

2911 Rt. 1 Box 634  
Cave Junction Ore

2911 PROTEST

newspaper paid 9.20.75 ck. # 58

STATUS OF APPLICATION

DESCRIPTION OF WATER RIGHT

FEEES PAID

Change in Place of Use + Point of Diversion  
Date filed Oct. 31 1973  
Date of hearing \_\_\_\_\_  
Place of hearing \_\_\_\_\_  
Date of order 1-11-79 Vol. 31, page 551  
Date for application of water 10-1-80  
Proof mailed \_\_\_\_\_  
Proof received \_\_\_\_\_  
Certificate issued OCT 26 1979 Vol. 42, page 48672  
MAY - 7 1985 48  
53114  
53115  
53116

Name of stream Atthouse Creek  
Trib. of \_\_\_\_\_ County of Josephine  
Use \_\_\_\_\_  
Quantity of water \_\_\_\_\_ No. of acres \_\_\_\_\_  
Name of ditch \_\_\_\_\_  
Date of priority \_\_\_\_\_  
In name of R. P. George / Hilda A.C. Hawk  
Atthouse Creek Adjudication, Vol. 1, page 249  
App. No. \_\_\_\_\_ Per. No. \_\_\_\_\_ Cert. No. 2713  
Certificate cancelled \_\_\_\_\_  
Notation made on record by \_\_\_\_\_

Date	Amount	Receipt No.
<u>10-31-73</u>	<u>\$54.25</u>	<u>From Trans # 2890</u>
<u>4-18-75</u>	<u>55.00</u>	<u>46370</u>
<u>4-18-75</u>	<u>75.00 P.O.N.</u>	<u>46371</u>
<u>TOTAL 7-18-75</u>	<u>.83 P.O.N.</u>	<u>42549</u>
	Cert. Fee	

FEEES REFUNDED

Date	Amount	Check No.

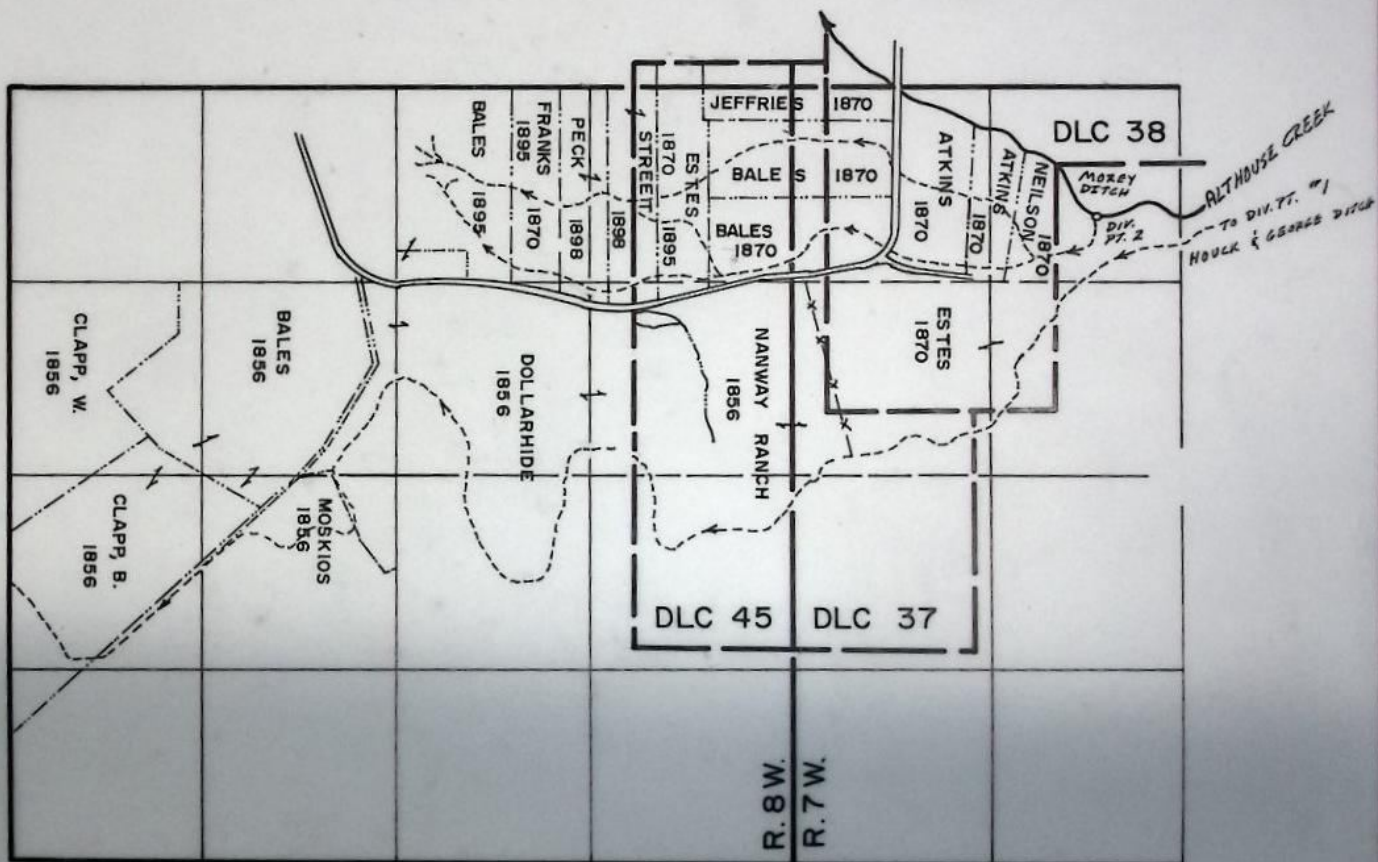
REMARKS

Surveyed 10/9/80 (Gals)  
See New Trans 5519 (Jeffries) - A POD for previous

INDEX CARDS:	Entered	Checked
<input checked="" type="checkbox"/> Name	<u>Yes</u>	___
<input checked="" type="checkbox"/> Stream	<u>Yes</u>	___
<input checked="" type="checkbox"/> Pt. of Div.	<u>Yes</u>	___
<input checked="" type="checkbox"/> Calendar	<u>Yes</u>	___
CHECKED TO RECORD		
<input checked="" type="checkbox"/> Twp. & Rgn.	<u>Yes</u>	___
<input checked="" type="checkbox"/> Decree-vault	<u>Yes</u>	___
<input checked="" type="checkbox"/> Decree-orig	<u>Yes</u>	___
<input checked="" type="checkbox"/> Cert. of W/R	<u>Yes</u>	___
___ Per. Folder	___	___
___ Chaindex	___	___
___ Cross Ref.	___	___
___ Power Claim	___	___
___ Abstracts	<u>Yes</u>	___



T. 40 S., R. 7 & 8 W., W.M.



SCALE 1" = 1320'

Cert. 2713 = 1856, 1859, 1870.

