

3289

DESCRIPTION OF WATER RIGHT

FEES PAID

42 3/7 48675

Notation made on record by

Date	Amount	Receipt No.
8-4-75	35.00	48755
TOTAL . . .	4.00 Cert. Fee	50841

FEES REFUNDED

Date	Amount	Check No.
10/10/80	2.00	4418 (Cert. fee)

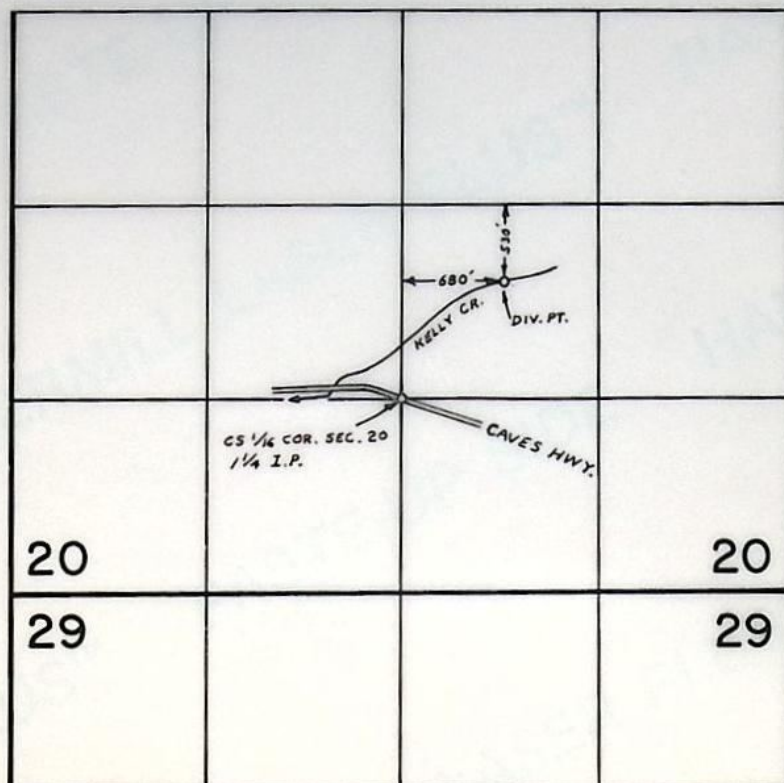
REMARKS

See Transfer No 3231 involving same right
do not issue R.R. cert. until Tr. 3231 disposed of

TO BE ENTERED WHERE CHECKED	INDEX CARDS:	Entered	Checked
<u>WH</u>	Name	<u>✓</u>	<u> </u>
<u>WH</u>	Stream	<u>✓</u>	<u> </u>
<u>WH</u>	Pt. of Div.	<u>✓</u>	<u> </u>
<u>WH</u>	Calendar	<u>✓</u>	<u> </u>
	CHECKED TO RECORDS:		
<u>✓</u>	Twp. & Rge.	<u>NO</u>	<u> </u>
<u> </u>	Decree-vault	<u> </u>	<u> </u>
<u> </u>	Decree-safe	<u> </u>	<u> </u>
<u>✓</u>	Cert. of W/E	<u>NO</u>	<u> </u>
<u>✓</u>	Per. Folder	<u>NO</u>	<u> </u>
<u> </u>	Chaindex	<u> </u>	<u> </u>
<u> </u>	Cross Ref.	<u> </u>	<u> </u>
<u> </u>	Power Claim	<u> </u>	<u> </u>
<u> </u>	Abstracts	<u> </u>	<u> </u>

434

T.39 S., R.7 W., W.M.



FINAL PROOF SURVEY
UNDER

Transfer No. 3289

Application No. Permit No.

IN NAME OF

FRANK HENDRIX

Surveyed AUG. 3 1978, by B. SUND

8-3-78 BRS
PT5-1928-14-C

FRANK HENDRIX

County Josephine

1. Name Daniel A. Brunicardi ✓ Address 5321 Caves Highway, Cave Junction 97523
2. Source of Supply Kelly Creek ✓, Trib. of _____
3. Amount of Water 0.031 c.f.s. Priority Date Oct. 26, 1925
4. Use irrigation
5. Proposed Point of Diversion ⁵³⁰ 500 ft. S. and ⁶⁸⁰ 700 ft. E. from center corner of
Sec. 20, being within the NW¹₄ SE¹₄ of Sec. 20, T. 39 S., R. 7 W., W.M.

