, Oregon,
on said day. Between the said post office and the address to which said copy was mailed, there is a regular communication by U. S. Mail.
Dated July 20, 19 77.

Of Attorneys for

COTTLE, HOSWER & HAMPTON
607 Siskiyou Blvd.
P.O. Box 627
Ashland, OR 97520
(503) 482-2621
ATTORNEY'S NAME, ADDRESS AND TELEPHONE NUMBER

BACKING SHEET

NOTE: See ORS 16.790(2). If the copy of the document named in
the above certificate of mailing was mailed to an address other than the
attorney's "regular office address," delete, by lining out, the words
"regular office address, to-wit:" and state the address to which the
document was mailed and the reason therefor.

COTTLE & HOWSER

ATTORNEYS AT LAW

607 SISKIYOU BOULEVARD

P. O. BOX 627

ASHLAND, OREGON 97520

AREA CODE 503
TELEPHONE 482-2621

RICHARD C. COTTLE
THOMAS C. HOWSER

RONALD K. CUE

W.H. Hampton III

July 20, 1977

State Water Master
Water Resources Department
Salem, Oregon 97310

RECEIVED
JUL 21 1977
WATER RESOURCES DEPT
SALEM, OREGON

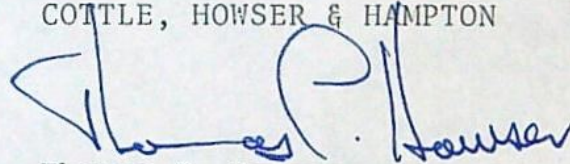
RE: Wegner and Richards
Our File 5551

Dear Sir:

Please find enclosed herewith an original copy of Objections.
Please file it accordingly. You will also find enclosed \$10
filing fee.

Sincerely yours,

COTTLE, HOWSER & HAMPTON



Thomas C. Howser

TCH/sc
Enclosures

Wilbers
ERASABLE FINISH
Bond

COTTLE & HOWSER

RICHARD C. COTTLE
THOMAS C. HOWSER
RONALD K. CUE

ATTORNEYS AT LAW
607 SISKIYOU BOULEVARD
P.O. BOX 627
ASHLAND, OREGON 97520

AREA CODE 503
TELEPHONE 482-2621

July 25, 1977

RECEIVED

JUL 26 1977

WATER RESOURCES DEPT
SALEM, OREGON

State Water Master
Water Resources Department
Salem, Oregon 97310

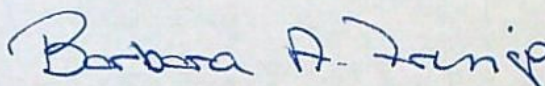
Re: Wegner & Richards
Our file: 5551

Dear Sir;

Enclosed is our check number 4757 in the amount of \$10.00 for the filing fee in the above matter. We understand that you will return the unsigned check we sent to you in error on July 20.

Sincerely yours,

COTTLE, HOWSER & HAMPTON



Barbara A. Frings
Secretary to Thomas C. Howser

TCH/bf
Encl:

RECEIVED

JUL 21 1977

COTTLE AND HOWSER
ATTORNEYS AT LAW
P. O. BOX 627, 607 SISKIYOU BLVD.
ASHLAND, OREGON 97520

4753

July 20 19 77 24-12/1230

WATER RESOURCES DEPT.

PAY TO THE ORDER OF **SALEM, OREGON** Water Resources Dept.

\$ 10.00

Ten dollars and no/100*****

DOLLARS



FIRST NATIONAL BANK
OF OREGON
ASHLAND BRANCH • ASHLAND

Wagner & Richards

486

Records have been redacted or withheld pursuant to the exemption for financial transfer records specified in ORS 192.345(27).

ROBERT D. HEFFERNAN, JR.
WILLIAM H. FOWLER
FRANK R. ALLEY, III

HEFFERNAN & FOWLER
ATTORNEYS AT LAW
705 WEST TENTH STREET
P. O. BOX 1746
MEDFORD, OREGON 97501

AREA CODE 503
TELEPHONE 779-4075

June 11, 1980

Mr. James Carver, Jr.
Engineer
Water Resources Department
555 13th Street N.E.
Salem, Oregon 97310

RECEIVED
JUN 12 1980
WATER RESOURCES DEPT
SALEM, OREGON

Re: Stewart V. Hinson (Bostwick)
Your File No.s T-2745 and 2746

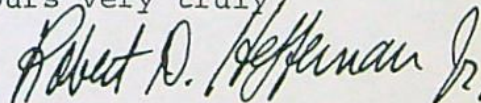
Dear Mr. Carver:

In regard to the hearings which have been set in Medford on June 27, 1980 in connection with these applications, would you please furnish us with copies of Mr. Hinson's original applications and any amendments thereto. I presume the applications bear a stamp indicating the date on which they were filed. However, if there is a separate record of the filing dates, will you also please furnish us with this information.

Any charges for copies shall be promptly paid and if you should have any questions, would you please call me.

Thank you for your assistance.

Yours very truly



ROBERT D. HEFFERNAN, JR.

RDH/p

COTTLE, HOWSER & CUE

ATTORNEYS AT LAW

607 SISKIYOU BOULEVARD

POST OFFICE BOX 627

ASHLAND, OREGON 97520

(503) 482-2621

RICHARD C. COTTLE
THOMAS C. HOWSER
RONALD K. CUE
GREGORY A. PARKER

April 9, 1980

RECEIVED

APR 11 1980

WATER RESOURCES DEPT
SALEM, OREGON

Mr. James E. Sexson
Director
Water Resources Department
Mill Creek Office Park
555 13th Street N E
Salem OR 97310

Re: Hinson/Wagner/Richards
Our file: 5551
Your files: T-2745, T-2746

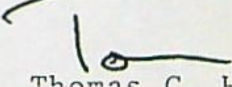
Dear Mr. Sexson:

Pursuant to your letter of February 7th, Mr. Hammack, Mr. Heffernan and myself have agreed to hold June 27, 1980 clear on our calendars. If it is possible, we would appreciate having the hearing in the Hinson matter reset on that day.

Please notify our office, if this can conveniently be arranged.

Sincerely yours,

COTTLE, HOWSER & CUE


Thomas C. Howser

TCH/bf

cc: Robert Heffernan
Larry Hammack

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

JACKSON COUNTY

IN THE MATTER OF THE APPLICATIONS)
OF STUART V. HINSON FOR APPROVAL OF)
CHANGES IN PLACE OF USE & POINT OF)
DIVERSION OF WATER FROM LITTLE)
APPLEGATE RIVER)

NOTICE OF
POSTPONEMENT
OF HEARING

TO: Stuart V. Hinson
*c/o Larry C. Hammack
Haviland, deSchweinitz,
Stark and Hammack
221 West Main Street
Medford, Oregon 97501

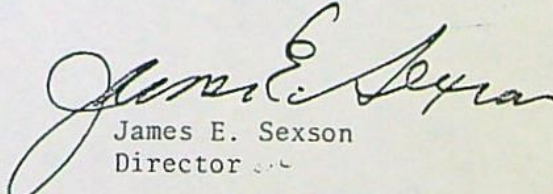
Glen F. & Helen A. Wegner
and Ralph & June Richards
*c/o Thomas C. Howser
Cottle, Howser & Hampton
P.O. Box 627
Ashland, Oregon 97520

Everett J. & Jimmie F. Bostwick
*c/o Robert D. Heffernan, Jr.
Heffernan & Fowler
P.O. Box 1746
Medford, Oregon 97501

David C. Hendrix
Watermaster, District 13
Jackson County Courthouse
Medford, Oregon 97501

Notice is given hereby that the concurrent hearings in the matters of water right transfer applications Nos. 2745 and 2746, in the name of Stuart V. Hinson, for approval of changes in place of use and point of diversion of water under rights described by the certificates recorded at page 24479, Volume 17 and page 38773, Volume 30, State Record of Water Right Certificates, as set forth in the notice published in the Medford Mail Tribune newspaper in the issues of June 10, 17 and 24, 1977, and protests in the names of Everette J. Bostwick and Jimmie F. Bostwick, and in the names of Glen F. Wegner, Helen A. Wegner, Ralph Richards and June Richards against approval of said applications, scheduled to be held before the Water Resources Director in Medford, Oregon on Tuesday, April 8, 1980, ARE POSTPONED TO A NEW DATE TO BE DETERMINED.

Dated at Salem, Oregon this 7th day of March, 1980.


James E. Sexson
Director

CERTIFIED MAIL, RRR

PS Form 3811, Jan. 1979

SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
 Show to whom and date delivered. 45¢
 Show to whom, date and address of delivery. ¢
 RESTRICTED DELIVERY
 Show to whom and date delivered. ¢
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery. \$ _____

(CONSULT POSTMASTER FOR FEES).