Cert. 2715 = 1856, 1895.

## FINAL PROOF SURVEY UNDER

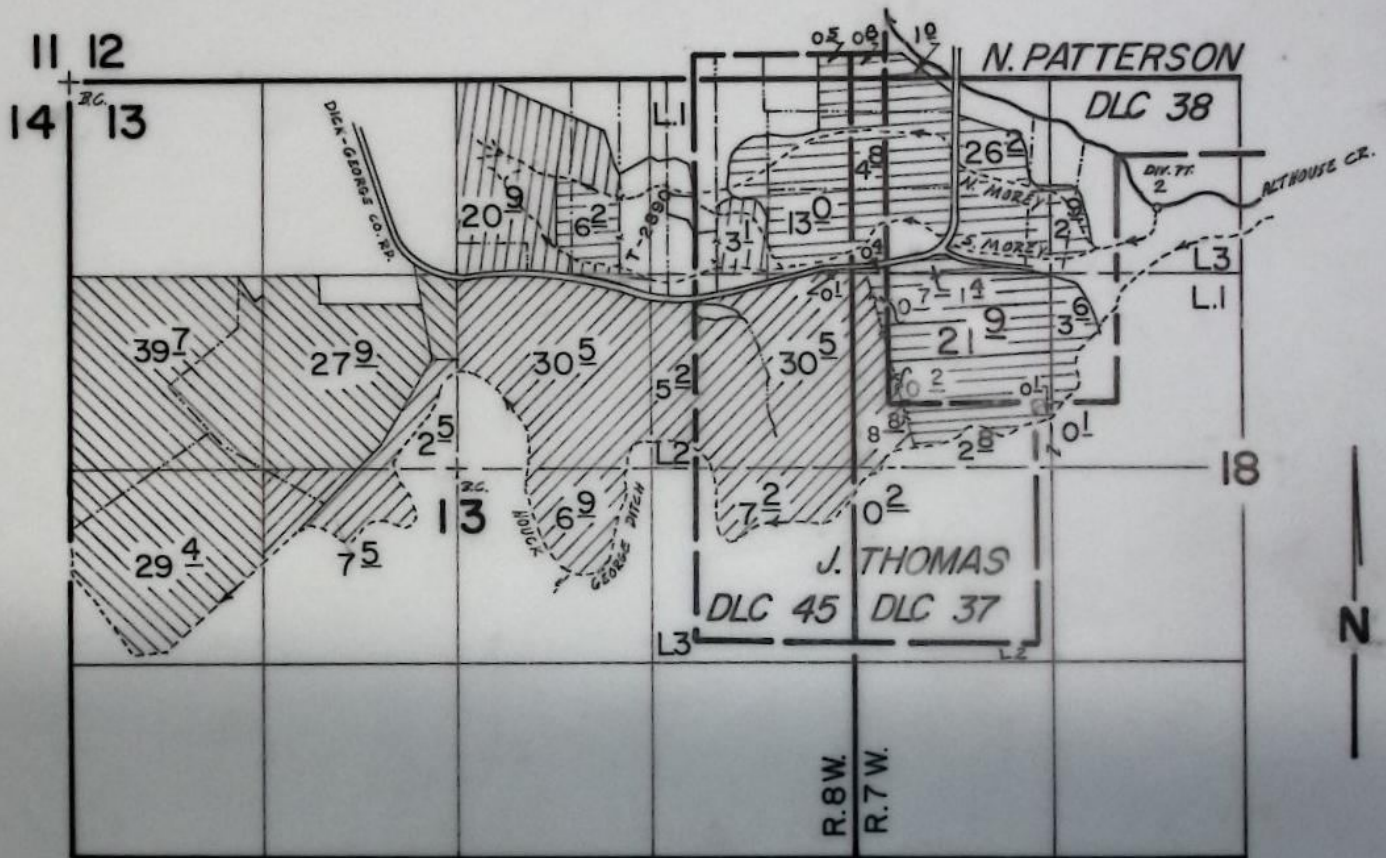
Certificates 2713 & 2715

Application No. .... Permit No. ....  
IN NAME OF

PROPERTY OWNERS OVERLAY

Surveyed ..... 19....., by .....

# T.40S., R.7 & 8W., W.M.



DIV. PT. 2 : 860'S & 2090'E FROM NORTHWEST COR. OF SEC. 18.

Scale : 4" = 1 Mile

- CERT. 2713 = 1856
- CERT. 2715 = 1856
- CERT. 2713 = 1870
- CERT. 2715 = 1895

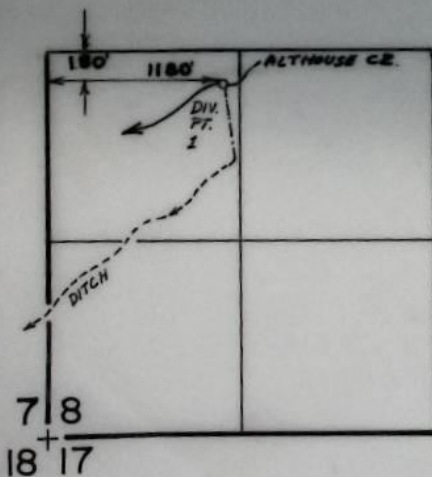
## FINAL PROOF SURVEY UNDER

Transfer No. 2911

Application No. .... Permit No. ....  
IN NAME OF

MRS. GLEN BALES Etal

Surveyed Oct. 9 1984, by J.R. WOODROOF





7N MAY

## STATE OF OREGON

COUNTY OF JOSEPHINE

## CERTIFICATE OF WATER RIGHT

(For Rights which have been confirmed by the Courts)

*Cert & Book 6013*  
 This is to Certify, That *Barbara Bales et al* R. P. GEORGE  
 of *PO Box 603 Cave Junction* Kerby, State of Oregon *97523* has a right to the use of  
 the waters of Althouse Creek, a tributary of the Illinois River

for the purpose of the irrigation of *183.0* 186 acres of land, domestic and stock use

and that said right has been confirmed by decree of the Circuit Court of the State of Oregon for  
 Josephine County, and the said decree entered of record at Salem, in the Order  
 Record of the State Water Board of the State of Oregon, in Volume *4*, at page *427* ;  
 that the priority of the right hereby confirmed dates from 1856 for 100 acres and 1870 for  
*86.0* 86 acres *97.0*

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  
*3.66* 3.72 cubic feet per second, and shall be subject to all other conditions and  
 limitations contained in said decree. *being 1.11 cfs through the Morey Ditch*

*if available at the original point of diversion, the Houck & George Ditch 2.55 cfs through the Houck & George Ditch*  
 A description of the lands irrigated under such right, and to which the water hereby con-  
 firmed is appurtenant, or, if for other purposes, the place where such water is put to beneficial use,  
 is as follows: 36 acres in the Southwest quarter of Northeast quarter; 3 acres in  
 the Northwest quarter of Northwest quarter; 39 acres in the Southwest quarter of  
 Northwest quarter; 37 acres in the Southeast quarter of Northwest quarter; 20 acres  
 in the Northeast quarter of Southwest quarter; 39 acres in the Northwest quarter  
 of Southwest quarter add 12 acres in the Southeast quarter of Southwest quarter of  
 Section Thirteen, Township Forty South, Range Eight West of Willamette Meridian,  
 in Josephine County, Oregon.