6. Place of Use DATE FOR APPLICATION OF WATER: 10/1/77

[illegible]

Info: Mr. Hendrix, NEW OWNER.

SYSTEM: GRAVITY FLOW

PIPE: $1\frac{1}{2}$ " TO HOUSE - 1000'
 $\frac{3}{4}$ " TO FIELD - 500'

SPRINKLERS: 2 RB 20's

USE: GARDEN, YARD, FRUIT TREES, PASTURE

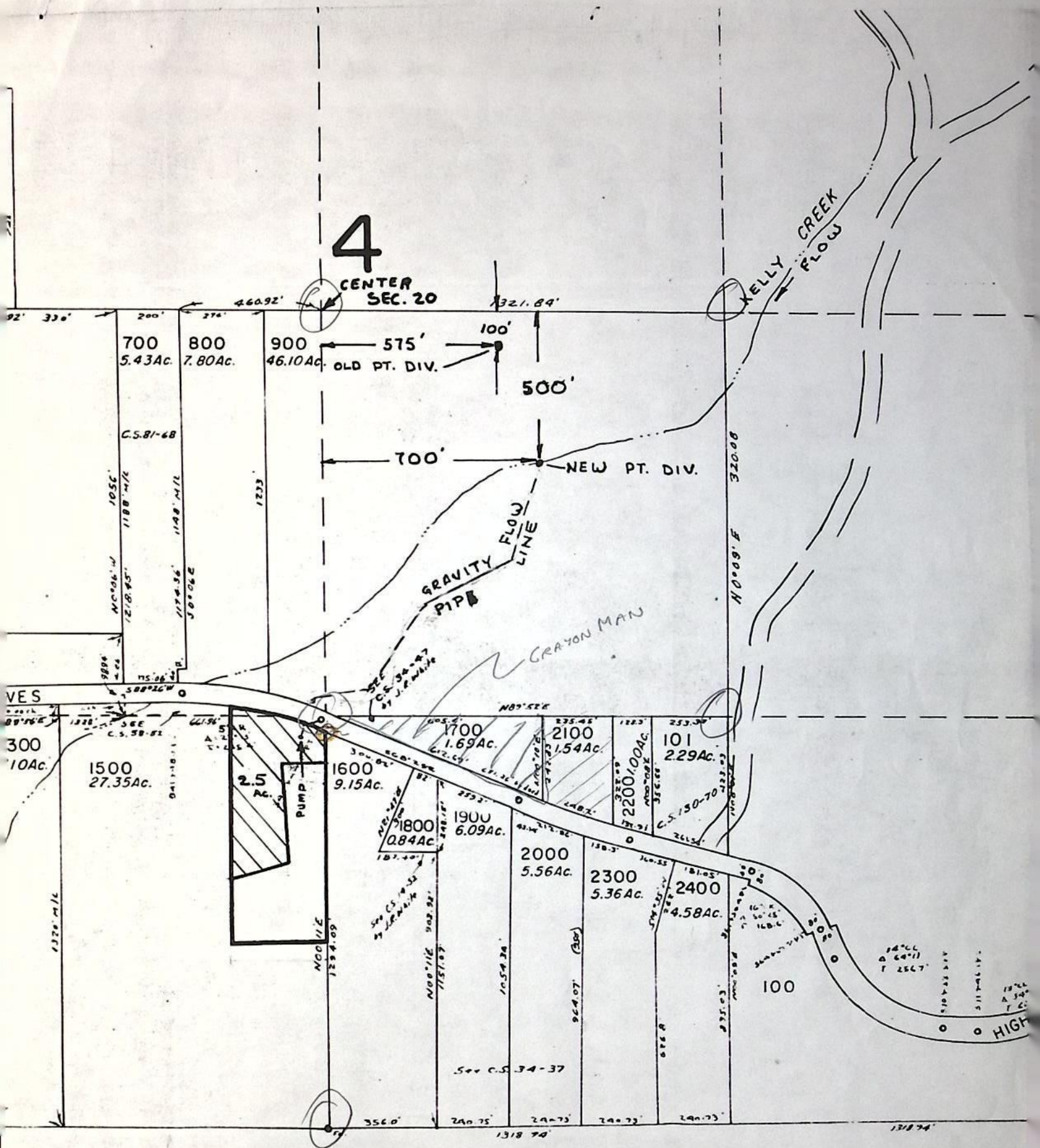
LIFT: + 15' MAX.