2. ARTICLE ADDRESSED TO:
 Stuart V. Hinson, %Larry C. Hammack
 Attorney at Law, 220 Laurel
 Medford, Oregon 97501

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	56309	

(Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE Addressee Authorized agent

4. DATE OF DELIVERY
Paul Robbins
 3-25-80

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: _____ CLERK'S INITIALS _____

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

lcj T-2745 ☆GPO : 1979-288-648



Water Resources Department
 MILL CREEK OFFICE PARK
 655 19th STREET N.E.
 SALEM, OREGON 97310

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
 No. 56309



CONSERVE WATER
 FOR
 OREGON'S FUTURE



Stuart V. Hinson
 % Larry C. Hammack
 Attorney at Law
 220 Laurel
 Medford, Oregon 97501



PS Form 3811, Jan. 1979

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
 Show to whom and date delivered. \$5
 Show to whom, date and address of delivery. \$
 RESTRICTED DELIVERY
 Show to whom and date delivered. \$
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery. \$

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 Everett J & Jimmie F Bostwick
 %Robert D. Heffernan, Jr., Heffernan & Fowler, PO Box 1746, Medford, OR 97501

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	56290	

 (Always obtain signature of addressee or agent)
 I have received the article described above.
 SIGNATURE Addressee Authorized agent

4. DATE OF DELIVERY: **MAR 14 1980**
 POSTMARK: **MAR 14 1980**

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

☆GPO : 1979-288-348

10J T-2745

J. & Jimmie F. Bostwick
Robert D. Heffernan, Jr.
Heffernan & Fowler
PO Box 1746
Medford, Oregon 97501

PS Form 3811, Jan. 1979

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one.)
 Show to whom and date delivered. \$5
 Show to whom, date and address of delivery. \$
 RESTRICTED DELIVERY
 Show to whom and date delivered. \$
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery. \$

(CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 Glen F. & Helen A Wegner & Ralph & June Richards, %Thomas C. Howser, Cottle, Howser & Hampton, PO Box 627, Ashland, OR 97520

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
	56289	

 (Always obtain signature of addressee or agent)
 I have received the article described above.
 SIGNATURE Addressee Authorized agent

4. DATE OF DELIVERY: **B. Jung**
 POSTMARK: **ASHLAND OR MAR 10 1980**

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: CLERK'S INITIALS

☆GPO : 1979-288-348

10J T-2745

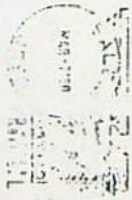
Glen F. & Helen A. Wegner
Ralph & June Richards
Thomas C. Howser
Howser & Hampton
PO Box 627
Ashland, Oregon 97520

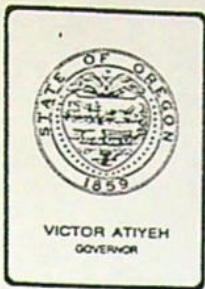


Water Resources Department
MILL CREEK OFFICE PARK
535 13th STREET N.E.
SALEM, OREGON 97310

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
No. 56288

Stuart V. Hinson
c/o Larry C. Hammack
Haviland, desSchweinitz, Stark & Hammack
221 West Main Street
Medford, Oregon 97501





Water Resources Department

MILL CREEK OFFICE PARK

555 13th STREET N.E., SALEM, OREGON 97310

PHONE 378-3066

February 7, 1980

Thomas C. Howser
Cottle, Howser & Cue
P.O. Box 627
Ashland, Oregon 97520

RE: Files Nos. T-2745, T-2746
Your File No. 5551

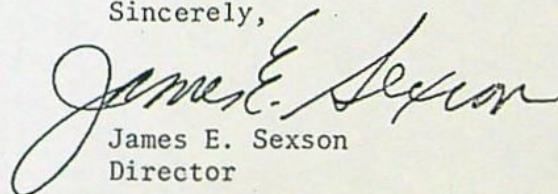
Dear Mr. Howser:

The resetting of the date for hearing in the Hinson matter has been delayed pending your confirmation of the tentative date of May 29, 1980, or such other date as you work out with counsel as discussed between you and Mr. Carver by telephone following receipt of your letter of December 19, 1979.

It was Mr. Carver's understanding that you intended to contact Mr. Hammack and Mr. Heffernan to arrange a suitable date. If this was a misunderstanding on our part, please accept my apology.

In any event, the hearing will not be held on April 8 as another matter has been set for that date.

Sincerely,


James E. Sexson
Director

JES/JWC:1cj

COTTLE, HOWSER, HAMPTON & CUE

ATTORNEYS AT LAW

607 SISKIYOU BOULEVARD

POST OFFICE BOX 627

ASHLAND, OREGON 97520

(503) 482-2621

RICHARD C. COTTLE
THOMAS C. HOWSER
W. H. HAMPTON III
RONALD K. CUE

January 31, 1980

RECEIVED
FEB 5 1980
WATER RESOURCES DEPT
SALEM, OREGON

James E. Sexson, Director
Water Resources Department
555 13th St., N.E.
Salem, Oregon 97310

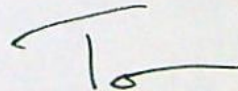
Re: Hinson transfer applications
Our File No. 5551
Your File No. T-2745 and T-2746

Dear Mr. Sexson:

I note in reviewing my file that I have not received any definite reset on the hearing in connection with the above matter. I received a phone call from your office and from Dave Hendrix about having it reset, but so far, I have been unable to determine whether it in fact has been reset. Could you please let me know where this stands so that I can plan accordingly? I still have the case set on April 8, 1980 that I referred to in my letter of December 19, 1979, and it looks as though it will be tried.

Sincerely yours,

COTTLE, HOWSER & CUE



Thomas C. Howser

TCH:fp

cc: Bob Heffernan
Larry Hammack
Dave Hendrix

COTTLE, HOWSER & CUE

ATTORNEYS AT LAW

607 SISKIYOU BOULEVARD

POST OFFICE BOX 627

ASHLAND, OREGON 97520

(503) 482-2621

December 19, 1979

RICHARD C. COTTLE
THOMAS C. HOWSER
RONALD K. CUE

RECEIVED

DEC 21 1979

WATER RESOURCES DEPT
SALEM, OREGON

James E. Sexson, Director
Water Resources Department
555 13th St NE
Salem, OR 97310

Re: Hinson transfer applications
Our File No. 5551
Your File No. T-2745 and T-2746

Dear Mr. Sexson:

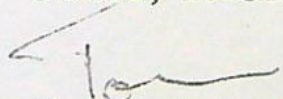
I have received your letter setting the hearing in the above matter at 9:30 a.m., April 8, 1980. I presently have set on that date the case of Thomas J. Parker and Associates v Kathy Wolfe, a 1977 case which has been continued a number of times for various reasons. I can't guarantee that the case will go to trial then, but if it does it will be impossible for me to attend the hearing set on that date. Unfortunately, no one else in my office is familiar with the file and it would be a real disadvantage to my clients to have to break in another lawyer in my office or elsewhere.

Would you treat this letter as a request to reset the hearing? I currently have trials on April 3 and 4, April 8-10, April 16, and must be out of town to a Board of Governors' meeting from April 24-27. In May, I have trials on May 1 and 2, 6 and 7, 15 and 28.

If perhaps some convenient and available date was agreed upon that would not conflict with those times, we could have another setting.

Sincerely yours,

COTTLE, HOWSER & CUE


Thomas C. Howser

TCH:ch

cc: Bob Heffernan
cc: Larry Hammack
cc: Glen F. and Helen A. Wegner
cc: Ralph and June Richards
cc: Mr. Dave Willard
cc: Mr. Dave Hendrix

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

JACKSON COUNTY

IN THE MATTER OF THE APPLICATIONS)
OF STUART V. HINSON FOR APPROVAL)
OF CHANGES IN PLACE OF USE & POINT)
OF DIVERSION OF WATER FROM LITTLE)
APPLEGATE RIVER)

FIRST AMENDED
NOTICE OF
HEARING

TO: Stuart V. Hinson
*c/o Larry C. Hammack
Haviland, deSchweinitz,
Stark and Hammack
221 West Main Street
Medford, Oregon 97501

Glen F. & Helen A. Wegner
and Ralph & June Richards
*c/o Thomas C. Howser
Cottle, Howser & Hampton
P.O. Box 627
Ashland, Oregon 97520

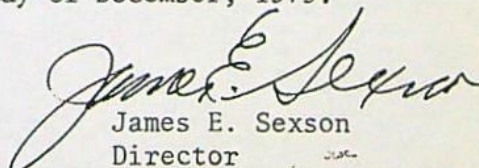
Everett J. & Jimmie F. Bostwick
*c/o Robert D. Heffernan, Jr.
Heffernan & Fowler
P.O. Box 1746
Medford, Oregon 97501

David C. Hendrix
Watermaster, District 13
Jackson County Courthouse
Medford, Oregon 97501

Notice is given hereby that concurrent hearings in the matters of water right transfer applications Nos. 2745 and 2746, in the name of Stuart V. Hinson, for approval of changes in place of use and point of diversion of water under rights described by the certificates recorded at page 24479, Volume 17 and page 38773, Volume 30, State Record of Water Right Certificates, as set forth in the notice published in the Medford Mail Tribune newspaper in the issues of June 10, 17 and 24, 1977, and protests in the names of Everett J. Bostwick and Jimmie F. Bostwick, and in the names of Glen F. Wegner, Helen A. Wegner, Ralph Richards and June Richards against approval of said applications, have been rescheduled to be held before the Water Resources Director in the Auditorium of the Jackson County Courthouse in Medford, Oregon, commencing at 9:30 a.m. on Tuesday, April 8, 1980.

All interested parties should appear at the above named time and place to submit evidence for or against approval of the above described applications.

Dated at Salem, Oregon this 6th day of December, 1979.