→ OVER

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

WITNESS the seal and signature of the State  
 Water Board, affixed this 15th day

This certificate is issued to confirm a change in place of use and point of  
 diversion approved by an order of the Water Resources Director  
 entered *1-11-79* and together with certificate of water right  
 recorded at page *A 48672*, Volume *482*, State Record of Water Right  
 Certificates, supersedes certificate of water right recorded at  
 page *2713*, Volume \_\_\_\_\_, State Record of Water Right Certificates.

The issuance of this superseding certificate does not confirm the status of  
 the water right in regard to the provisions of ORS 540.610 pertaining to  
 forfeiture or abandonment.

531155

A is RR CERT



1870  
Morey Ditch

~~T400~~

0.5 acre dd w/in J. Thomas DLC 45

Sec 12

13.0 acres aa 45

6.2 ba

Sec 13

T405 R8W WM

0.8 acre cc w/in J. Thomas DLC 37

1.0 cc N. Patterson DLC 38

Sec 7

2.9 ab 38

26.2 bb 38

4.8 bb 37

Sec 18

T405 R7W WM

Houck & George Ditch

14 acres bb w/in N. Patterson DLC 38

3.5 cb 37

21.9 cb 38

0.1 Lot, (cb)

0.1 Lot, (db)

3.6 db 38

Sec 18

T405 R7W WM

1856

H. & G. Ditch

39.7 acres cb

27.9 db

29.4 bc

Sec 13

T405 R8W WM



# STATE OF OREGON

COUNTY OF JOSEPHINE

## CERTIFICATE OF WATER RIGHT

(For Rights which have been confirmed by the Courts)

This is to Certify, That R. P. GEORGE  
of Kerby, State of Oregon has a right to the use of  
the waters of Althouse Creek, a tributary of the Illinois River

for the purpose of the irrigation of <sup>3.0</sup> 186 acres of land, domestic and stock use

and that said right has been confirmed by decree of the Circuit Court of the State of Oregon for  
Josephine County, and the said decree entered of record at Salem, in the Order  
Record of the State Water Board of the State of Oregon, in Volume 4, at page 427 ;  
that the priority of the right hereby confirmed dates from 1856 for 100 acres and 1870 for  
86 acres

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  
0.06 3.72 cubic feet per second, and shall be subject to all other conditions and  
limitations contained in said decree.

A description of the lands irrigated under such right, and to which the water hereby con-  
firmed is appurtenant, or, if for other purposes, the place where such water is put to beneficial use,  
is as follows: 36 acres in the Southwest quarter of Northeast quarter; 3 acres in  
the Northwest quarter of Northwest quarter; 39 acres in the Southwest quarter of  
Northwest quarter; 37 acres in the Southeast quarter of Northwest quarter; 20 acres  
in the Northeast quarter of Southwest quarter; 38 acres in the Northwest quarter  
of Southwest quarter and 12 acres in the Southeast quarter of Southwest quarter of  
Section Thirteen, Township Forty South, Range Eight West of Willamette Meridian,  
in Josephine County, Oregon.

3.0 acres bb  
Sec 13  
T40S R8W W/M

POD: bc Sec 8 T40S R7W W/M, Houck & George Ditch —  
180'S & 1180'E from W 1/4 cor Sec 8

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

WITNESS the seal and signature of the State

This certificate describes that portion of the water right confirmed by the  
prior certificate recorded at page 2713, Volume 4, State Record of  
Water Right Certificates, NOT modified by the provisions of an order of the  
Water Resources Director entered on January 11, 1979, approving  
transfer application No. 2911.

The issuance of this superseding certificate does not confirm the status of  
the water right in regard to the provisions of ORS 540.610 pertaining to  
forfeiture or abandonment.

48672

53114



Tom ISSUE CERTIFICATES  
IN MAY

Cancelled Sp.Or.Rec.Vol. 31 p. 551

STATE OF OREGON

COUNTY OF JOSEPHINE

Superseded by  
Cert. No.

CERTIFICATE OF WATER RIGHT

(For Rights which have been confirmed by the Courts)

This is to Certify, That *Barbara Bales et al*  
*PO Box 603 Cave Junction* HILA A. C. HOUCK  
of Kerby, State of Oregon 97523 has a right to the use of  
the waters of Althouse Creek, a tributary of the Illinois River

for the purpose of the irrigation of <sup>124.0</sup> 128 acres of land, domestic and stock use

and that said right has been confirmed by decree of the Circuit Court of the State of Oregon for  
Josephine County, and the said decree entered of record at Salem, in the Order

Record of the State Water Board of the State of Oregon, in Volume 4, at page 427;

that the priority of the right hereby confirmed dates from 1856 for 100 acres and 1895 for  
28 acres

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  
2.56 cubic feet per second, and shall be subject to all other conditions and  
limitations contained in said decree. *→ being 0.56 cfs through the Morey Ditch,*

*if available at the original point of diversion, the Houck & George Ditch & 2.0 cfs through the H. & G. Ditch*  
A description of the lands irrigated under such right, and to which the water hereby con-  
firmed is appurtenant, or, if for other purposes, the place where such water is put to beneficial use,

is as follows: 39 acres in the Southeast quarter of Northeast quarter; 10 acres in  
the Northeast quarter of Southeast quarter of Section Thirteen, Township Forty  
South, Range Eight: 3 acres in the Northeast quarter of Northwest quarter; 30  
acres in the Northwest quarter of Northwest quarter; 36 acres in the Southwest  
quarter of Northwest quarter and 6 acres in the Southeast quarter of Northwest  
quarter of Section Eighteen, Township Forty South, Range Seven, All West of Wil-  
lamette Meridian, in Josephine County, Oregon.