TIE: PTS - 1978 - 14 - C, PROP. COR. CS $\frac{1}{16}$ COR $1\frac{1}{4}$ " I.P.

Bruce R. Lund

F.E. 8-3-78

$$\frac{2(4.7)}{750} = 0.02 \text{ c.f.s.}$$



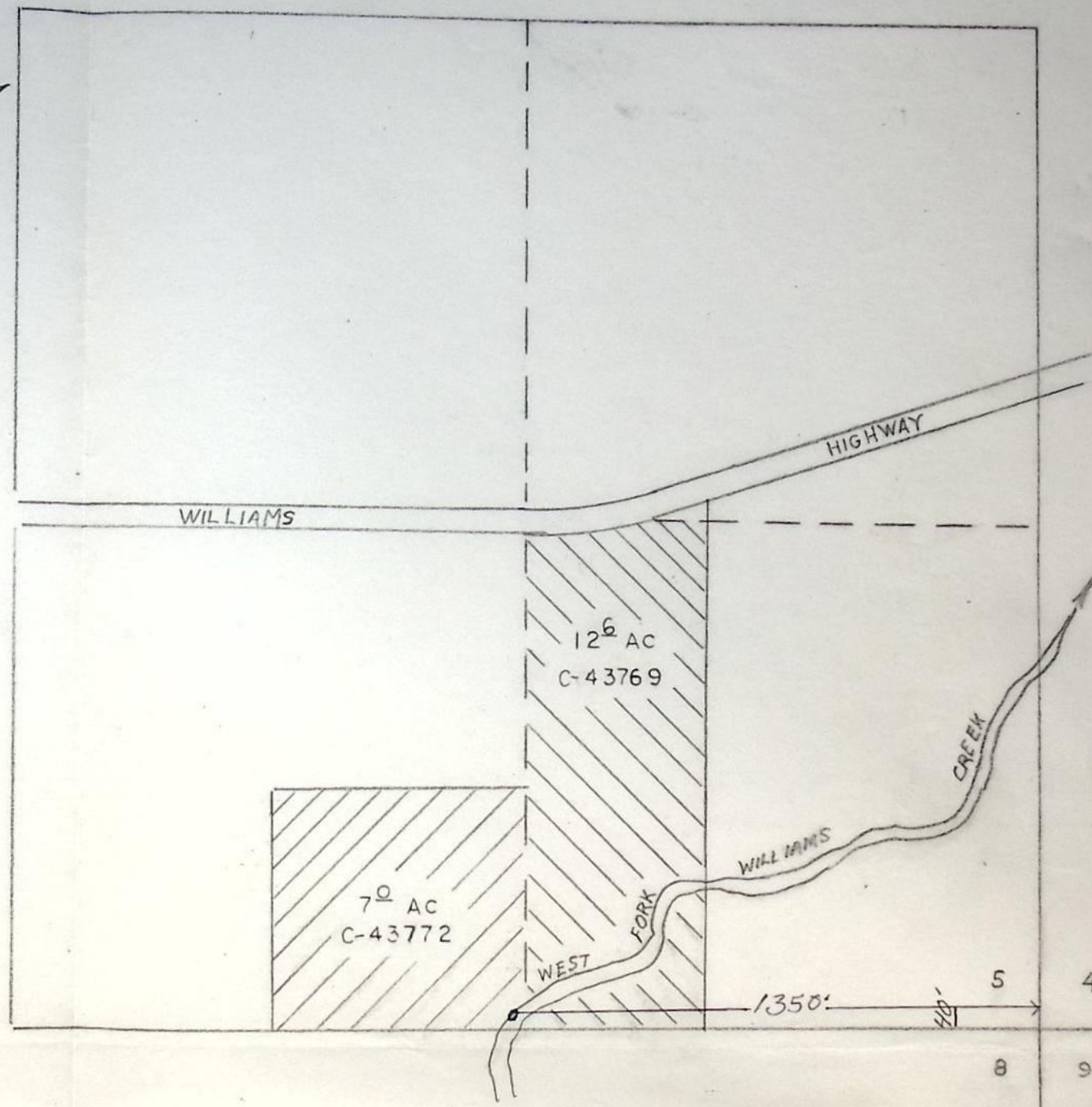
6	5
7	8

TOWNSHIP 39 SOUTH, RANGE 5 W. W. M.

