

3276 Donald H & Nancy M Simon
 Bend, OR

3276

STATUS OF APPLICATION

Change in place of use
 Date filed 6-30-75
 Date of hearing _____
 Place of hearing _____
 Date of order 10-17-75 Vol. 26, page 122-3
 Date for application of water 10-1-76
 Proof mailed _____
 Proof received _____
 Certificate issued _____ Vol. _____, page _____

DESCRIPTION OF WATER RIGHT

Name of stream Deschutes R
 Trib. of _____ County of Deschutes
 Use irrigation
 Quantity of water _____ No. of acres 1.0
 Name of ditch C.O.I. Canal
 Date of priority Feb 31, 1900 + Dec 2, 1907
 In name of Jess Hartner
Deschutes R. Adjudication, Vol. 16, page 62
 App. No. _____ Per. No. _____ Cert. No. 29052
 Certificate cancelled _____
 Notation made on record by _____

FEEES PAID

Date	Amount	Receipt No.
<u>6-30-75</u>	<u>25.00</u>	<u>48203</u>
TOTAL . . .		
	Cert. Fee	

FEEES REFUNDED

Date	Amount	Check No.

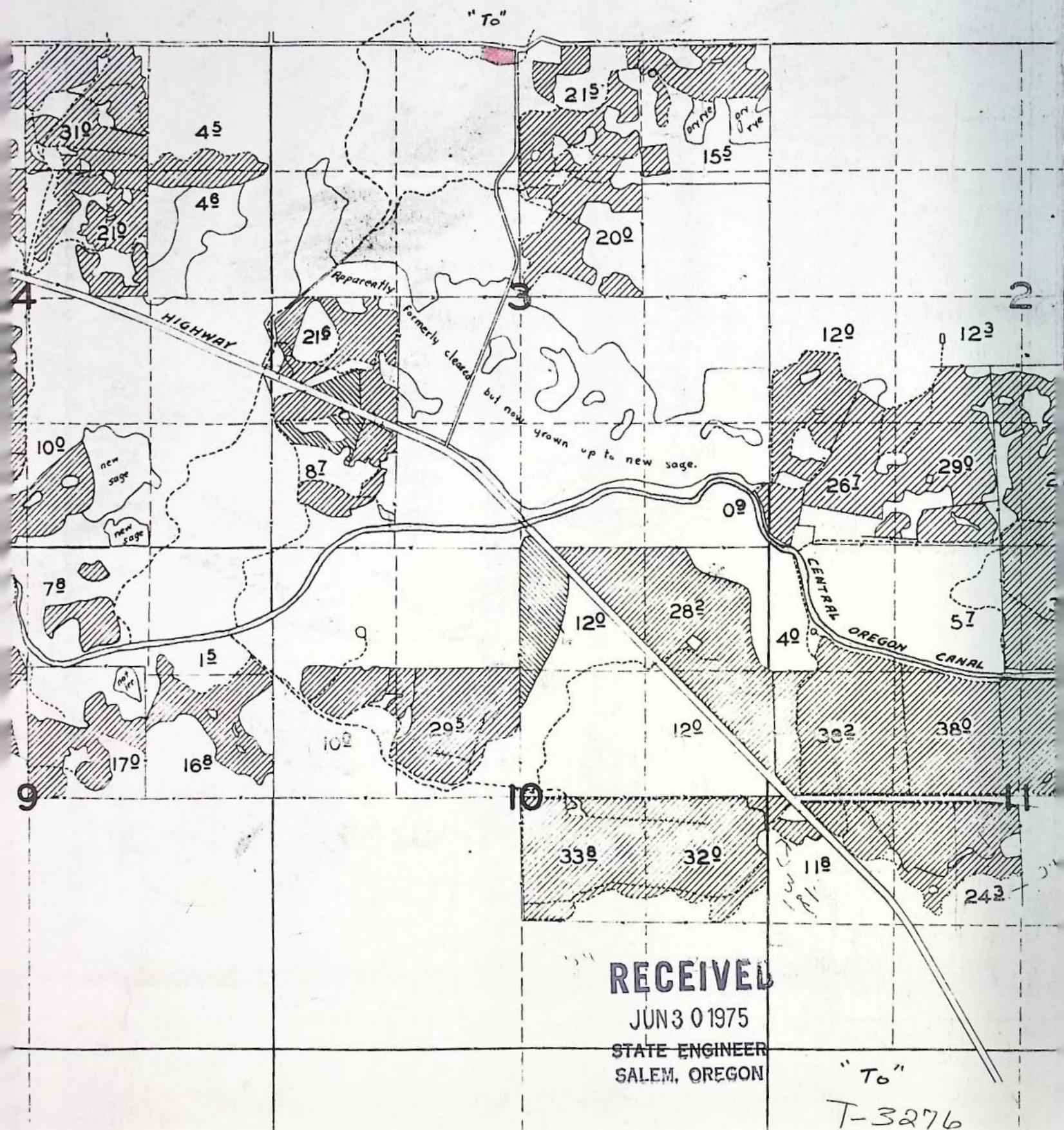
REMARKS

Surveyed 5/16/75 (Foster)

to survey 1/75

TO BE ENTERED WHERE CHECKED	INDEX CARDS:	
	Entered	Checked
<input checked="" type="checkbox"/> Name	<u>WJ</u>	_____
<input checked="" type="checkbox"/> St.	<u>WJ</u>	_____
<input checked="" type="checkbox"/> Pl. Div.	<u>WJ</u>	_____
<input checked="" type="checkbox"/> Co. Div.	<u>WJ</u>	_____
<input checked="" type="checkbox"/> Div. of Rec.	<u>WJ</u>	_____
<input checked="" type="checkbox"/> Div. of Eng.	<u>WJ</u>	_____
<input checked="" type="checkbox"/> Div. of Insp.	<u>WJ</u>	_____
<input type="checkbox"/> Div. of Comm.	_____	_____
<input type="checkbox"/> Div. of Gen. Inv.	_____	_____
<input type="checkbox"/> Power Claim	_____	_____
<input type="checkbox"/> Abstracts	_____	_____

WJ



"To"

HIGHWAY

CENTRAL OREGON CANAL