James E. Sexson
Director

*CERTIFIED MAIL, RRR

PS Form 3811, Aug. 1978

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one). *45c*
 Show to whom and date delivered
 Show to whom, date, and address of delivery
 RESTRICTED DELIVERY
 Show to whom and date delivered
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery. \$.....
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 Everett J. & Jimmie F. Bostwick;
 % Robert D. Heffernan, JR. Attorney
 PO Box 1746, Medford, OR 97501

3. ARTICLE DESCRIPTION:
 REGISTERED NO. | CERTIFIED NO. | INSURED NO.
 | 56607 |
 (Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE Addressee Authorized agent
Cindy Dayhurst

4. DATE OF DELIVERY | POSTMARK
 | DEC 7 - 1979 |

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: | CLERK'S INITIALS

1cj T-2745,6

☆ GPO: 1978-272-382

PS Form 3811, Aug. 1978

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one). *45c*
 Show to whom and date delivered
 Show to whom, date, and address of delivery
 RESTRICTED DELIVERY
 Show to whom and date delivered
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery. \$.....
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 Glen F. & Helen A. Wegner & Ralph &
 June Richards; % Thomas C. Howser,
 Cottle, et al; PO Box 627; Ashland, OR
 97520

3. ARTICLE DESCRIPTION:
 REGISTERED NO. | CERTIFIED NO. | INSURED NO.
 | 56606 |
 (Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE Addressee Authorized agent
B. June

4. DATE OF DELIVERY | POSTMARK
 | DEC 11 1979 |

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: | CLERK'S INITIALS

1cj T-2745,6

☆ GPO: 1978-272-382

PS Form 3811, Aug. 1978

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one). *45c*
 Show to whom and date delivered
 Show to whom, date, and address of delivery
 RESTRICTED DELIVERY
 Show to whom and date delivered
 RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery. \$.....
 (CONSULT POSTMASTER FOR FEES)

2. ARTICLE ADDRESSED TO:
 Stuart V. Hinson; c/o Larry C. Hammack;
 Haviland, et al; 221 West Main St.
 Medford, OR 97501

3. ARTICLE DESCRIPTION:
 REGISTERED NO. | CERTIFIED NO. | INSURED NO.
 | 56605 |
 (Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE Addressee Authorized agent
Bobby Russel

4. DATE OF DELIVERY | POSTMARK
 | DEC 7 1979 |

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE: | CLERK'S INITIALS

1cj T-2745,6

☆ GPO: 1978-272-382

378-3066

November 2, 1979

LARRY C HAMMACK
DESCHWEINITZ & HAMMACK
ATTORNEYS AT LAW
221 WEST MAIN STREET
MEDFORD OR 97501

ROBERT D HEFFERNAN
HEFFERNAN & FOWLER
ATTORNEYS AT LAW
705 WEST TENTH STREET
P O BOX 1746
MEDFORD OR 97501

THOMAS C HOWSER
COTTLE HOWSER & CUE
ATTORNEYS AT LAW
607 SISKIYOU BOULEVARD
P O BOX 627
ASHLAND OR 97520

RE: Files No. T-2745 and T. 2746

Gentlemen:

We have Mr. Howser's letter of October 15th, Mr. Hammack's letter of October 18th, and Mr. Heffernan's letter of October 25th, all in regard to pending water right transfer applications No. 2745 and No. 2746, in the name of Stuart V. Hinson, and protests against approval of the applications.

If the three of you will agree on a date for hearing on the matters, at Medford, we will try to accomodate that date. All other considerations being equal, it would be more convenient for us if the hearing were on a Wednesday or Thursday. Our hearing calendar is pretty well filled up through February.

Sincerely,

James W. Carver, Jr.
Engineer

JWC:jfv
cc: Del Sparks, Watermaster, District 17

deSCHWEINITZ & HAMMACK

ALLAN B. deSCHWEINITZ

ATTORNEYS AT LAW
221 WEST MAIN STREET
MEDFORD, OREGON 97501

AREA CODE 503
TELEPHONE

LARRY C. HAMMACK

779-2133

October 30, 1979

RECEIVED

NOV - 1 1979

WATER RESOURCES DEPT
SALEM, OREGON

Mr. James W. Carver, Jr.
Water Resources Department
555 13th Street N.E.
Salem, Oregon 97310

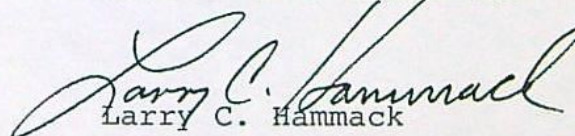
Re: Hinson transfer applications
T-2745 and 7-2746

Dear Mr. Carver:

I have not been able to get a hold of Tom Howser but, pursuant to our last conversation, as far as I am concerned, you can set this matter for any time during March or April other than a Monday or a Friday. I believe that you indicated that those dates would not be preferable to you and that being the case, let's set it for Tuesday through Thursday and I am sure, with this much advance notice there won't be a problem.

Very truly yours,

deSCHWEINITZ & HAMMACK


Larry C. Hammack

LCH/br

RECEIVED

OCT 29 1979

HEFFERNAN & FOWLER
ATTORNEYS AT LAW
705 WEST TENTH STREET
P. O. BOX 1746
MEDFORD, OREGON 97501

WATER RESOURCES DEPT. AREA CODE 503
SALEM, OREGON TELEPHONE 779-4075

ROBERT D. HEFFERNAN, JR.
WILLIAM H. FOWLER
FRANK R. ALLEY, III

October 25, 1979

Mr. James W. Carver, Jr.
Water Resources Department
555 13th Street N.E.
Salem, Oregon 97310

Re: Hinson transfer applications
T-2745 and T-2746

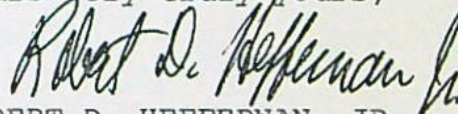
Dear Mr. Carver:

We have reviewed Mr. Thomas C. Howser's letter to you of October 15, 1979, and generally concur with his statements.

At the time of a hearing in this matter, Mr. Bostwick shall present evidence that he purchased his property from Mr. Hinson as irrigated land and since such time has made a beneficial use of the attendant water rights. This "use" has included the rental of the irrigated pasture to Mr. Hinson for grazing purposes.

After conferring with Mr. Howser we anticipate that it shall be appropriate to file an amended or supplemental protest.

Yours very truly yours,



ROBERT D. HEFFERNAN, JR.

RDH:cah

cc: Larry Hammack
Thomas Howser

RECEIVED

OCT 13 1979

COTTLE, HOWSER & CUE

ATTORNEYS AT LAW

607 SISKIYOU BOULEVARD

ASHLAND, OREGON 97520

(503) 482-2621

WATER RESOURCES DEPT

POST OFFICE BOX 627 SALEM, OREGON

RICHARD C. COTTLE
THOMAS C. HOWSER
RONALD K. CUE

October 15, 1979

Mr. James W. Carver, Jr.
Water Resources Department
555 13th St NE
Salem, OR 97310

Re: Hinson transfer applications #T-2745 and T-2746
Our File No. 5551

Dear Mr. Carver:

I am in receipt of a copy of your letter of September 19, 1979 as well as your prior letter of August 22, 1979. I must say that I disagree with your position that changes in ownership since the initial filing of the application are not relevant to the issue. They seem to me to be highly relevant for the reason that part of the property which Mr. Hinson desired to transfer rights to and from are no longer owned by him and the owners of those properties, to whom the rights passed at the time the sale was made, would have to be joined as parties if that proceeding is to take place and their consent would have to be obtained. Unless Mr. Hinson made a full disclosure at the time of the sales that there would be changes, it appears to me there would be a substantial question as to the extent to which the Water Resources Department can, in effect, change the contractual relationship of these various parties.

I believe you've also received a letter from Mr. Wegner dated September 17, 1979, to which your letter of September 19, 1979 was a response. I am representing, in addition to Mr. Richards and Mr. Wegner, a Mr. David Willard who had not previously submitted a protest.

I wonder if there isn't some serious problem with this proceeding due to the serious delay of time which has been occasioned

continued.....

Mr. Carver
Water Resources Department
October 15, 1979
Page two (2)

solely by Mr. Hinson's inaction. If the equitable doctrine of laches does not apply it appears to me that the statute of limitations relative to transactions relating to contracts would apply, and since that is a 6-year statute, the proceeding could not go ahead.

We will be filing an amended protest in the near future raising some of these other issues and identifying all of the parties.

Sincerely yours,

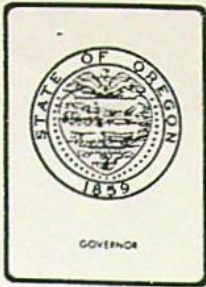
COTTLE, HOWSER & CUE



Thomas C. Howser

TCH:ch

cc: Mr. Larry C. Hammack
Mr. Robert D. Heffernan
Mr. David C. Hendrix
Mr. Glen F. Wegner
Mr. Ralph Richards
Mr. Dave Willard



Water Resources Department

MILL CREEK OFFICE PARK

555 13th STREET N.E., SALEM, OREGON 97310

PHONE 378-3066

September 19, 1979

Glen F. Wegner
4025 Little Applegate Road
Jacksonville, Oregon 97530

RE: Files Nos. T-2745, T-2746

Dear Mr. Wegner:

We have your letter of September 17, 1979, in behalf of yourself and others, in regard to water right transfer applications Nos. 2745 and 2746, in the name of Stuart V. Hinson.

Our records show that Mr. and Mrs. Glen F. Wegner and Mrs. and Mrs. Ralph J. Richards are parties to a protest filed through Thomas C. Howser of the firm of Cottle, Howser and Hampton, Attorneys at Law, against approval of the subject applications.

The records also show that Everette J. and Jimmie F. Bostwick are parties to a protest filed through Robert D. Heffernan of the firm of Heffernan and Fowler, Attorneys at Law, against approval of the subject applications.

Enclosed is a copy of our letter of August 22, 1979, to the above named attorneys and also to Larry C. Hammack of the firm of Haviland, deSchweinitz, Stark and Hammack, Attorneys at Law, attorney for the applicant, Stuart Hinson, in regard to the subject applications and the protests against them.

You may wish to discuss the matter with your attorney, as to the courses of action open to you.

Sincerely,

James W. Carver, Jr.
Engineer

JWC:lcj

cc: Larry C. Hammack, Attorney
Robert D. Heffernan, Attorney
Thomas C. Howser, Attorney
David C. Hendrix, Watermaster

4025 Little Applegate Road
Jacksonville, Oregon 97530
September 17, 1979

RECEIVED

SEP 18 1979

WATER RESOURCES DEPT
SALEM, OREGON

Mr. James E. Sexson, Director
State Water Resource Department
Mill Creek Office Park
555 13th Street, N.E.
Salem, Oregon 97310

Re: Wegner, Richards, Willard, Bostwick,
and Huffman. File # 5551

Dear Mr. Sexson:

It has been brought to our attention that the water transfer application by Stuart V. Hinson, Nos. 2745 and 2746, is being considered by your department.

The following people who have purchased land from Mr. Hinson would be adversely affected by the transfer and object to any transfer of water rights: Everett Bostwick, David Willard, Merle Huffman, Ralph Richards, and Glen Wegner.