1" = 400'

Old point of diversion
1150' S. and 1320' E.
from N.W. cor. Sec. 8
Being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$

KINCAID ROAD



T-3724

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

Josephine County

IN THE MATTER OF THE APPLICATION)
OF DANIEL A. BRUNICARDI FOR THE)
APPROVAL OF A CHANGE IN POINT OF)
DIVERSION OF WATER FROM KELLY CREEK)

ORDER APPROVING
TRANSFER NO. 3289

On August 4, 1975, Daniel A. Brunicardi filed an application in the office of the Water Resources Director for the approval of a change in point of diversion of water from Kelly Creek, pursuant to the provisions of ORS 540.510 to 540.530.

Certificate of water right issued to Robert Wilson, Thomas Alfson, Norbert Poth and Lorna Byrne and recorded at Page 42064, Volume 34, State Record of Water Right Certificates, confirms a right to the use of not to exceed 0.234 cubic foot per second of water from Kelly Creek for the irrigation of, among other lands, 2.5 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 20, Township 39 South, Range 7 West, W.M., with a date of priority of October 26, 1925. These lands are irrigated by means of the Poth ditch from a point of diversion located 100 feet South and 575 feet East from the center corner of Section 20, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20, Township 39 South, Range 7 West, W.M.

The applicant herein, owner of the lands above described, proposes to irrigate these lands from a point of diversion to be located 500 feet South and 700 feet East from the center corner of Section 20, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20, Township 39 South, Range 7 West, W.M.

Notice by publication as provided by ORS 540.520 was not given in connection with this application for the reason said section provides notice is not required on an application for a change in point of diversion of water of less than one-fourth mile where there is no intervening diversion.

Mr. Robert B. Steimer, Watermaster of District No. 14, has filed a report to the effect that the proposed change in point of diversion of water may be made without injury to existing rights.

No objection having been filed and it appearing that the proposed change in point of diversion may be made without injury to existing rights, the application should be approved.

NOW, THEREFORE, it hereby is ORDERED that the change in point of diversion of water from Kelly Creek, to wit:

From a point located 100 feet South and 575 feet East from the center corner of Section 20, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20, Township 39 South, Range 7 West, W.M.

To a point to be located 500 feet South and 700 feet East from the center corner of Section 20, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 20, Township 39 South, Range 7 West, W.M.

for the irrigation of 2.5 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 20, Township 39 South, Range 7 West, W.M., with a date of priority of October 26, 1925, is approved.

It is FURTHER ORDERED that the construction work shall be completed and the change in point of diversion of water made on or before October 1, 1977.

It is FURTHER ORDERED that the quantity of water diverted at the new point of diversion shall not exceed the quantity of water available at the old point of diversion, and shall not exceed 0.031 cubic foot per second.

It is FURTHER ORDERED that the following provisions shall be effective when in the judgement of the watermaster it becomes necessary to install headgates and measuring devices.

That the diversion works shall include an in line flow meter, a weir, or other suitable device 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 certificate of water right heretofore issued to Robert Wilson, Thomas Alfsen, Norbert Poth and Lorna Byrne and recorded at Page 42064, Volume 34, State Record of Water Right Certificates, is canceled, and in lieu thereof a new certificate be issued covering the balance of the lands not involved in this proceeding, and upon receipt of proof satisfactory to the Water Resources Director of completion of the authorized change in point of diversion, a certificate of water right shall be issued to Daniel A. Brunicardi confirming the change in point of diversion.

Dated at Salem, Oregon, this 13th day of July, 1976.

/s/ JAMES E. SEXSON
Director

T-3289

RECEIVED

AUG 4 1975
WATER RESOURCES DEPT.
SALEM, OREGON

Application for Transfer of Water Right

To the STATE ENGINEER OF OREGON:

Daniel A. Brunicardi

5321 Caves Highway

I, _____
(Name of applicant)

of Cave Junction 97523, County of Josephine
(Postoffice)

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

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

1. The source of present water right is Kelly Creek
(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 Poth Ditch

4. The point of diversion is located 100 S 575 E Center
(N. or S.) (E. or W.)
Section 20 being within the NW 1/4 SE 1/4
corner of (Section or subdivision)

of Section 20 Tp. 39S R. 7W Josephine
(No. N. or S.) (No. E. or W.) W. M., in the County of

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	7W	20												2.5				

NOTE: If you own less than 40-acre tracts, attach a description of your land as it appears in your deed. (See attached sheet)
(Attach separate sheet if necessary)

See to how received Dec 13, 1975

6. Are you the legal owner of the above described lands? No, not at time of filing. I now live on this land and am in process of purchasing land; escrow to close in August, 1975.
(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 26, 1925.