Apparently formerly cleared but now grown up to new sage.

new sage

dry me on rye

RECEIVED

JUN 3 0 1975

STATE ENGINEER
SALEM, OREGON

"To"

T-3276



RECEIVED
 JUN 3 0 1975
 STATE ENGINEER
 SALEM, OREGON

T-3276

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

Deschutes County

IN THE MATTER OF THE APPLICATION)
OF DONALD K. AND NANCY M. SMITH)
(CENTRAL OREGON IRRIGATION DISTRICT))
FOR THE APPROVAL OF A CHANGE IN PLACE)
OF USE OF WATER FROM DESCHUTES RIVER)

ORDER APPROVING
TRANSFER NO. 3276

On June 30, 1975, Donald K. and Nancy M. Smith filed an application in the office of the Water Resources Director for the approval of a change in place of use of water from Deschutes River, pursuant to the provisions of ORS 540.510 to 540.530.

By Decree of the Circuit Court for Deschutes County, Oregon, entered September 30, 1958, In the Matter of the Determination of the Relative Rights to the Use of the Deschutes River and its Tributaries, a water right was established in the name of Central Oregon Irrigation District for the use of the waters of Deschutes River for the irrigation of, among other lands, 1.0 acre in NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 7, Township 18 South, Range 12 East, W.M., being tabulated in the name of Jess Harter, with dates of priority of October 31, 1900, and December 2, 1907, as evidenced by certificate of water right recorded at Page 29052, Volume 21, State Record of Water Right Certificates. These lands also have a supplemental right under permit No. 23256 to the use of the water stored in Crane Prairie Reservoir with a date of priority of February 28, 1913. These lands are irrigated by means of the Central Oregon Canal.