Those property owners listed above constitute the only people affected, and would be seriously affected by the proposed transfer. All have beef cattle using the irrigated pastures.

As legal owners of the water rights on our properties, we cannot understand how these rights could be taken from us without our consent.

If there are documents being filed we would appreciate copies, and if there is a hearing scheduled, we would want to be notified.

Please send correspondence to the following:

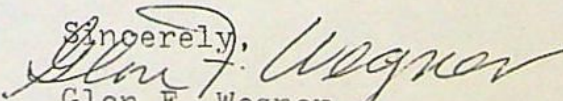
Mr. Everett Bostwick
659 Stage Road South, Medford, Oregon 97501

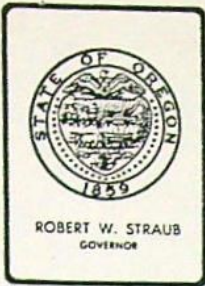
Mr. David Willard
4055 Little Applegate Road, Jacksonville, Oregon 97530

Mr. Ralph Richards
4025 Little Applegate Road, Jacksonville, Oregon 97530

Mr. Merle Huffman
4015 Little Applegate Road, Jacksonville, Oregon 97530

Mr. Glen Wegner
4025 Little Applegate Road, Jacksonville, Oregon 97530

Sincerely,

Glen F. Wegner



Water Resources Department

MILL CREEK OFFICE PARK

555 13th STREET N.E., SALEM, OREGON 97310

PHONE 378-3066

August 22, 1979

Larry C. Hammack
Haviland, deSchweinitz, Stark & Hammack
221 West Main Street
Medford, Oregon 97501

Thomas C. Howser
Cottle, Howser & Hampton
P.O. Box 627
Ashland, Oregon 97520

Robert D. Heffernan
Heffernan & Fowler
P.O. Box 1746
Medford, Oregon 97501

RE: Stuart Hinson Transfer Applications Nos. 2745, 2746

Gentlemen:

We have Mr. Hammack's letter of August 17, 1979, in reference to water right transfer applications Nos. 2745 and 2746 in the name of Stuart Hinson and the protest by Mr. and Mrs. Glen F. Wagner and Mr. and Mrs. Ralph J. Richards and the protest by Mr. and Mrs. Everette J. Bostwick, requesting that the matter be set for hearing before the Water Resources Director. If you gentlemen will agree to a date sometime after the first of October, 1979, we will attempt to accommodate that date and make the necessary arrangements for a hearing in the Jackson County Courthouse in Medford, to take testimony on the question of injury to other water rights that would result from the proposed changes in place of use and point of diversion of water from Little Applegate River.

After having had opportunity to carefully review the files, I believe the following comment should be noted: It is doubtful that the Water Resources Director could deny the applications on the basis of portions of the lands to which the subject water rights are appurtenant having changed ownership subsequent to the applications having been filed as public records. In view of this, it may be that part of the issues could be resolved by stipulation.

Sincerely,

James W. Carver, Jr.
Engineer

JWC:lcj
cc: David C. Hendrix, Watermaster

COPY

RECEIVED

AUG 20 1979

HAVILAND, deSCHWEINITZ, STARK & HAMMACK
ATTORNEYS AT LAW
221 WEST MAIN STREET
MEDFORD, OREGON 97501

WATER RESOURCES DEPT
SALEM, OREGON
AREA CODE 503
TELEPHONE 779-2311

PAUL W. HAVILAND
ALLAN B. deSCHWEINITZ
RICHARD A. STARK
LARRY C. HAMMACK

August 17, 1979

Mr. James W. Carver, Jr.
Water Resources Department
Mill Creek Office Park
555 13th Street N. E.
Salem, Oregon 97310

Re: Transfers 2745 and 2746

Dear Mr. Carver:

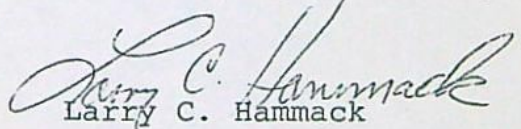
Will you please schedule a hearing within 60 days or as soon thereafter as is possible, concerning these transfers which have been applied for by my client, Stuart Hinson.

The matter is apparently not going to be resolved without a hearing.

If you have any questions, please contact me.

Very truly yours,

HAVILAND, deSCHWEINITZ, STARK & HAMMACK


Larry C. Hammack

LCH/br

cc: D. Hendericks
Medford Water Master

file

HAVILAND, deSCHWEINITZ, STARK & HAMMACK

PAUL W. HAVILAND
ALLAN B. deSCHWEINITZ
RICHARD A. STARK
LARRY C. HAMMACK

ATTORNEYS AT LAW
221 WEST MAIN STREET
MEDFORD, OREGON 97501

AREA CODE 503
TELEPHONE 779-2311

March 28, 1979

RECEIVED
MAR 29 1979
WATER RESOURCES DEPT.
SALEM, OREGON

Mr. James W. Carver, Jr.
Water Resources Department
Mill Creek Office Park
555 13th Street N.E.
Salem, OR 97310

Re: Stuart Hinson

Dear Mr. Carver:

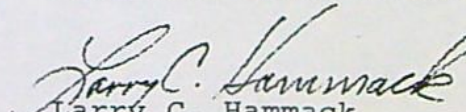
As you recall, I wrote to you on February 2, 1979 concerning transfers 2745 and 2746 for Stuart Hinson. At that time, you called me back and referred me to attorney Tom Howser who is representing the parties opposing the transfer.

Please be advised that I will meet with Mr. Howser shortly and if we cannot resolve the matter, I will write you informally and ask that a hearing be scheduled.

If this does not meet with your approval, please advise immediately.

Very truly yours,

HAVILAND, deSCHWEINITZ, STARK & HAMMACK


Larry C. Hammack

LCH:gk

HAVILAND, deSCHWEINITZ, STARK & HAMMACK

PAUL W. HAVILAND
ALLAN B. deSCHWEINITZ
RICHARD A. STARK
LARRY C. HAMMACK

ATTORNEYS AT LAW
221 WEST MAIN STREET
MEDFORD, OREGON 97501

AREA CODE 503
TELEPHONE 779-2311

February 2, 1979

RECEIVED
FEB 6 1979
WATER RESOURCES DEPT.
SALEM, OREGON

Mr. James W. Carver, Jr.
Water Resources Department
Mill Creek Office Park
555 13th Street N.E.
Salem, OR 97310

Re: Stuart Hinson

Dear Mr. Carver:

Please be advised that this office is representing Stuart Hinson regarding Transfers 2745 and 2746, which I understand were filed in 1977.

It is my understanding that the original hearing was postponed. It is also my understanding that Mr. Hinson now wants to follow through with these hearings and I would appreciate it if you would address all correspondence regarding the same to me.

Very truly yours,

HAVILAND, deSCHWEINITZ, STARK & HAMMACK

Larry C. Hammack
Larry C. Hammack *gh*

LCH:gk

Carver phoned Hammack 2-6-79

Hammack will contact Tom Houser re issues and possible hearing date.

378-3066

T-2745, T-2746

7 September 1977

Thomas C. Howser
Cottle, Howser & Hampton
P.O. Box 627
Ashland, Oregon 97520

Dear Mr. Howser:

We have your letter of September 2, 1977 in behalf of your clients, Mr. and Mrs. Ralph J. Richards and Mr. and Mrs. Glen F. Wegner, regarding transfer applications Nos. 2745 and 2746, in the name of Stuart V. Hinson.

It would be necessary to dispose of the protests prior to any action on the applications.

In the event the pending, protested applications are withdrawn and new applications are filed at a later date, you will be notified.

Sincerely,

James W. Carver, Jr.
Engineer

JWC:lcj

SEP
1975 9/6

STUART HINSON 1# 2175910

COTTLE, HOWSER & HAMPTON

ATTORNEYS AT LAW

607 SISKIYOU BOULEVARD

POST OFFICE BOX 627

ASHLAND, OREGON 97520

(503) 482-2621

September 2, 1977

RICHARD C. COTTLE
THOMAS C. HOWSER
W. H. HAMPTON III
RONALD K. CUE

RECEIVED

SEP - 6 1977

WATER RESOURCES DEPT
SALEM, OREGON

James W. Carver, Jr.
Engineer
State Water Resources Dept.
Mill Creek Office Park
555 13th Street, N.E.
Salem, OR 97310

RE: Wegner and Richards
Water rights
Our File 5551

Dear Mr. Carver:

Mr. and Mrs. Ralph J. Richards and Mr. and Mrs. Glen F. Wegner have requested that their position as objectors be clearly noted in the file in the above matter, and that in the event that the application is revived, or that a new application is filed that they actually be notified. The process of publication in the newspaper may be within the statutory requirements, but it does not give much likelihood of giving actual notice to people who are involved. Therefore, they request that they be actually indicated as desiring copies of all documents that may be filed in the future.

Sincerely yours,

COTTLE, HOWSER & HAMPTON



Thomas C. Howser

TCH/sc

cc: Mr. and Mrs. Richards
Mr. and Mrs. Wegner
Mr. Robert Heffernan, Jr.

378-3066

10 August 1977

Stuart V. Hinson
Route 2, Box 25
Jacksonville, Oregon 97530

Dear Mr. Hinson:

Enclosed is our check No. 1425 in the amount of \$34.34
refunding excess payment of fees.

Sincerely,

James W. Carver, Jr.
Engineer

JWC:lcj

378-3066

10 August 1977

Mail Tribune Comapny
P.O. Box 1108
Medford, Oregon 97501

Gentlemen:

Enclosed is our check No. 1426 in the amount of \$46.66
in payment of your statement of June 24, 1977.

Please receipt the enclosed statement and return it to
this office.