→ OVER

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

This certificate describes that portion of the water right  
confirmed by the prior certificate recorded at Page 2715 Vol 4  
SEWRRC, NOT modified by the provisions of an order of the  
WRD entered 1-11-79 approving transfer application 2911  
& is issued to confirm a change in place of use & point of  
diversion approved by the same order & supersedes certificate 2715.  
The issuance etc

(531156)

1-27-11



~~1850~~

1895

Morey Ditch

3.1 acres aa w/in J. Thomas DLC 45

20.9 ba

Sec 13

T40S R8W W1W

1856

H. & G. Ditch

0.1 acre aa w/in 45

30.5 ca

5.2 Lt<sub>2</sub>(da)

30.5 da 45

~~3.5~~ 2.5 db

7.5 ac

7.2 ad w/in 45

6.9 bd

Sec 13

T40S R8W W1W

0.4 bb ~~45~~ 37 w/in J. Thomas DLC ~~37~~ 37

8.8 cb ~~45~~ 37

0.2 cb ~~45~~ N. Patterson DLC 38

0.2 bc 37

Sec 18

T40S R7W W1W



BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

JOSEPHINE COUNTY

IN THE MATTER OF TRANSFER APPLICATION )  
NO. 2911 IN THE NAMES OF H.M. ESTES, )  
VELMA A. ESTES, W.A. ESTES, VESTA )  
LOUISE ESTES & R.J. ESTES FOR APPROVAL )  
OF CHANGES IN PLACE OF USE AND POINT OF )  
DIVERSION OF WATER FROM ALTHOUSE CREEK )  
- - - - -

STATEMENT, FINDINGS,  
CONCLUSIONS  
AND  
ORDER

On October 31, 1973, an application was filed in the office of the Water Resources Director, in the names of H. M. Estes, W. A. Estes and R. J. Estes, for approval of changes in place of use and point of diversion of water from Althouse Creek for irrigation purposes, under the provisions of ORS 540.510 to 540.530.

The application was subsequently amended to include Velma A. Estes, wife of H. M. Estes, and Vesta Louise Estes, wife of W. A. Estes, as applicants.

The water rights involved in this matter were allowed by decree of the Circuit Court of Oregon for Josephine County in the Matter of the Determination of the Relative Rights of the Waters of Althouse Creek, a Tributary of the Illinois River, in Josephine County, Oregon, and are as follows:

(a) A right allowed in the name of R. P. George for appropriation of not to exceed 1.94 cubic feet per second for irrigation of 97 acres with a priority date of 1856 and 1.72 cubic feet per second for irrigation of 86 acres with a priority date of 1870; being 36 acres in SW $\frac{1}{4}$  NE $\frac{1}{4}$ , 39 in SW $\frac{1}{4}$  NW $\frac{1}{4}$ , 37 acres in SE $\frac{1}{4}$  NW $\frac{1}{4}$ , 20 acres in NE $\frac{1}{4}$  SW $\frac{1}{4}$ , 39 acres in NW $\frac{1}{4}$  SW $\frac{1}{4}$  and 12 acres in SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 13, Township 40 South, Range 8 West, W.M., being a portion of the right described by the certificate recorded at page 2713, Volume 4, State Record of Water Right Certificates.

(b) A right allowed in the name of Hila A. C. Houck for appropriation of not to exceed 2.0 cubic feet per second for irrigation of 100 acres with a priority

131 P. 251



date of 1856 and 0.56 cubic foot per second for irrigation of 24 acres with a priority date of 1895; being 39 acres in SE $\frac{1}{4}$  NE $\frac{1}{4}$  and 10 acres in NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 13, Township 40 South, Range 8 West, W.M.; 3 acres in NE $\frac{1}{4}$  NW $\frac{1}{4}$ , 30 acres in NW $\frac{1}{4}$  NW $\frac{1}{4}$ , 36 acres in SW $\frac{1}{4}$  NW $\frac{1}{4}$  and 6 acres in SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 18, Township 40 South, Range 7 West, W.M., as described by the certificate recorded at page 2715, Volume 4, State Record of Water Right Certificates.

Water is diverted from Althouse Creek for the said rights through the Houck and George Ditch from a point located 180 feet South and 1180 feet East from the West Quarter Corner of Section 8, being within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 8, Township 40 South, Range 7 West, W.M.

The applicants herein, owners of the above described lands at the time the said transfer application was filed, propose to change the place of use for a portion of said rights, and to change the point of diversion for a portion of said rights, without loss of priority, and thereafter exercise the subject water rights as follows:

(AA) Diversion of not to exceed 3.94 cubic feet per second through the said Houck and George Ditch with a priority date of 1856 for irrigation of a certain 0.1 acre in NE $\frac{1}{4}$  NE $\frac{1}{4}$ , 30.5 acres in SW $\frac{1}{4}$  NE $\frac{1}{4}$ , 35.7 acres in SE $\frac{1}{4}$  NE $\frac{1}{4}$ , 39.7 acres in SW $\frac{1}{4}$  NW $\frac{1}{4}$ , 30.4 acres in SE $\frac{1}{4}$  NW $\frac{1}{4}$ , 7.5 acres in NE $\frac{1}{4}$  SW $\frac{1}{4}$ , 29.4 acres in NW $\frac{1}{4}$  SW $\frac{1}{4}$ , 7.2 acres in NE $\frac{1}{4}$  SE $\frac{1}{4}$  and 6.9 acres in NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 13, Township 40 South, Range 8 West, W.M.; 0.4 acre in NW $\frac{1}{4}$  NW $\frac{1}{4}$ , 9.0 acres in SW $\frac{1}{4}$  NW $\frac{1}{4}$  and 0.2 acre in NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 18, Township 40 South, Range 7 West, W.M.

(BB) Diversion of not to exceed 0.61 cubic foot per second through the said Houck and George Ditch with a priority date of 1870 for irrigation of a certain 1.4 acres in NW $\frac{1}{4}$  NW $\frac{1}{4}$ , 25.5 acres in SW $\frac{1}{4}$  NW $\frac{1}{4}$  and 3.7 acres in SE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 18, Township 40 South, Range 7 West, W.M.

(CC) Diversion of not to exceed 1.11 cubic feet per second through the

C-2713 X  
C-2715 8

P557



Morey Ditch from a point located 860 feet South and 2090 feet East from the Northwest Corner of Section 18, being within the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 18, Township 40 South, Range 7 West, W.M., with a priority date of 1870 for irrigation of a certain 0.5 acre in SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 12; 13.0 acres in NE $\frac{1}{4}$  NE $\frac{1}{4}$  and 6.2 acres in NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 13, Township 40 South, Range 8 West, W.M.; 1.8 acres in SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 7; 2.9 acres in NE $\frac{1}{4}$  NW $\frac{1}{4}$  and 31.0 acres in NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 18, Township 40 South, Range 7 West, W.M.