The applicants herein, contract purchasers of the lands above described, propose to transfer the water right therefrom, without loss of priority, to 1.0 acre in NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 3, Township 18 South, Range 13 East, W.M.

Guy B. Pope, Portland, Oregon, as mortgagee, has submitted written approval of the proposed change in place of use.

Notice by publication as provided by ORS 540.520 was not given in connection with this application for the reason that said section provides notice is not required on an application for a change in place of use of water.

The lands involved herein are within the boundaries of the Central Oregon Irrigation District and the Board of Directors of said District approved the proposed change in place of use of water at a regular meeting held May 7, 1975.

No objections having been filed and it appearing that the proposed change in place of use of water may be made without injury to existing rights, the application should be approved.

NOW, THEREFORE, it hereby is ORDERED that the proposed change in place of use of water is approved and the water right hereinbefore described as appurtenant to 1.0 acre in NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 7, Township 18 South, Range 12 East, W.M., with dates of priority of October 31, 1900, and December 2, 1907, be severed therefrom and simultaneously and without loss of priority transferred to 1.0 acre in NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 3, Township 18 South, Range 13 East, W.M.

It is FURTHER ORDERED that said water so transferred shall be applied to beneficial use on or before October 1, 1976.

It is FURTHER ORDERED that upon receipt of proof satisfactory to the Water Resources Director of complete application of water to beneficial use on the lands to which the water is transferred hereby, a certificate of water right will be issued to the Central Oregon Irrigation District confirming this and prior changes within the District.

Dated at Salem, Oregon, this 17th day of October, 1975.

JAMES E. SEXSON
Director

TR.3276

Richard H. Foster
236 Airport Rd.
Silverton, Or. 97381

May 25, 1984

Water Masters Office
1507 N.E. 1st.
Bend, Or. 97701

Re: Water Rights at 23365 Bear Creek Rd.
Bend, Or. 97701

Attn. Leslie Olson,

Confirming our telephone conversation today 5-25-84, I am sending this statement. Because of the work situation my wife and I have had to move over to Silverton. Our home in Bend is somewhat neglected except for an occasional run over there to look after things.

As I told you our original plans were to divide our property so that each of our children could have a parcel of land to build on and we purchased water rights so that each one would have enough water for domestic use and some irrigation for a little pasture. The property is not adequate or suitable for any serious farming.

So far only one daughter has been able to build and they have done real well. It has not been practical for the other children so far. And because of new zoning laws, unemployment and other reasons, we have been unable to carry out some of our original plans.

We had also hoped to sell off two five acre parcels with an acre of water rights on each. But we have been unable to sell them.

As I mentioned our property is not suitable for much livestock or farming of any kind, so about six years ago I decided to try to raise some Christmas trees. We purchased 1300 trees suitable for the elevation and planted them and are still irrigating those that are left. Between the deer and some unfavorable weather we lost most of them.

Some of the things which we have done for irrigation purposes are not the conventional way of doing things. However we built our own headgate and weir box, we built our own dam and irrigation pond and leveled some land along Bear Creek Rd. for pasture. We seeded some pasture grass and made up an irrigation system of P.V.C. pipe and rainbirds that is portable, using a gasoline driven pump with a 2" outlet.

We dug ditches and installed underground irrigation pipe and stand pipes so that we could attach our rainbirds from any standpipe. For irrigating the trees we had tanks at various stations to fill our five gallon buckets. Also a special tank mounted on the tractor for irrigating the trees.

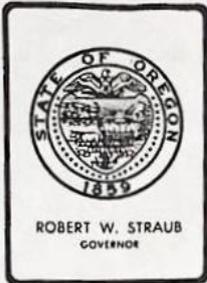
According to your standards I suppose our method of utilizing our water rights does not meet your approval. But we have paid for the rights and the water, we have invested quite a sum of money into our irrigation system, we have tried and have enjoyed doing it.