Sincerely,

James W. Carver, Jr.
Engineer

JWC:lcj

JOHN E. FERRIS, PROFESSIONAL CORPORATION

JOHN E. FERRIS

ATTORNEY AT LAW
The Mall, Suite 10, 1005 East Main
Medford, Oregon 97501

(503) 772-6115

August 3, 1977

RECEIVED
AUG - 5 1977
WATER RESOURCES DEPT
SALEM, OREGON

Water Resources Department
Mill Creek Office Park
555 13th St. N.E.
Salem, OR 97310

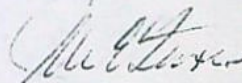
Attention: Jim Carver

Dear Mr. Carver:

Enclosed is my check for the copies of the most recent water rights application for Stuart Hinson, applications number T2745 and T2746.

Thanks for the copies.

Sincerely,



JOHN E. FERRIS

JEF:pg

enc.

cc: Stuart V. Hinson

Copies mailed

Rec # 22951

Mr. John E. Ferris
Attorney at Law
Medford

phoned 8-2-77

He is representing Hinson

Will meet with other attorneys who
are representing the protestants.

If matter cannot be settled they
will confer on hearing date and advise.

Ferris wants copies of current Hinson
transf. appls with maps

JWC, Jr.

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

JACKSON COUNTY

IN THE MATTER OF THE APPLICATIONS)
OF STUART V. HINSON FOR APPROVAL)
OF CHANGES IN PLACE OF USE AND)
POINT OF DIVERSION OF WATER FROM)
LITTLE APPLGATE RIVER)

POSTPONEMENT
OF HEARING

TO:

Stuart V. Hinson
P.O. Box 579
Jacksonville, OR 97530

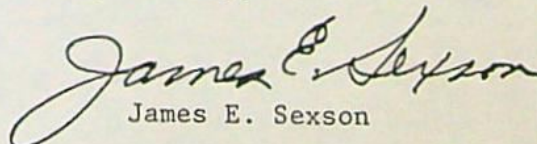
Robert D. Heffernan, Jr.
Heffernan & Fowler
Attorneys At Law
P.O. Box 1746
Medford, OR 97501

Thomas C. Howser
Cottle & Howser
Attorneys At Law
P.O. Box 627
Ashland, OR 97520

David C. Hendrix, Watermaster
Jackson County Courthouse
Medford, OR 97501

You are hereby notified that the hearing proposed to be held
at the Jackson County Courthouse at Medford, Oregon, on August 5, 1977,
at 9:30 a.m., in the matter of water right transfer applications Nos.
2745 and 2746, in the name of Stuart V. Hinson, for changes in place of
use and point of diversion under rights described by the certificates
recorded at page 24479, Volume 17, and at page 38773, Volume 30, State
Record of Water Right Certificates, pursuant to the notice published
by the Water Resources Director in the June 10, 17 and 24, 1977, issues
of the Medford Mail Tribune newspaper is postponed to a new date to be
determined.

Dated at Salem, Oregon, this 27th day of July, 1977.


James E. Sexson

Director

July 27, 1977

Robert D. Heffernan, Jr.
Heffernan & Fowler
Attorneys At Law
P.O. Box 1746
Medford, OR 97501

Dear Mr. Heffernan:

This will acknowledge your letter of July 21, 1977, transmitting a protest in the names of Everette J. Bostwick and Jimmie F. Bostwick against approval of transfer applications Nos. 2745 and 2746 in the name of Stuart V. Hinson.

The protest was filed as provided by law on July 22, 1977.

Our receipt No. 62673 is enclosed in acknowledgement of your payment of the filing fee in the amount of \$10.00.

It will be necessary to also submit proof of service of a copy of the protest upon Mr. Stuart V. Hinson, applicant.

Sincerely,

James W. Carver, Jr.
Engineer

JWC:lcj
cc: David C. Hendrix, Watermaster

378-3066

July 27, 1977

Thomas C. Howser
Cottle & Howser
Attorneys At Law
P.O. Box 627
Ashland, OR 97520

Dear Mr. Howser:

Your letter of July 20, 1977, transmitting a protest in the names of Glen F. Wegner and Helen A. Wegner and Ralph Richards and June Richards against approval of water right transfer applications Nos. 2745 and 2746 in the name of Stuart V. Hinson, proof of service, and an unsigned check in the amount of \$10.00, was received on July 21, 1977.

Your letter of July 25, 1977, transmitting a signed check in the amount of \$10.00 was received on July 26, 1977, and the protest was filed as provided by law on that date.

The unsigned check, our receipt No. 62742, and the requested copy of that portion of the administrative rules pertaining to filing of protests are enclosed.

Sincerely,

James W. Carver, Jr.
Engineer

JWC:lcj
cc: David C. Hendrix, Watermaster

MEDFORD MAIL TRIBUNE COMPANY

Publishers of the
MEDFORD MAIL TRIBUNE

MEDFORD, OREGON

PHONE 779-1411 - P. O. BOX 1108

In Account With

- Oregon Water Resources Dept.
1178 Chemeketa St., N.E.
Salem, Oregon 97310

RECEIVED

JUN 24 1977

WATER RESOURCES DEPT
SALEM, OREGON

Date June 24, 1977 19__

Published Notice of Water Rights Transfer
2745 and 2746

June 10, 17, 24, 1977

98 lines @ .476180

46.66

PAID
JUN 24 1977

L.S.
MAIL TRIBUNE COMPANY

RECEIVED

JUN 24 1977

WATER RESOURCES DEPT
SALEM, OREGON

Prompt Payment of this Account will be Greatly Appreciated

NOTICE
OF WATER RIGHT TRANSFER

APPLICATIONS NOS. 2745 and 2746
Notice is given hereby that two applications have been filed in the office of the Water Resources Director by Stuart V. Hinson for approval of changes in place of use and point of diversion from Little Applegate River.

(1) The certificate recorded at Page 38773, Vol. 30, State Record of Water Right Certificates, in the name of A. S. Kleinhammer, describes a right which includes the use of not to exceed 0.41 cubic feet per second from Little Applegate River for irrigation of 8.4 acres in SE 1/4 NW 1/4, 2.0 acres in NE 1/4 SW 1/4 and 6.0 acres in NW 1/4 SE 1/4 of Sec. 19, T. 39 S., R. 2 W., W.M., with a date of priority of Sept. 1, 1857.

Water for the said right is diverted through the Upper & Lower Phillips Ditches from points located (1) 680 ft. S. and 9 ft. W., (2) 215 ft. S. and 790 ft. W. from the N. 1/4 corner of Sec. 29, both being within the NE 1/4 NW 1/4 of Sec. 29, T. 39 S., R. 2 W., W.M.

By application No. 2745, the applicant herein, owner of the lands above described, proposes to change the place of use and point of diversion therefrom, and without loss of priority to irrigate a certain 0.6 acre in NE 1/4 SW 1/4 and 16.0 acres in Lot 3 (NW 1/4 SW 1/4) of Sec. 19, T. 39 S., R. 2 W., W.M., through the Gin Lin Ditch from a point of diversion located 1430 ft. N. and 1905 ft. W. from the E. 1/4 corner of Sec. 29, being within the NW 1/4 NE 1/4 of Sec. 29, T. 39 S., R. 2 W., W.M.

(2) The certificate recorded at Page 24479, Vol. 17, State Record of Water Right Certificates, in the names of First National Bank of Ashland & Armin Richter, describes a right which includes the use of not to exceed 0.21 cubic foot per second from Little Applegate River for irrigation of 0.6 acre in NE 1/4 SW 1/4 and 16.0 acres in Lot 3 (NW 1/4 SW 1/4) of Sec. 19, T. 39 S., R. 2 W., W.M., with a date of priority of Nov. 12, 1929.

Water for the said right is diverted through the Gin Lin Ditch as described above.

By application No. 2746, the applicant herein, owner of the lands above described, proposes to change the place of use and point of diversion therefrom, and without loss of priority to irrigate a certain 8.2 acres in NW 1/4 NE 1/4 and 8.4 acres in SE 1/4 NW 1/4 of said Sec. 19, through the Upper Phillips Ditch as described above.

All persons interested are notified hereby that a hearing will be held at the county courthouse at Medford, Oregon, on August 5, 1977, at 9:30 a.m. All objections to the proposed change, if any there are, will be heard at said time and place. Any and all objections shall be prepared in writing, one copy to be served on Stuart V. Hinson, P.O. Box 579, Jacksonville, Oregon 97530, and one copy filed with the Water Resources Department, Salem, Oregon 97310, together with a \$10 filing fee, at least 10 days prior to the date set for hearing. IF NO OBJECTION IS FILED, THE APPLICATION MAY BE APPROVED BY THE WATER RESOURCES DIRECTOR WITHOUT A HEARING. Administrative rules pertaining to the filing of a protest will be furnished by the Water Resources Department upon request.

Dated at Salem, Oregon, this 24th day of May, 1977.

JAMES E. SEXSON
Director

Affidavit of Publication

RECEIVED
JUN 27 1977

WATER RESOURCES DEPT
SALEM, OREGON

State of Oregon, }
County of Jackson } ss.

I, Sharon J. Morris, being first duly

sworn, depose and say that I am the.....
OWNER, EDITOR, PUBLISHER, MANAGER.

Principal Clerk

ADVERTISING MANAGER, PRINCIPAL CLERK, PRINTER OR PRINTER'S FOREMAN

of Medford Mail Tribune, a newspaper of general circulation, as defined by ORS 193,010 and 193,020; printed and published at Medford in the aforesaid county and state:

that the Notice of Water Rights Transfer

2745 and 2746

copy of which is hereto annexed, was published in the entire issue of said newspaper for 3 successive and consecutive weeks in the

following issues June 10, 17, 24, 1977

(HERE SET FORTH DATES OF ISSUES IN WHICH THE SAME WAS PUBLISHED)

Sharon J. Morris

Subscribed and sworn to before me this 24th day of June, 1977

James J. Olson
NOTARY PUBLIC FOR OREGON

My Commission expires 21st day of May, 1981

378-3066

T-2745
T-2746

May 24, 1977

Medford Mail Tribune
P.O. Box 1108
Medford, Oregon 97501

Gentlemen:

Enclosed is a notice for publication in the June 10, 17
and 24, 1977, issues of your newspaper.