(DD) Diversion of not to exceed 0.56 cubic foot per second through the said Morey Ditch with a priority date of 1895 for irrigation of a certain 3.1 acres in NE $\frac{1}{4}$  NE $\frac{1}{4}$  and 20.9 acres in NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 13, Township 40 South, Range 8 West, W.M.

The subsequent purchasers of portions of the above described lands have all submitted statements that they are in agreement with the proposed changes in place of use and point of diversion of water.

Notice of the application, pursuant to ORS 540.520(2), was published in the Illinois Valley News, a newspaper printed and having general circulation in Josephine County, Oregon, for a period of three weeks in the issues of May 1, 8 and 15, 1975.

On June 9, 1975, a protest against approval of the subject transfer application was filed by Richard D. Weaver and Patricia A. Weaver, through their attorney, Mr. Donald H. Coulter, Attorney at Law, Grants Pass, Oregon. The protestants allege that the proposed change in point of diversion would result in interference with their water rights for irrigation of their lands from the natural flow of Althouse Creek; and further allege that they are the owners of the real property upon which the proposed point of diversion is located and that the applicants have not obtained property rights necessary to carry out the proposed change in point of diversion.

P553



The protestants have not objected to the proposed changes in place of use.

Pursuant to notice to the parties, dated September 6, 1977, the matter of the transfer application No. 2911 and the protest against it was brought to hearing before Mr. James W. Carver, Jr., Water Resources Department, on October 5, 1977, at Grants Pass, Oregon.

The applicants were represented by their attorney, Mr. Wally P. Martin, Attorney at Law, Grants Pass, Oregon.

The protestants were represented by their attorney, Mr. Donald H. Coulter, Attorney at Law, Grants Pass, Oregon.

Pursuant to stipulation between counsel, the hearing was recessed to a new date to be determined. The hearing was reconvened on August 17, 1978, upon corrected notice of hearing to the parties, dated June 22, 1978.

#### EVIDENTIARY RULINGS

Protestants offer as their Exhibit "A" a map entitled: "Plat of Survey in the W $\frac{1}{2}$  of Section 18, T. 40 S., R. 7 W., and in Section 13, T. 40 S., R 8 W., W.M., Josephine County, Oregon, Oct. 11, 1968, For: Mr. W. A. Estes, Cave Junction, Oregon".

Applicants object to the exhibit on the grounds that it is not material to the proceeding.

Objection sustained.

#### FINDINGS

Althouse Creek is a perennial stream which rises on the northwesterly slope of the Siskiyou Mountains, near the Oregon-California Border, and flows generally north and west for a distance of approximately 15 miles to a confluence with the East Fork Illinois River. The lands to which the subject water rights are appurtenant lie approximately five miles south and three miles east of the town of

2594



Cave Junction, Oregon.

The water rights of the protestants for the use of waters from the natural flow of Althouse Creek were allowed by decree of the court in the same proceeding as the water rights of the applicants and are for the appropriation of not to exceed 1.26 cubic feet per second with a priority date of 1876 for irrigation of a certain 63 acres within Sections 7 and 18 of Township 40 South, Range 7 West, W.M., as described by the certificate issued in the name of Ed Lind and recorded at page 2717, Volume 4, State Record of Water Right Certificates; and the appropriation of not to exceed 0.6 cubic foot per second with a priority date of 1898 for irrigation of a certain 30 acres within said Section 7, as described by the certificate issued in the name of Joseph Skeeters and recorded at page 2719 of said Volume 4.

The protestants divert their water from Althouse Creek for the said rights at a point located 150 feet South and 1220 feet East from the West Quarter Corner of Section 8, being within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 8, Township 40 South, Range 7 West, W.M., which point is designated as point "A" on Figure 1, herein, and is located on the North bank of the stream.

The point of diversion for the Houck and George Ditch, which is the existing, authorized point of diversion for the applicants' water rights described above, is located downstream approximately 50 feet and across the channel from the protestants' point of diversion, and is designated on Figure 1 as point "B".

The point of diversion for the Morey Ditch, which is the applicants' proposed point of diversion for a portion of the subject water rights, is located on the South bank of Althouse Creek approximately one mile downstream from point "B" and is designated on Figure 1 as point "C". The said point of diversion at point "C" and the Morey Ditch are existing works and are used by the applicants and others to obtain water from the flow of Althouse Creek under water rights not

2-15-59





Figure 1

OREGON  
CALIFORNIA



involved in this proceeding.

There is no point of diversion for use of water from Althouse Creek between point "B" and point "C".

That section of the channel of Althouse Creek which includes the aforesaid diversion points is formed by erosion in loose gravels and tends to move during times of flood flows.

It has been the practice of the applicants, each irrigation season, to build up a gravel berm across the channel of Althouse Creek immediately below point "B", the inlet to the Houck and George Ditch, and thereby raise the level of the water flowing in the channel so that it fills the concrete pipe inlet to the said Houck and George Ditch. The distances and elevations are such that the said gravel berm also provides a similar benefit to the intake works of the protestants' ditch at point "A".

It is usual for the flow of Althouse Creek to diminish during the irrigation season to where the protestants must be denied water under their said water rights, in whole or in part, to supply the applicants' needs under their said prior water rights.

Without the proposed change in point of diversion from the Houck and George Ditch to the Morey Ditch for a part of the applicants' 1870 and 1895 water rights, at any time that the applicants do not take their full entitlement of water into the intake of the Houck and George Ditch, any surplus water is automatically available to the protestants at the intake to their ditch.

The issue before the Water Resources Director in this matter is defined by ORS 540.530(1) as follows: "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 and fixing a time limit within which the application of water may be made ...".



Evidence was offered by the parties in regard to private property right matters associated with the proposed change in point of diversion. However, the jurisdiction of the Water Resources Director does not extend to matters of easements or rights-of-way or to other private property matters that might be associated with a proposed change in point of diversion of water from a natural stream channel.

During the course of the hearing, the applicants stated through their attorney that they are aware that approval of their pending application would not convey to them any property rights that might be necessary to the project; and that they are willing to risk forfeiture of the water rights involved should they be unable to perform under the provisions of an order approving their application.

Specifically, the question before the Water Resources Director in this proceeding is whether the proposed change in point of diversion from the Houck and George Ditch (point "B") to the Morey Ditch (point "C") for a portion of the applicants' water rights as described above would result in depriving the protestants of water they are entitled to receive under their water rights.

#### CONCLUSIONS

If the applicants' diversion of water through the Morey Ditch (point "C") under the rights involved in the proposed change in point of diversion were made contingent to the construction, maintenance and operation of a permanent control structure across the channel of Althouse Creek, and a measuring device, adequate to measure the summer flow in the channel of Althouse Creek immediately downstream from the inlet of the Houck and George Ditch, and the construction, maintenance and operation of a measuring device in the diversion works of the Morey Ditch adequate to measure the waters received into the Morey Ditch, so that with regulation by the watermaster, the quantity of water diverted through the Morey Ditch under the subject rights would not exceed the quantity of water available to the subject



rights at the intake to the Houck and George Ditch, the proposed change in point of diversion could be made without injury to the protestants' existing water rights.