I guess a crop failure is inexcusable, but perhaps you could allow us an (E) for effort.

Thankyou for your consideration.

Sincerely,

Mr. Richard H. Foster
Mrs. Elma J. Foster



Water Resources Department
MILL CREEK OFFICE PARK

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

PHONE 378-3066

January 19, 1978

Mr. & Mrs. Richard H. Foster
23365 Bear Creek Road
Bend, Oregon 97701

RE: Transfer No. 3276

Dear Mr. & Mrs. Foster:

We have your letter of January 13, 1978, regarding use of water on your property, and asking about the survey referred to in our letter of January 5, 1978, in connection with water right transfer No. 3276.

A copy of the administrative order of the Water Resources Director, entered on October 17, 1975, approving transfer application No. 3276, in the names of Donald K. and Nancy M. Smith, for a change in place of use of water for irrigation of a certain 1.0 acre of land, under the provisions of Oregon Revised Statutes 540.510 to 540.530, is enclosed.

The right for use of water that was established on your land by means of the transfer is limited to the extent the water was beneficially used for the purpose of irrigation of up to 1.0 acre, within the time limit fixed by the order, which was October 1, 1976.

The purpose of the survey is to accept proof of use from you as to the actual extent of such beneficial use, in accord with the last paragraph of the order.

The approved transfer application for change in place of use for irrigation does not provide water for household use, regardless of the extent to which water has been used for beneficial irrigation of your lands.

You could obtain water for household use (domestic use), within the irrigation season, by a transfer application for a change in use heretofore made, from irrigation to domestic use, for a portion of the additional irrigation rights you are obtaining. The application could include more than one house and could also include changes in place of use for irrigation purposes.

Domestic water for the non-irrigation season would have to be obtained by application for a new water right permit. Application forms and instructions are enclosed.

Mr. & Mrs. Richard H. Foster
Page Two
T-3276

Please note that when a change in use heretofore made is proposed, notice of the application must be published in a newspaper that is printed and circulated in the county where the water right is located.

Sincerely,

James W. Carver, Jr.
Engineer

JWC:slk
Enclosures
cc: Robert Anderson, COID
Robert Main, Watermaster

COPY

Mr. & Mrs. Richard H. Foster
23365 Bear Creek Road
Bend, OR 97701

January 13, 1978
Trans. Appl. #3276

Water Resources Dept.
Mill Creek Office Park
555 13th St. N.E.
Salem, Oregon 97310

RECEIVED
JAN 13 1978
WATER RESOURCES DEPT
SALEM, OREGON

Robert F. Main, Water master
and James W. Carver, Jr. Engineer

Dear Sirs,

My wife and I have received your letter dated 1/5/78 sent in care of C.O.I. in regards to the one acre of water rights applied for No. 3276. Also the notice of a survey to be made at a later date and the statement "In case of irrigation, any lands described in the order that have not been irrigated will be automatically eliminated from the water right."

This places us in a very difficult position especially if this survey is to be made real soon and if we are required to meet the demands fully as stated in your letter.

I am wondering if the situation here east of Bend where we are located is not quite different from many other agricultural areas. I truly trust that we in this area might get some special consideration.

There are undoubtedly hundreds of other folks in this general area that are in the same situation as we are. I'll try to relate our case. We came to Bend in 1974 and bought our forty acre piece from Deschutes County. We are up in age to where we should retire in a few years and like many others here, we are not farmers.

I am a plumber by trade. We like the desert real well; our property is covered by Juniper trees, sagebrush and lava rocks everywhere. You couldn't farm it properly if you had the funds to clear all the trees and rocks off. And to buy the farming and irrigation equipment that is needed.

If we removed all the desert growth we wouldn't want to live here. We like it as natural as possible.