If, for any reason, you cannot publish this notice on the
dates specified above, please return it to this office.

Upon completion, please forward an affidavit of publication
and statement for this service to this office.

Sincerely,

James W. Carver, Jr.
Engineer

JWC:whh

Enclosures

cc: Stuart V. Hinson (*sent to Attorney Ferris*)
cc: David C. Hendrix, Watermaster, Dist. No. 13

NOTICE OF WATER RIGHT TRANSFER APPLICATIONS NOS. 2745 and 2746

Notice is given hereby that two applications have been filed in the office of the Water Resources Director by Stuart V. Hinson for approval of changes in place of use and point of diversion from Little Applegate River.

(1) The certificate recorded at Page 38773, Vol. 30, State Record of Water Right Certificates, in the name of A.S. Kleinhammer, describes a right which includes the use of not to exceed 0.41 cubic foot per second from Little Applegate River for irrigation of 8.4 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, 2.0 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$ and 6.0 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 19, T. 39 S., R. 2 W., W.M., with a date of priority of Sept. 1, 1857.

Water for the said right is diverted through the Upper & Lower Phillips Ditches from points located (1) 680 ft. S. and 9 ft. W., (2) 215 ft. S. and 790 ft. W. from the N. $\frac{1}{4}$ corner of Sec. 29, both being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 29, T. 39 S., R. 2 W., W.M.

By application No. 2745, the applicant herein, owner of the lands above described, proposes to change the place of use and point of diversion therefrom, and without loss of priority to irrigate a certain 0.6 acre in NE $\frac{1}{4}$ SW $\frac{1}{4}$ and 16.0 acres in Lot 3 (NW $\frac{1}{4}$ SW $\frac{1}{4}$) of Sec. 19, T. 39 S., R. 2 W., W.M., through the Gin Lin Ditch from a point of diversion located 1430 ft. N. and 1905 ft. W. from the E. $\frac{1}{4}$ corner of Sec. 29, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 29, T. 39 S., R. 2 W., W.M.

(2) The certificate recorded at Page 24479, Vol. 17, State Record of Water Right Certificates, in the names of First National Bank of Ashland & Armin Richter, describes a right which includes the use of not to exceed 0.21 cubic foot per second from Little Applegate River for irrigation of 0.6 acre in NE $\frac{1}{4}$ SW $\frac{1}{4}$ and 16.0 acres in Lot 3 (NW $\frac{1}{4}$ SW $\frac{1}{4}$) of Sec. 19, T. 39 S., R. 2 W., W.M., with a date of priority of Nov. 12, 1929.

Water for the said right is diverted through the Gin Lin Ditch as described above.

By application No. 2746, the applicant herein, owner of the lands above described, proposes to change the place of use and point of diversion therefrom, and without loss of priority to irrigate a certain 8.2 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$ and 8.4 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Sec. 19, through the Upper Phillips Ditch as described above.

All persons interested are notified hereby that a hearing will be held at the county courthouse at Medford, Oregon, on August 5, 1977, at 9:30 a.m. All objections to the proposed change, if any there are, will be heard at said time and place. Any and all objections shall be prepared in writing, one copy to be served on Stuart V. Hinson, P.O. Box 579, Jacksonville, Oregon 97530, and one copy filed with the Water Resources Department, Salem, Oregon 97310, together with a \$10 filing fee, at least 10 days prior to the date set for hearing. IF NO OBJECTION IS FILED, THE APPLICATION MAY BE APPROVED BY THE WATER RESOURCES DIRECTOR WITHOUT A HEARING. Administrative rules pertaining to the filing of a protest will be furnished by the Water Resources Department upon request.

Dated at Salem, Oregon, this 24th day of May, 1977.

JAMES E. SEXSON
Director



WATER RESOURCES DEPARTMENT

JACKSON COUNTY COURTHOUSE • MEDFORD, OR • 97501 • Phone 773-6211

May 16, 1977

ROBERT W. STRAUB
GOVERNOR

JAMES E. SEXSON
Director

WATER POLICY REVIEW
BOARD

EMERY N. CASTLE
Chairman
Corvallis

CHAPIN D. CLARK
Vice Chairman
Eugene

GEORGE H. PROCTOR
Klamath Falls

ANN W. SQUIER
Portland

RICHARD ROY
Portland

JAMES HILL
Arch Cape

JEAN FROST
Portland

Re: T-2745 & T-2746

Mr. James E. Sexson, Director
Water Resources Department
Salem, Oregon 97310

Attention: Mr. James W. Carver, Jr.

Dear Mr. Carver:

Please find enclosed two amended transfer applications which I discussed with you on the phone last Friday. Both applications are in the name of Stuart V. Hinson of mailing address P. O. Box 579, Jacksonville, Oregon 97530, and they provide for both the change in point of diversion and place of use of water. Also enclosed please find Mr. Hinson's check in the sum of \$60 to cover the advertising fees which he has requested be placed in the Medford Mail Tribune, Medford, Oregon 97501.

It is my opinion that both of these transfers may be made without injury to existing rights, and since we presently have methods of regulating the heads of the three ditches in question, the second provision would be best to incorporate within the order.

Very truly yours,

David C. Hendrix

David C. Hendrix
Water Master, Dist. 13

DCH:pg

enclosures

RECEIVED

MAY 17 1977

WATER RESOURCES DEPT
SALEM, OREGON

378-3066

January 28, 1977

File T-2745
T-2746

Mr. John E. Ferris
Attorney at Law
1005 E. Main St.
Medford, OR 97501

Dear Mr. Ferris:

As discussed during our telephone conversation Friday, January 28, water right transfer applications No. 2745 and 2746 in the name of Stuart V. Hinson are enclosed for additional information, accompanied by supporting maps and other data. The applications and maps, amended as you find appropriate, should be returned to us. The other data, you may keep.

With reference to application No. 2745, the water right records do not define the specific lands to which each of the priorities is appurtenant. If your client owns all of the lands to which the entirety of the right described by certificate No. 38773 is appurtenant and submits an affidavit to that effect, we will accept his division of the priorities. If he does not own all of the lands it will be necessary for the several owners to agree on the location of the priorities, unless he elects to claim the younger of the priorities for the lands involved in the transfer.

With reference to application No. 2746, Item 13, the application proposes to transfer 8.37 acres of water right to the southerly portion of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 20, Certificate No. 5292 in the name of Walter Zeidler describes a right to appropriate not to exceed 0.14 cubic foot per second of water from the Little Applegate River with a date of priority of February 21, 1920, for irrigation of 10.7 acres south of the Gallagher ditch in the said quarter-quarter section. (See enclosed map with notation "certificate No. 5292" in the lower, right-hand corner)

Both applications will require publication of notice pursuant to ORS 540.520. It will be necessary to submit an additional deposit of \$50.00 for this purpose. Please advise which newspaper your client prefers that we use.

Sincerely,

James W. Carver, Jr.
Engineer

JWC:lds

COLLINS, FERRIS & VELURE

HUGH B. COLLINS
JOHN E. FERRIS
LYLE C. VELURE

ATTORNEYS AT LAW
225 WEST MAIN STREET
MEDFORD, OREGON 97501

TELEPHONE
(503) 779-4333

July 12, 1973

RECEIVED
JUL 16 1973
STATE ENGINEER
SALEM, OREGON

PLEASE REFER TO
OUR FILE NUMBER:

State Engineer
1178 Chemeta Street NE
Salem, OR 97310

Re: File No. 2745 and 2746

Gentlemen:

Enclosed please find Applications for Transfer of Water Rights together with maps and an Affidavit.

Sincerely,

John E. Ferris
JOHN E. FERRIS

JEF:jc
Encs.

April 12, 1973

2745
2746

Collins, Redden, Ferris & Velure
Attorneys at Law
225 West Main Street
Medford, Oregon 97501

Attention: John E. Ferris

Dear Mr. Ferris:

This will acknowledge three applications submitted in the name of Stuart V. Hinson for approval of changes in point of diversion and place of use of the water of Little Applegate River, six maps, and fees in the amount of \$105.00 for which our receipts numbered 31798, 31799, 31800, 31801, and 31802 are enclosed.

These applications have been filed as numbers T-2745 and T-2746 and the numbers shown on the application forms. Two are further identified by circled numbers 1 and 2, as these involve the same right and can be filed as one application.

Since the proposed change in point of diversion is over $\frac{1}{4}$ mile, the State Engineer is required to publish notice of the proposed change in a newspaper published and having general circulation in Jackson County. Please designate the newspaper of your choice.

We will need a letter from the First National Bank of Oregon, Medford Branch, as mortgage holders, stating that they have no objection to the water rights being transferred from the lands as listed in these applications.

The applications apparently were prepared on the basis of all lands irrigated from the three ditches, which results in repeating the acreage list and is somewhat confusing.

Collins, Hedden, Ferris & Velure
April 12, 1973
Page 2

The lands south of the river were, according to the adjudication map, irrigated from the Gin Lin Ditch and the lands north of the river irrigated through the Upper Phillips or Lower Phillips Ditch.

The 1898 and 1857 rights were not established under State Engineer's Permit and the 1929 right was, so items 9 and 11 need changing. The reference corner was omitted from item 4 and Section 19 is listed in item 13 instead of Section 20, if the map is correct. Also, Certificate 16400 has been superseded by Certificate 38773.

Instead of detailing suggested changes, I have used the records and the applications and maps submitted to prepare two new applications which I believe correctly describe the intended changes. The application for change of the 1929 right lists both Phillips Ditches with no division of lands between the two. I assume the land above the Lower Phillips Ditch will be irrigated from the Upper Ditch and the land below the Lower Phillips Ditch will be irrigated from that ditch and have prepared the application accordingly.

We will need a statement that Mr. Hinson owns all the land described in Certificate 38773 or an agreement with other owners as to a division by priority date.

If you agree with the applications I have prepared, Mr. Hinson should execute the affidavits of applicant and return the applications.

Mr. David Hendrix, our Watermaster in Medford, will receive all of this information in case you wish to discuss any question with him.