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 application should be approved.

#### ORDER

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

It is FURTHER ORDERED that diversion of water from Althouse Creek through the Morey Ditch under the water rights involved in the change in point of diversion authorized herein shall be contingent to the construction, maintenance, and operation of a permanent control structure across the channel of Althouse Creek and a measuring device, adequate to measure the summer flow within the channel of Althouse Creek immediately downstream from the inlet to the Houck and George Ditch, and the construction, maintenance, and operation of a measuring device in the diversion works of the Morey Ditch, adequate to measure the waters received into the Morey Ditch; and that the type and plans of the measuring devices and associated structures be approved by the watermaster before the beginning of construction work and the installation of said devices and structures shall be under the general supervision of said watermaster.

It is FURTHER ORDERED that the quantity of water diverted at the new point of diversion (Morey Ditch) shall not exceed the quantity of water available at the old point of diversion (Houck and George Ditch) under the subject water rights.

It is FURTHER ORDERED that the construction work shall be completed and the change in point of diversion of water made and that said water so transferred

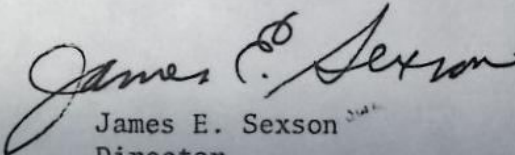
2357



shall be applied to beneficial use on or before October 1, 1980.

It is FURTHER ORDERED that the certificate of water right heretofore issued to R. P. George and recorded at page 2713, Volume 4, State Record of Water Right Certificates, is canceled; and in lieu thereof a new certificate be issued covering the balance of the right NOT involved in this proceeding; that the certificate of water right heretofore issued to Hila A. C. Houck and recorded at page 2715, Volume 4, State Record of Water Right Certificates, is canceled; and upon proof satisfactory to the Water Resources Director of completion of works and beneficial use of water to the extent intended under the provisions of this order, confirming certificates of water right shall be issued to the applicants herein.

Dated at Salem, Oregon this 11th day of January, 1979.

  
James E. Sexson  
Director

NOTICE: You are entitled to a judicial review of this Order. Judicial review may be obtained by filing a petition for review within sixty days from the service of this Order. Judicial review is pursuant to the provisions of ORS Chapter 183.

1560



## STATE OF OREGON

COUNTY OF JOSEPHINE

## CERTIFICATE OF WATER RIGHT

This Is to Certify, That R. P. GEORGE

of Kerby, State of Oregon, 97531, has  
a right to the use of the waters of Althouse Creek

a tributary of Illinois River for the purpose of  
irrigation of 3.0 acres, domestic and stock use

and that said right has been confirmed by decree of the Circuit Court of the State of Oregon for Josephine County, and the said decree entered of record at Salem, in the Order Record of the WATER RESOURCES DIRECTOR, in Volume 4, at page 427; that the priority of the right thereby confirmed dates from 1856

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 0.06 cubic foot per second

The point of diversion is located in the NW $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 8, T. 40 S., R. 7 W., W.M., Houck and George Ditch - 180 feet South and 1180 feet East from the W $\frac{1}{4}$  Corner, Section 8

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

3.0 acres NW $\frac{1}{4}$  NW $\frac{1}{4}$   
Section 13  
T. 40 S., R. 8 W., W.M.

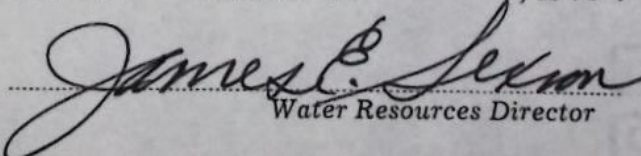
This certificate describes that portion of the water right confirmed by the prior certificate recorded at page 2713, Volume 4, State Record of Water Right Certificates, NOT modified by the provisions of an order of the Water Resources Director entered on January 11, 1979, approving transfer application No. 2911.

The issuance of this superseding certificate does not confirm the status of the water right in reference to ORS 540.610.

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 Water Resources Director, affixed

this date October 26, 1979.

  
Water Resources Director

Recorded in State Record of Water Right Certificates, Volume 42, page 48672



STATE OF OREGON

Superseded by  
Cert. No. \_\_\_\_\_

COUNTY OF JOSEPHINE

CERTIFICATE OF WATER RIGHT

(For Rights which have been confirmed by the Courts)

**This is to Certify, That** HILA A. C. HOUCK

of Kerby, State of Oregon has a right to the use of  
the waters of Althouse Creek, a tributary of the Illinois River

for the purpose of the irrigation of 128 acres of land, domestic and stock use

and that said right has been confirmed by decree of the Circuit Court of the State of Oregon for  
Josephine County, and the said decree entered of record at Salem, in the Order

Record of the State Water Board of the State of Oregon, in Volume 4, at page 427 ;  
that the priority of the right hereby confirmed dates from 1856 for 100 acres and 1895 for  
28 acres

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  
2.56 cubic feet per second, and shall be subject to all other conditions and  
limitations contained in said decree.

A description of the lands irrigated under such right, and to which the water hereby con-  
firmed is appurtenant, or, if for other purposes, the place where such water is put to beneficial use,  
is as follows: 39 acres in the Southeast quarter of Northeast quarter; 10 acres in  
the Northeast quarter of Southeast quarter of Section Thirteen, Township Forty  
South, Range Eight: 3 acres in the Northeast quarter of Northwest quarter; 30  
acres in the Northwest quarter of Northwest quarter; 36 acres in the Southwest  
quarter of Northwest quarter and 6 acres in the Southeast quarter of Northwest  
quarter of Section Eighteen, Township Forty South, Range Seven, All West of Wil-  
lamette Meridian, in Josephine County, Oregon.

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

WITNESS the seal and signature of the State  
Water Board, affixed this 15th day  
of August, 1920

STATE WATER BOARD

(Seal of State Water Board)

By PERCY A. CUPPER  
State Engineer, President

Attest:

R. W. POTTER  
Secretary

Recorded in State Record of Water Right Certificates, Volume 4, page 2715

CANCELED

T-3911



Thursday, May 1, 1975  
ILLINOIS VALLEY NEWS  
Cave Junction, Oregon 97523

## PUBLIC NOTICE

### NOTICE OF FILING APPLICATION FOR A CHANGE IN POINT OF DIVERSION AND PLACE AND USE OF WATER

Notice is given hereby that H. M., W. A. and R. J. Estes have filed an application for the approval of a change in point of diversion and place of use of water from Althouse Creek.