9. Was your water right acquired by State Engineer's Permit? yes If so, give number of permit 6982
(Yes or No)

42064
~~8785~~

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

12. Is the water right recorded in your name? no--Herbert Tyser Robert Wilson, Thomas Alfson
Norbert Poth, & Lornd Byrne
(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 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

(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 500 S 700 E Center
ft. and ft. from the Section 20 NW 1/4 SE 1/4 (N or S.) 20 39S 7W
corner of being within the of Section 20 Tp. 39S R. 7W W. M.,
(Smallest legal subdivision) Josephine pipeline (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? no

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.
Owner is Norbert Poth of Morgan Hill, California
Evidence of legal easement to follow.

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.? ----
(Answer Yes or No)

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

NATURE OF ENCUMBRANCE	HELD BY	AMOUNT

20. Reasons for the proposed changes are I have been informed by the State Engineer
that the 1925 water right was in Herbert Tyser's name. I was requested
to file this change in diversion point form in order to correct the records.

AFFIDAVIT OF APPLICANT

STATE OF OREGON,

County of Josephine } ss.

I, Daniel A. Brunicaudi, 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 28th day of July, 1975.

Daniel A. Brunicaudi
(Name of applicant)

Subscribed and sworn to before me this 28th day of July, 1975.

[Notarial Seal]

B. J. Zsarnow
NOTARY PUBLIC FOR OREGON

My commission expires 3/30/78

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.

15095
AGREEMENT FOR EASEMENT

VOL 313 PAGE 71



THIS AGREEMENT, Made and entered into this 25th day of July, 1975, by and between Norbert Poth hereinafter called the first party, and Daniel A. Brunicardi hereinafter called the second party;

WITNESSETH:

WHEREAS: The first party is the record owner of the following described real estate in Josephine County, State of Oregon, to-wit:

The Northwest quarter of the Southwest quarter, and the East half of the Northeast quarter of the Southwest quarter of Section 20, Township 39 South, Range 7 West of the Willamette Meridian, Josephine County, Oregon, except that part lying south of the Oregon Caves Highway. Less and Excepting there from the following described tract of land. to wit: Beginning at the Northwest corner of the East half of the Northeast quarter of the Southwest quarter of Section 20, Township 39 South, Range 7 West, and running thence East 474 feet; thence South 1233 feet to the Northerly line of the Caves Highway; thence in a Westerly direction along the Northerly line of said Highway to the West line of the East half of the Northeast quarter of the Southwest quarter of said Section 20; thence North 1198 feet to the place of beginning; Josephine County, Oregon.

and has the unrestricted right to grant the easement hereinafter described relative to said real estate;

NOW, THEREFORE, in view of the premises and in consideration of One Dollar (\$1) by the second party to the first party paid and other valuable considerations, the receipt of all of which hereby is acknowledged by the first party, they agree as follows:

The first party does hereby grant, assign and set over to the second party

An easement for an existing ditch to convey irrigation water to the Daniel A. Brunicardi property from a point located 500 ft. South and 700 ft. East from the center corner of Section 20 being within the Northwest quarter of the Southeast quarter of Section 20, Township 39 South, Range 7 West, of the Willamette Meridian, Josephine County. Said easement over the existing ditch running in a South Westerly direction to the following described property. Which said easement is appurtenant to said following described property. (See ~~reverse side~~ for description of property.)

(Insert here a full description of the nature and type of the easement granted to the second party.)

The second party shall have all rights of ingress and egress to and from said real estate (including the right from time to time, except as hereinafter provided, to cut, trim and remove trees, brush, overhanging branches and other obstructions) necessary for the second party's use, enjoyment, operation and maintenance of the easement hereby granted and all rights and privileges incident thereto.

Except as to the rights herein granted, the first party shall have the full use and control of the above described real estate.

The second party hereby agrees to hold and save the first party harmless from any and all claims of third parties arising from second party's use of the rights herein granted.