I am also returning the original applications along with the maps. On return of the applications and completed superseding applications, we will promptly prepare a notice for publication.

Very truly yours,

Trevor Jones
Assistant

TJ:bjs
Enclosures
cc: David C. Hendrix, Watermaster

COLLINS, REDDEN, FERRIS & VELURE

HUGH B. COLLINS
JAMES A. REDDEN
JOHN E. FERRIS
LYLE C. VELURE

ATTORNEYS AT LAW
225 WEST MAIN STREET
MEDFORD, OREGON 97501

TELEPHONE
(503) 779-4333

—
PLEASE REFER TO
OUR FILE NUMBER:

December 15, 1972

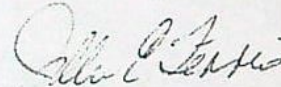
RECEIVED
DEC 18 1972
STATE ENGINEER
SALEM, OREGON

Chris L. Wheeler
State Engineer
1178 Chemeketa Street N.E.
Salem, OR 97310

Dear Mr. Wheeler:

Please file the enclosed Applications for Transfer of Water Rights for Stuart Hinson. Enclosed is our check No. 7079 in the amount of \$105 for that fee.

Sincerely,



JOHN E. FERRIS

JEF:11
Enclosures

RECEIVED

MAY 14 1977

WATER RESOURCES DEPT
SALEM, OREGON

Application for Transfer of Water Right

To the WATER RESOURCES DIRECTOR OF OREGON:

I, Stuart V. Hinson (Name of applicant)

of P. O. Box 579, (Mailing address) Jacksonville, (City)

State of Oregon, 97530 (Zip Code), 899-7410 (Phone number), do hereby make application for change

in point of diversion and change in place of use. (In point of diversion; place of use; use heretofore made of the water)

1. Is the water right recorded in your name? No. A. S. Kleinhammer. (If not, give name)

2. Was your water right determined by Decree of Court? Yes. If so, give title of proceedings (Yes or No)
Rogue River Decree, (Page 30, Col. 3) number of certificate 38773

3. Was your water right acquired by Water Right Permit? No. If so, give number (Yes or No)
of permit Number of certificate

NOTE: If the entire right of record is not directly involved in the requested change, only that part of the right that is directly involved should be considered in answering the balance of the questions on this form.

4. The source of water is Little Applegate River.

5. What is the date of priority of your water right? September 1, 1857. by amended Decree

6. The authorized point of diversion is located Upper Phillips -- 680 S. 9' W. both
Lower Phillips -- 215 ft. S. and 790 ft. W. both from the N¹/₄
(N. or S.) (E. or W.)
corner of Sec. 29 / both being within the NE 1/4 NW 1/4 of Section 29 Tp. 39 S. R. 2 W. W. M.,
(No. N. or S.) (No. E. or W.)
in the county of Jackson. The name of the ditch used is Upper & Lower Phillips Ditch.

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

7. The proposed point of diversion is located 1430 ft. N. and 1905 ft. W. from the E¹/₄
(N. or S.) (E. or W.)
corner of 29 being within the NW 1/4 NE 1/4 of Section 29 Tp. 39 S. R. 2 W. W. M.,
(No. N. or S.) (No. E. or W.)
in the county of Jackson. The name of the ditch to be used is Gin Lin Ditch.

WRD # 1

10611

8. The use to which the water is applied is irrigation.
(Irrigation, Mining, Power, Manufacturing, etc.)

Location of area irrigated, or place of use if other than irrigation:

Township North or South	Range E. or W. of Willamette Meridian	Section	List 1/4-1/4 of Section	Number Acres To Be Irrigated
39 S.	2 W.	19	SE1/4 NW1/4	8.4 acres
			NW1/4 SE1/4	6.2 acres
			NE1/4 SW1/4	2.0 acres
				<u>16.6</u>

(If more space required, attach separate sheet)

9. Are you the legal owner of the above described lands? Yes.
(If not owner, explain your interest)

10. To your knowledge, has any portion of the water right above described undergone a period of five or more consecutive years of nonuse? No.
(Yes or No)

NOTE: Answer questions 11, 12 and 13 if application is for change in use or place of use.

11. Are the lands from which you propose to transfer your water right free of all encumbrances, including taxes, mortgages, liens, etc.? Yes.
(Answer Yes or No)

12. If not, give below a description of existing encumbrances:

NATURE OF ENCUMBRANCE	HELD BY	AMOUNT

13. The use to which the water is to be applied is irrigation.
(Irrigation, power, mining, manufacturing, domestic supplies, etc.)

Location of area to be irrigated, or place of use if other than irrigation:

Township North or South	Range E. or W. of Willamette Meridian	Section	List 1/4-1/4 of Section	Number Acres To Be Irrigated
39 S.	2 W.	19	NW1/4 SW1/4 (Lot 3)	16.0 acres
			NE1/4 SW1/4	0.6 acre

(If more space required, attach separate sheet)

A F F I D A V I T

RECEIVED
JUL 16 1973
STATE ENGINEER
SALEM, OREGON

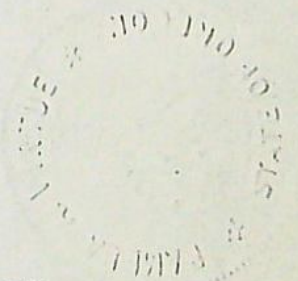
STATE OF OREGON)
) ss
County of Jackson)

I, STUART V. HINSON, do hereby certify that I am the owner of all of the properties listed on these two applications for transfer of Water Rights.

X *Stuart V. Hinson*
STUART V. HINSON

Subscribed and sworn to before me this 13th day of July, 1973.

Pamela A. Victor
NOTARY PUBLIC FOR OREGON
My Commission Expires: 2/19/77



14. Reasons for the proposed changes are to irrigate the most desirable lands
with the oldest priority.

15. Construction work will be completed on or before October 1, 1978.

16. The water will be completely applied to the proposed use on or before October 1, 1979.

Remarks

THIS APPLICATION PREPARED BY:

John F. Cummins

FROM INFORMATION FURNISHED BY
THE APPLICANT,

(L 267)

NOTE: THIS APPLICATION MUST BE ACCOMPANIED BY A MAP OR MAPS SHOWING THE
BEFORE AND AFTER LOCATIONS OF THE POINT OF DIVERSION AND/OR PLACE OF
USE, AS THE CASE MAY BE.

AFFIDAVIT OF APPLICANT

I, Stuart V. Hinson, the applicant herein, being
first duly sworn, depose and say that I have read the above and foregoing application for transfer of water
right; that I know the contents thereof and that the statements therein made are true and correct to the best
of my knowledge and belief.

In Witness Whereof, I have hereunto set my hand this 13th day of May, 1977

[Signature]
(Name of applicant)

Subscribed and sworn to before me this 13th day of May, 1977

[Notarial Seal]

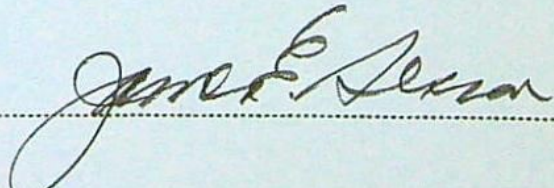
David L. Hendrix
NOTARY PUBLIC FOR OREGON

My commission expires Nov. 3, 1980

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

I, James E. Sexson, Water Resources Director of the State of Oregon,
do hereby certify that the foregoing copy of water right transfer application No. 2745
in the name of Stuart V. Hinson, together with map
has been compared with the original and that it is a correct transcript therefrom and the whole of
such original application, together with map, as the same appears
on file in my office and custody.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of
June, 1980


Director
By _____

RECEIVED

MAY 1 1977

WATER RESOURCES DEPT
SALEM, OREGON

Application for Transfer of Water Right

To the WATER RESOURCES DIRECTOR OF OREGON:

I, Stuart V. Hinson (Name of applicant)
 of P. O. Box 579, (Mailing address) Jacksonville, (City)
 State of Oregon, 97530 (Zip Code), 899-7410 (Phone number), do hereby make application for change
 in point of diversion and change in place of use.
 (In point of diversion; place of use; use heretofore made of the water)

1. Is the water right recorded in your name? No. 1st National Bank of Ashland, and Armin Richter.
 (If not, give name)

2. Was your water right determined by Decree of Court? No. If so, give title of proceedings
 (Yes or No)
 number of certificate

3. Was your water right acquired by Water Right Permit? Yes. If so, give number
 (Yes or No)
 of permit 9389 Number of certificate 24479.

NOTE: If the entire right of record is not directly involved in the requested change, only that part of the right that is directly involved should be considered in answering the balance of the questions on this form.

4. The source of water is Little Applegate River.

5. What is the date of priority of your water right? November 12, 1929.

6. The authorized point of diversion is located 1430 ft. N. (N. or S.) and 1905 ft. W. (E. or W.) from the E¹/₄ corner of 29 being within the NW 1/₄ NE 1/₄ of Section 29 Tp. 39 S. R. 2 W. W. M., (No. N. or S.) (No. E. or W.) in the county of Jackson. The name of the ditch used is Gin Lin Ditch.

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

7. The proposed point of diversion is located 680 ft. S. (N. or S.) and 9 ft. W. (E. or W.) from the N¹/₄ corner of Sec. 29 being within the NE¹/₄ NW 1/₄ of Section 29 Tp. 39 S. R. 2 W. W. M., (No. N. or S.) (No. E. or W.) in the county of Jackson. The name of the ditch to be used is Upper Phillips Ditch.

WRD #2

8. The use to which the water is applied is irrigation.
(Irrigation, Mining, Power, Manufacturing, etc.)

Location of area irrigated, or place of use if other than irrigation:

Township North or South	Range E. or W. of Willamette Meridian	Section	List ¼-¼ of Section	Number Acres To Be Irrigated
39 S.	2 W.	19	NW¼ SW¼ (Lot 3)	16 acres
			NE¼ SW¼	0.6 acre

(If more space required, attach separate sheet)

9. Are you the legal owner of the above described lands? Yes.
(If not owner, explain your interest)

10. To your knowledge, has any portion of the water right above described undergone a period of five or more consecutive years of nonuse? No.
(Yes or No)

NOTE: Answer questions 11, 12 and 13 if application is for change in use or place of use.