In the Althouse Creek Adjudication proceedings a water right was established in the name of R. P. George for the use of waters on Althouse Creek for the irrigation of, among other lands, 36 acres in SW $\frac{1}{4}$  NE $\frac{1}{4}$ , 39 acres in SW $\frac{1}{4}$  NW $\frac{1}{4}$ , 37 acres in SE $\frac{1}{4}$  NW $\frac{1}{4}$ , 20 acres in NE $\frac{1}{4}$  SW $\frac{1}{4}$ , 39 acres in NW $\frac{1}{4}$  SW $\frac{1}{4}$  and 12 acres in SE $\frac{1}{4}$  SW $\frac{1}{4}$ , Sec. 13, T. 40 S., R. 8 W., W.M., with priority dates of 1856 and 1870, and in the name of Hila A. C. Houck for the irrigation of 39 acres in SE $\frac{1}{4}$  NE $\frac{1}{4}$ , 10 acres in NE $\frac{1}{4}$  SE $\frac{1}{4}$ , Sec. 13, T. 40 S., R. 8 W., 3 acres in NE $\frac{1}{4}$  NW $\frac{1}{4}$ , 30 acres in NW $\frac{1}{4}$  NW $\frac{1}{4}$ , 36 acres in SW $\frac{1}{4}$  NW $\frac{1}{4}$ , and 6 acres in SE $\frac{1}{4}$  NW $\frac{1}{4}$ , Sec. 18, T. 40 S., R. 7 W., W.M., with priority dates of 1856 and 1895.

Water for this use is diverted by means of the Houck and George ditch from a point located 960 ft. N. and 330 ft. E. from the SW corner of Sec. 8, being within the NW $\frac{1}{4}$  SW  $\frac{1}{4}$ , Sec. 8, T. 40 S., R. 7 W., W.M.

The applicants herein, owners of the lands above described under the Hila A. C. Hough right, propose to change the place of use for the irrigation of 24 acres to the irrigation of 3.1 acres in NE $\frac{1}{4}$  NE $\frac{1}{4}$  and 20.9 acres in NW $\frac{1}{4}$  NE $\frac{1}{4}$ , Sec. 13, T. 40 S., R. 8 W., W.M., with a date of priority of 1895.

Under the R. P. George right the applicants propose to change the place of use for irrigation of 55.4 acres to 1.8 acres in SW  $\frac{1}{4}$  SW $\frac{1}{4}$ , Sec. 7, 2.9 acres in NE $\frac{1}{4}$  NW $\frac{1}{4}$ , 31.0 acres in NW $\frac{1}{4}$  NW $\frac{1}{4}$ , Sec. 18, T. 40 S., R. 7 W., and 0.5 acre in SE $\frac{1}{4}$  SE $\frac{1}{4}$ , Sec. 12, and 13.0 acres in NE $\frac{1}{4}$  NE $\frac{1}{4}$ , 6.2 acres in NW $\frac{1}{4}$  NE $\frac{1}{4}$ , Sec. 13, T. 40 S., R. 8 W., W.M., with date of priority of 1870, and irrigate the lands under both rights by means of the Morey Ditch from a point of diversion to be located 860 ft. S. and 2090 ft. E. from the NE corner of Sec. 18, being within the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , Sec. 18, T. 40 S., R. 7 W., W.M.

All persons interested are notified hereby that a hearing will be held at the county courthouse at Grants Pass, Oregon, on June 25, 1975 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 H. M., W. A. and R. J. Estes, Route 1, Box 534, Cave Junction, Or., and one copy filed with the State Engineer, Salem, Or., together with a \$5 filing fee at least 10 days prior to the date set for hearing. If no objections are filed the application may be approved by the State Engineer without a hearing. Administrative rules pertaining to the filing of a protest will be furnished by the State Engineer upon request.

Dated at Salem, Oregon, this 18th day of April, 1975.

CHRIS L. WHEELER  
State Engineer

Publish: May 1, 8, 15, 1975

## Affidavit of Publication

STATE OF OREGON,  
County of Josephine

} ss.

I, L. Joan Grant, being first duly sworn, depose and say I am the forman of the printers of the Illinons Valley News, a newspaper of general circulation printed and published at Cave Junction in the aforesaid county and state, as defined in Section 58, Oregon Laws, that legal notice of filing appli-  
cator water diversion-Estes a printed copy of which is hereto annexed, was published in the entire issue of said newspaper for 3  
successive and consecutive weekly issues on the following dates:

May 1, 8, 15, 1975

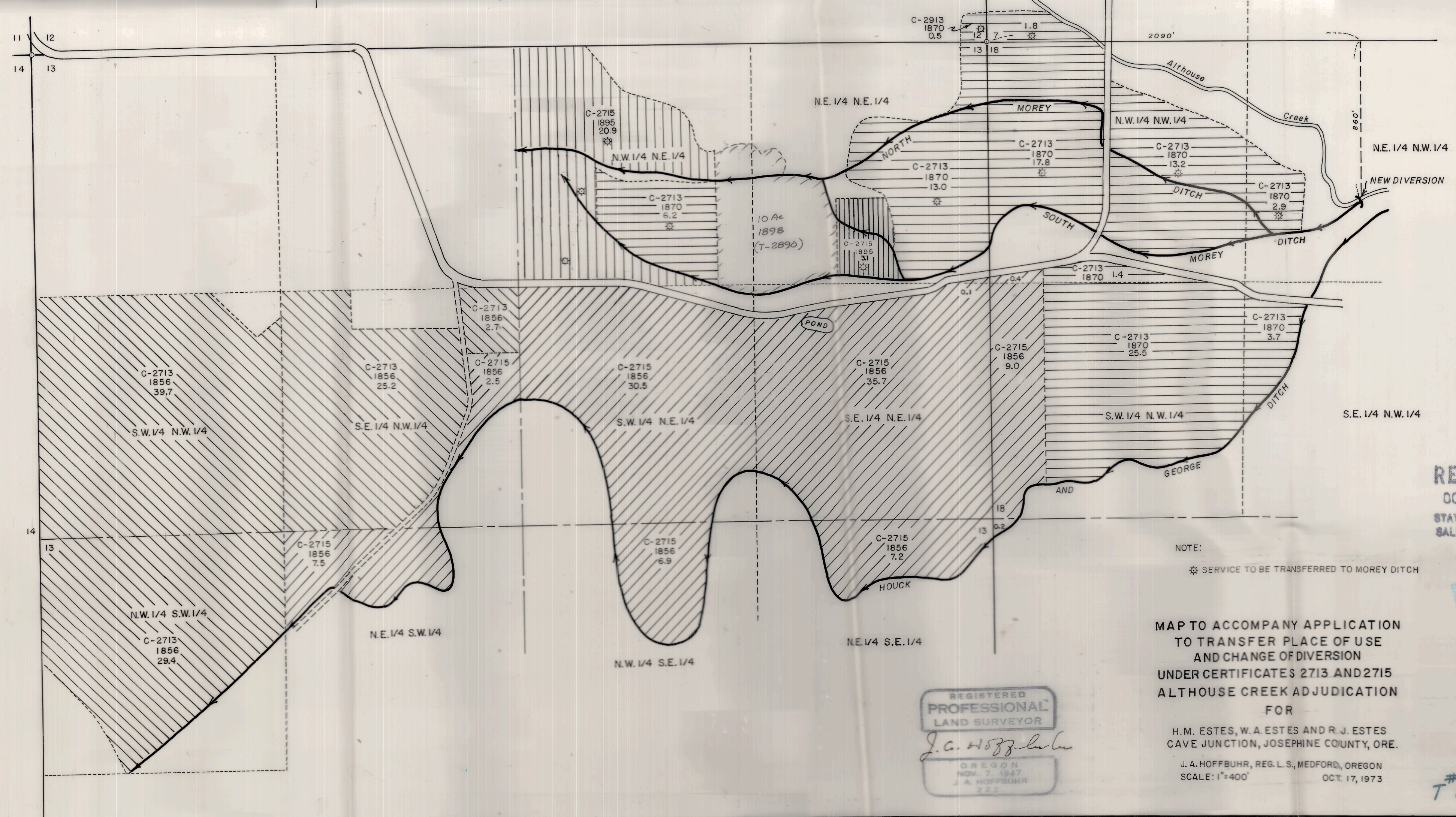
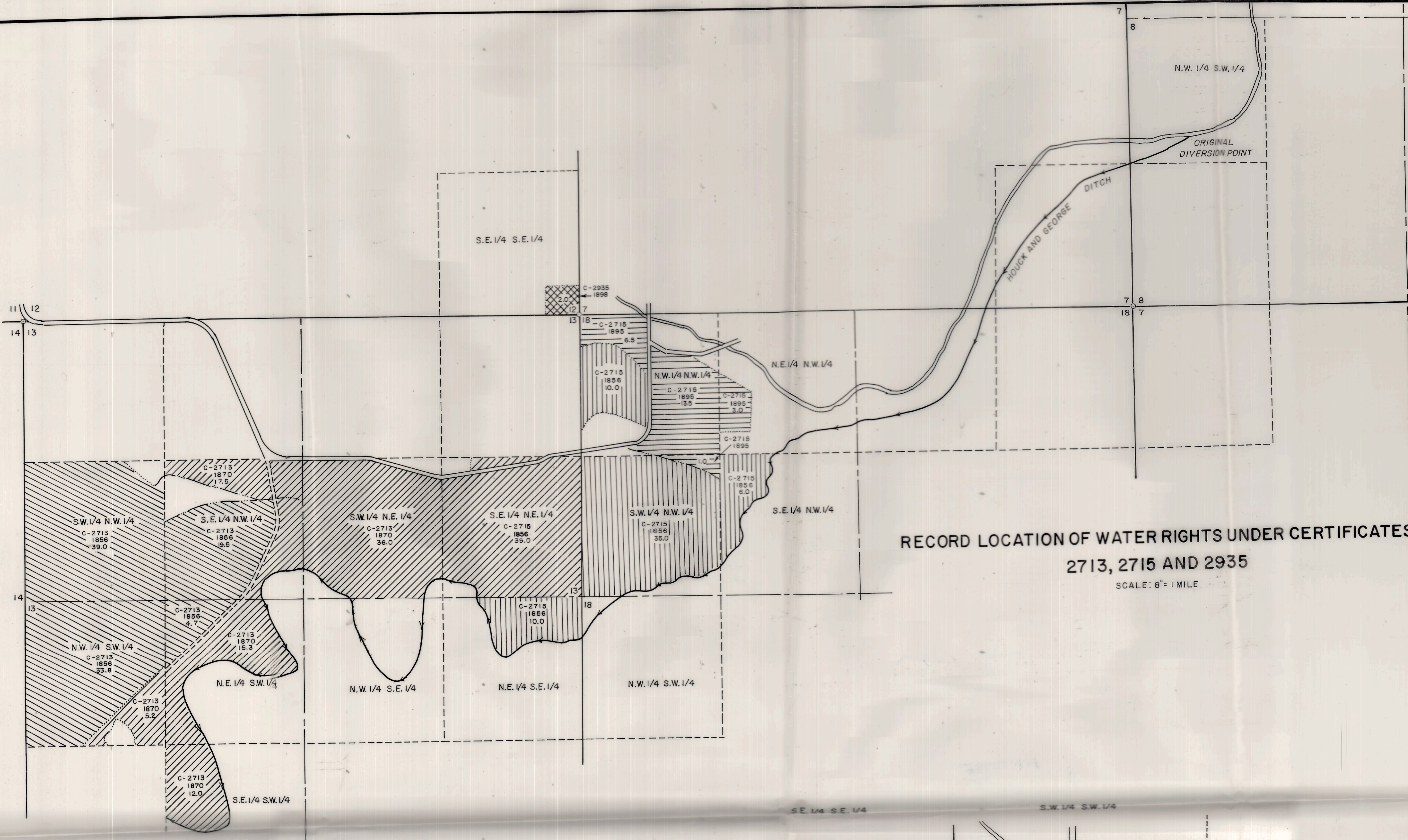
L. Joan Grant

Subscribed and sworn to before me this 13 day  
of Dec, 1976.

Walter E. McLean  
Notary Public for Oregon

(My Commission expires June 16, 1978.)





RECEIVED  
OCT 31 1973  
STATE ENGINEER  
SALEM, OREGON

RECEIVED  
OCT 28 1973  
WATER RESOURCES DEPT  
SALEM, OREGON

NOTE:  
\* SERVICE TO BE TRANSFERRED TO MOREY DITCH

MAP TO ACCOMPANY APPLICATION  
TO TRANSFER PLACE OF USE  
AND CHANGE OF DIVERSION  
UNDER CERTIFICATES 2713 AND 2715  
ALTHOUSE CREEK ADJUDICATION  
FOR

H.M. ESTES, W.A. ESTES AND R.J. ESTES  
CAVE JUNCTION, JOSEPHINE COUNTY, ORE.  
J.A. HOFFBUHR, REG. L.S., MEDFORD, OREGON  
SCALE: 1"=400' OCT 17, 1973

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
J.A. HOFFBUHR  
OREGON  
NOV. 7, 1947  
J.A. HOFFBUHR  
222

# 2911