Most of our neighbors are also plumbers, electricians, butchers, lawyers, clergymen, loggers, mill workers, and many retired people who just like living in the country. A few have a horse or a beef or two, but many do not really have space to accomodate livestock and raise their own feed for them.

We struggled with zoning problems to place our mobile home on our property then we had no water to drink. We took some water from the ditch for domestic use only and we got in trouble with our neighbors. They quickly advised us that the water was theirs and we were not to touch it. So we have been struggling to obtain water rights for domestic use mainly because a well drilled in this area would run from eight to \$15,000.00 and there is no other water available.

We are completely ignorant of the rules and regulations of the C.O.I., and have never been given any information at all.

We have had to learn everything the hard way, such as - the C.O.I. water is not for domestic use at all, even though thousands are using it for that purpose. Our property was not even in the district legally, so we had to get that taken care of. Then we finally were able to start the paper work to buy this one acre of water rights and after paying a high price for it plus a \$50.00 transfer fee plus putting in an expensive weir box, headgate and culvert according to C.O.I. specs. capable of handling 10 acres of water or more, Bob Anderson told us we could go ahead and take water for domestic use. (which is not legal) So we have been drinking this illegal water ever since and we are thankful for it.

I got together with the C.O.I. engineer to determine where to place this one acre of water. I wanted to put in an irrigation pond (which I have done) in a low swampy area next to the road near my mobil home. Which I intended to irrigate from as I acquire a little more water rights for a little pasture and vegetable garden. The garden I have irrigated, the pasture is still desert and rocks.

The engineer did not advise me that I could not claim as irrigated land the area where the pond is. So I have a designated acre with a pond and a swamp that cannot be used for farming as it is utilized by the pond, 60 feet of county Rd. right of way, C.O.I. ditch right of way, and my own drive way.

According to your letter there is no possible way we could hold on to this acre of water rights. The only other alternative is a well and we cannot afford it. And we would have a hard time selling our property without water. So what do we do?

Recently we got an opportunity to buy five more acres of water rights which we have done. Although the paper work has not been completed. We purchased this additional five acres of water rights so that our children would have domestic water and a little for gardens or pasture not realizing what was coming--(the survey).

Our three children are married and we have layed out 5 acres of ground each. One daughter and her husband are building now and have requested 2 acres of water rights which will hopefully go with their 5 acres when transferred. The other two children have been promised one acre of water rights designated for each of their 5 acre plots.

The land has not been partitioned as yet. I cannot afford to develop our small amount of pasture or land for cultivation by the time your survey takes place especially if it is real soon.

I have designated the land for these additional water rights in locations according to future partitioning; each piece is accessable by pipe line (which is not in yet) and each piece has some potential for a bit of pasture or garden use, but not every square foot of it because some of it is solid rock out cropings. So this would mean an elimination of rights again.

A working man developing property for his family needs sufficient time to do so.

Sixty years ago the hard working pioneers in this area got their land for practically nothing and probably their water rights also, with a team of horses a rock sled, and an ax they proceeded to clear what bottom land they could. Then after a period of twenty years or so they finally had a little bit of cultivated land and pasture surrounded with rock fences to make their meager living.

RECEIVED
JAN 10 1978
WATER RESOURCES
DEPARTMENT
BIRMINGHAM

If you survey those same lands today no doubt most of them will not meet your demands and you will have their rights also.

It seems to me that the existing rules and regulations should be revised to fit our situation today.

I have a few thousand dollars tied up in these water rights and I hopefully intend to use every bit of it as I can afford to, even if I have to seed and water the rocks to get some pasture. But I sincerely trust you will allow me some time as you have those in the past.

Questions:

1. Will there be any notice given others of the survey?
2. Are they not going to allow some minimum water rights for domestic use?
3. Will there be any payment for rights taken away?
4. Will there be any allowance for water being used on lands on my property other than the designated plots in order to make up the difference where some portions are not usable in designated areas?
5. Would you please send me a copy of your rules and regulations concerning water rights.?