11. Are the lands from which you propose to transfer your water right free of all encumbrances, including taxes, mortgages, liens, etc.? Yes.
(Answer Yes or No)

12. If not, give below a description of existing encumbrances:

NATURE OF ENCUMBRANCE	HELD BY	AMOUNT

13. The use to which the water is to be applied is irrigation.
(Irrigation, power, mining, manufacturing, domestic supplies, etc.)

Location of area to be irrigated, or place of use if other than irrigation:

Township North or South	Range E. or W. of Willamette Meridian	Section	List ¼-¼ of Section	Number Acres To Be Irrigated
39 S.	2 W.	19	NW¼ NE¼	8.2 acres
			SE¼ NW¼	8.4 acres

(If more space required, attach separate sheet)

A F F I D A V I T

RECEIVED
JUL 16 1973
STATE ENGINEER
SALEM, OREGON

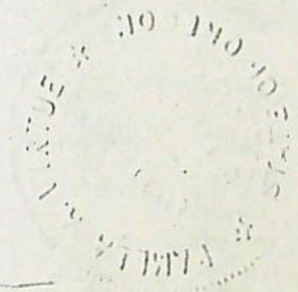
STATE OF OREGON)
) ss
County of Jackson)

I, STUART V. HINSON, do hereby certify that I am the owner of all of the properties listed on these two applications for transfer of Water Rights.

x. *Stuart V. Hinson*
STUART V. HINSON

Subscribed and sworn to before me this 13th day of July, 1973.

Pamela A. Victor
NOTARY PUBLIC FOR OREGON
My Commission Expires: 2/19/77



14. Reasons for the proposed changes are to irrigate the most desirable lands
with the oldest priority.

15. Construction work will be completed on or before October 1, 1978.

16. The water will be completely applied to the proposed use on or before October 1, 1979.

Remarks

THIS APPLICATION PREPARED BY:

John F. Cummins

FROM INFORMATION FURNISHED BY
THE APPLICANT.

(L-DE7)

NOTE: THIS APPLICATION MUST BE ACCOMPANIED BY A MAP OR MAPS SHOWING THE
BEFORE AND AFTER LOCATIONS OF THE POINT OF DIVERSION AND/OR PLACE OF
USE, AS THE CASE MAY BE.

AFFIDAVIT OF APPLICANT

I, Stuart V. Hinson, the applicant herein, being
first duly sworn, depose and say that I have read the above and foregoing application for transfer of water
right; that I know the contents thereof and that the statements therein made are true and correct to the best
of my knowledge and belief.

In Witness Whereof, I have hereunto set my hand this 13th day of May, 1977.

[Signature]
(Name of applicant)

Subscribed and sworn to before me this 13th day of May, 1977.

[Notarial Seal]

David L. Hendrix
NOTARY PUBLIC FOR OREGON

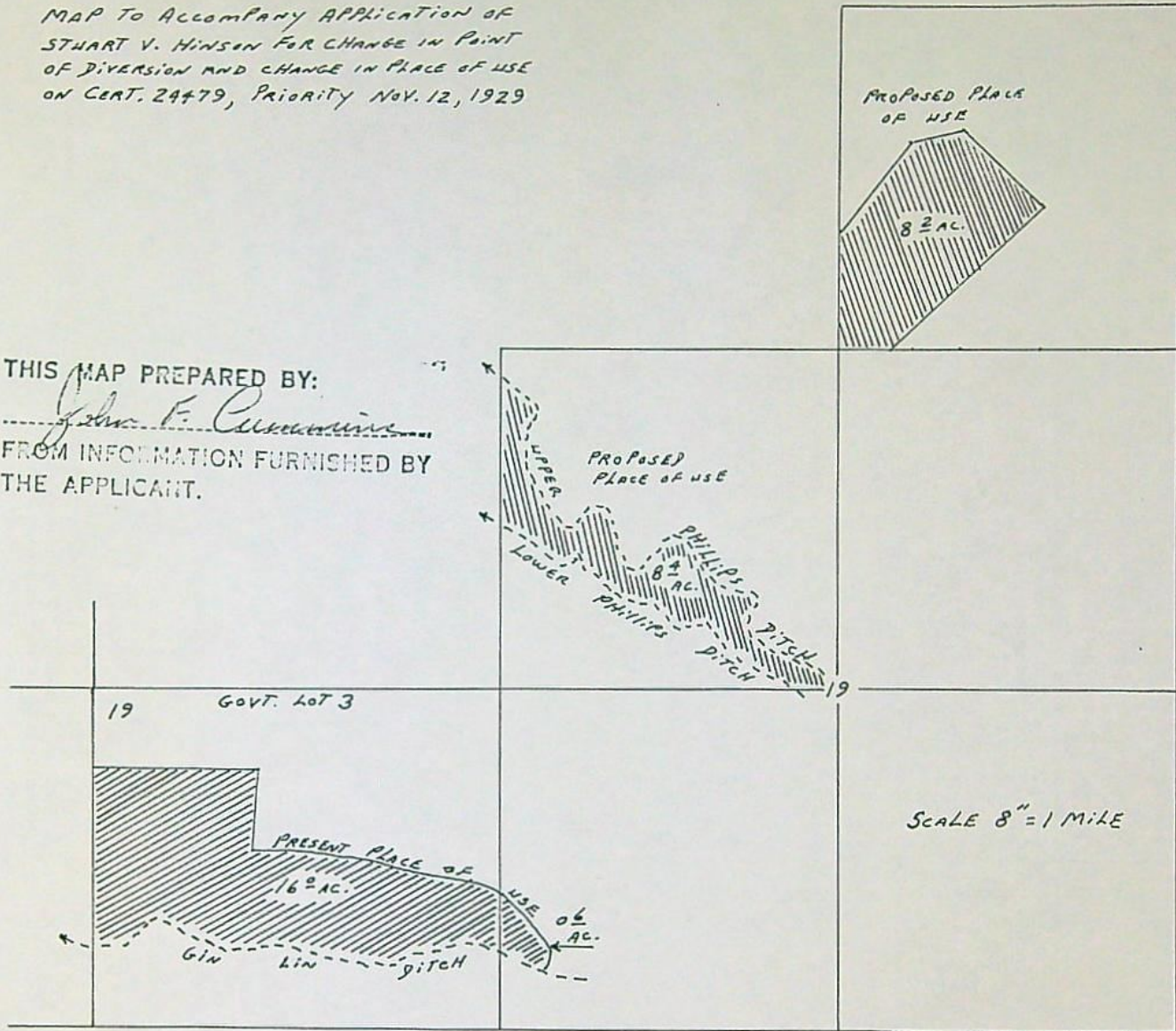
My commission expires Nov. 3, 1980

T.395. R.2W. W. M.

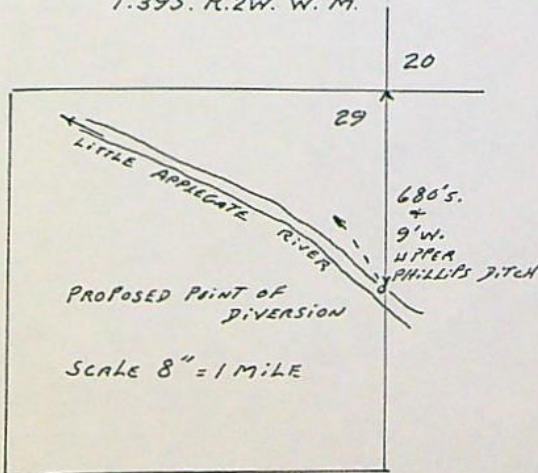
MAP TO ACCOMPANY APPLICATION OF
STUART V. HINSON FOR CHANGE IN POINT
OF DIVERSION AND CHANGE IN PLACE OF USE
ON CERT. 24479, PRIORITY NOV. 12, 1929

THIS MAP PREPARED BY:

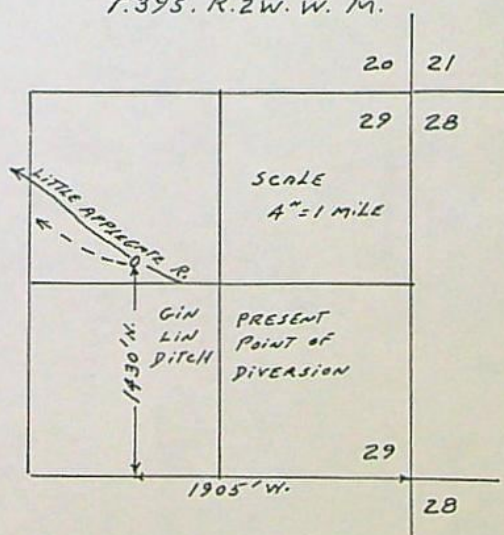
John F. Cummings
FROM INFORMATION FURNISHED BY
THE APPLICANT.



T.395. R.2W. W. M.



T.395. R.2W. W. M.



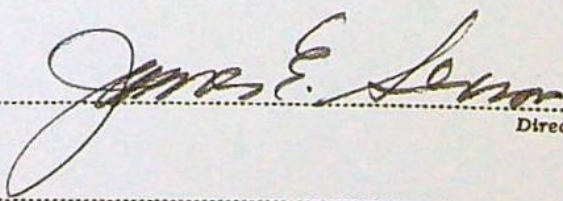
5-11-77

(T-2746)

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

I, James E. Sexson, Water Resources Director of the State of Oregon,
do hereby certify that the foregoing copy of water right transfer application No. 2746
in the name of Stuart V. Hinson, together with map,
has been compared with the original and that it is a correct transcript therefrom and the whole of
such original application, together with map, as the same appears
on file in my office and custody.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of
June, 1980


Director
By _____