The easement described above shall continue for a period of ~~indefinite~~ ^{Indefinite}, always subject, however, to the following specific conditions, restrictions and considerations: Revocable at any time without a waiting period. Notice may be given orally but shall be followed up in writing.

If this easement is for a right of way over or across first party's said real estate, the center line of said easement is described as follows:

and second party's right of way shall be parallel with said center line and not more than 2 1/2 feet distant from either side thereof.

This agreement shall bind and inure to the benefit of, as the circumstances may require, not only the immediate parties hereto but also their respective heirs, executors, administrators and successors in interest as well.

In construing this agreement and where the context so requires, words in the singular include the plural; the masculine includes the feminine and the neuter; and generally, all changes shall be made or implied so that this instrument shall apply both to individuals and to corporations.

IN WITNESS WHEREOF, the parties hereto have subscribed this instrument in duplicate on this, the day and year first hereinabove written.

Norbert Poth

State of California

County of SANTA CLARA

SS

— ACKNOWLEDGMENT—General—

On this 21st day of August A. D. 1975 before me,
BONITA E. BAUER a Notary Public in and for the said
County and State, residing therein, duly commissioned and sworn, personally ap-
peared Norbert W. Poth

satisfactorily proven

known to be the person whose name is subscribed to the
within Instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal
the day and year in this Certificate first above written.

Bonita E. Bauer
Notary Public in and for said County and State of California



55 West First Street, Morgan Hill, CA 95037

My Commission Expires

Form GA — Sam Hopkins Legal Forms Printing Service, 2328 Fruitvale Ave., Oakland, Calif.

AGREEMENT FOR EASEMENT

(FORM No. 926)

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE.

BETWEEN

AND

45095

State of Oregon,) ss. No. 45095
County of Josephine,)
I, County Clerk and ex-officio Recorder
of Conveyances, in and for said County,
do hereby certify that the within instru-
ment was received for record at

SEP 3 '75 PM



COUNTY CLERK
JOSEPHINE COUNTY OREGON

and Recorded
at Page 71-72 of Vol. 313
DEED
Records of Josephine County, Oregon.
MAXINE FOSTER Co. Clerk
By *[Signature]* Deputy
Fee \$ 6.00
134 344
-puty.

AFTER RECORDING RETURN TO

5600

Blanche Dunsen
5321 Laurel Hwy.
Banc Junction Ore

97523

Description of the Daniel A. Brundage property:
Commencing at the Northeast corner of the Southwest Quarter of Section 20, Township 39 South, Range 7 West of the Willamette Meridian, Josephine County, Oregon; thence South along the East line thereof, to the Southernly right of way line of Oregon Caves Highway, for the true point of beginning; thence continue South, along said East line, to a point that is 730.0 feet South of the Northeast corner of said Southeast quarter of the Southwest quarter; thence West 300.0 feet; thence North to the Southernly right of way line of said Oregon Caves Highway; thence Southeasterly, along said right of way line, to the true point of beginning.

Transfer No. 3289

NOTICE OF COMPLETION OF CONSTRUCTION

I, DANIEL A BRUNICARDI hereby certify
that the construction work has been completed and the change in point
of diversion of water made as set forth in the order of the Water Resources
Director dated JULY 13 1976, approving an application
for a change in point of diversion of water from Kelly Creek
_____.

FEB 4 1977

Date

RECEIVED

Daniel A Brunnicardi
Name

FEB - 8 1977

WATER RESOURCES DEPT
SALEM, OREGON

Water

Legal Description of Daniel A. Brunicardi's land as requested
in question number 5:

Commencing at the Northeast Corner of the Southeast Quarter
of the Southwest Quarter of Section 20, Township 39 South,
Range 7 West of the Willamette Meridian, Josephine County,
Oregon; thence South along the East line thereof, to the
Southerly right of way line of the Oregon Caves Highway, for
the true point of beginning; thence continue South, along
said East line, to a point that is 730.0 feet South of the
of the Northeast corner of said Southeast Quarter of the
Southwest Quarter; thence West 300.0 feet; thence North to
the Southerly right of way line of said Oregon Caves Highway;
thence Southeasterly, along said right of way line, to the
true point of beginning.

RECEIVED

AUG 4 1975

WATER RESOURCES DEPT.
SALEM, OREGON

T-3289