P.S. Please excuse the lengthy letter.

Thankyou,

Mr. and Mrs. R. H. Foster

Mr. Richard H. Foster 1/12/78
Mrs. R. H. Foster

Mr. & Mrs. Richard H. Foster
23365 Bear Creek Road
Bend, OR 97701

RECEIVED
JAN 13 1978
WATER RESOURCES DEPT
SALEM, OREGON

RECEIVED

DEC 30 1977

WATER RESOURCES DEPT
SALEM, OREGON

NOTICE OF COMPLETE APPLICATION
OF WATER TO BENEFICIAL USE

Transfer No. 3276

I, Mr + Mrs Richard H. Foster, hereby certify that
on October 1, 1976, 1976, the water has been applied to the
lands to which the water right was transferred by an order of the State
Engineer dated Oct. 17, 1975, approving an application for a
change in place of use of water from NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec 7 Twp. 18s R12E WM.

Dec. 28, 1977
Date

Richard H. Foster
Signature

on file



POPE & TALBOT, INC.

Guy B. Pope
President and
Chief Operating Officer

March 5, 1975

Mr. Robert Anderson
Control Oregon Irrigation District
P. O. Box 548
Redmond, Oregon

Dear Mr. Anderson:

I am the bearer of the mortgage of the property presently owned by Mr. and Mrs. Don Smith who live at the End of McClellan Road in Bend, Oregon.

They desire to sell the rights to one acre of water on the property, and I have given my approval to the sale.

If you need any other information from me, please let me know.

Sincerely,

GBP:gg

cc. Mr. Don Smith

RECEIVED
JUN 3 0 1975
STATE ENGINEER
SALEM, OREGON

RECEIVED

T-3276

JUN 30 1975
STATE ENGINEER
SALEM, OREGON

Application for Transfer of Water Right

To the STATE ENGINEER OF OREGON:

I, Donald K. & Nancy M. Smith
(Name of applicant)

of Bend, (Postoffice), County of Deschutes

State of Oregon, do hereby make application for change

in place of use

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

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

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

3. The name of the ditch, canal or pipe line is C.O.I. Central Oregon Canal

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

corner of _____ being within the _____
(Section or subdivision)

of Section _____ Tp. _____ R. _____ W. M., in the County of _____
(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 $\frac{1}{4}$	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 $\frac{1}{4}$
18	12	7	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)

6. Are you the legal owner of the above described lands? Contract purchaser
(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? October 31, 1900 & December 2, 1907

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? No If so, give number of certificate
(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 Adjudication of the Dschutes River
(Yes or No)

12. Is the water right recorded in your name? No. Jess Harter, page 68 of the decree
(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 $\frac{1}{4}$
18	13	3					1											

(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 ft. and ft. from the
(N. or S.) (E. or W.)
 corner of being within the of Section Tp. R. W. M.,
(Smallest legal subdivision) (No. N. or S.) (No. E. or W.)
 in the county of The name of the ditch to be used is

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?

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
Title	Guy Pope	permission attached

20. Reasons for the proposed changes are more beneficial use

.....

AFFIDAVIT OF APPLICANT

STATE OF OREGON,

County of Deschutes } ss.

I, Donald K. & Nancy M. Smith, 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 19th day of February, 1975.

Donald K. Smith
Nancy M. Smith (Name of applicant)

Subscribed and sworn to before me this 19th day of February, 1975.

[Notarial Seal]

Carol Bryant NOTARY PUBLIC FOR OREGON

My commission expires July 28, 1978.

Remarks The court awarded 7 acres of water right on the lands owned by Jess Harter but showed only 5.6 acres as irrigated on the state maps, we have to assume that the one additional acre allowed on this forty rests upon Mr. Smith's property.

Approved by the Board of Directors of the Central Oregon Irrigation District at the regular meeting held May 7, 1975

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.