

3179

3179 R Wayne + Stella Hamby
COI Pend, or

STATUS OF APPLICATION

DESCRIPTION OF WATER RIGHT

FEES PAID

Change in place of use
 Date filed 3-7-75
 Date of hearing _____
 Place of hearing _____
 Date of order 10-17-75 Vol. 26, page 110-114
 Date for application of water TO-1-76 10-1-78
 Proof mailed _____
 Proof received _____
 Certificate issued _____ Vol. _____, page _____

Name of stream Deschutes R
 Trib. of _____ County of Deschutes
 Use irrigation
 Quantity of water _____ No. of acres 40
 Name of ditch COI
 Date of priority Oct 31, 1900 + Dec 2, 1907
 In name of Ha-Vi, Jr. Farms
Deschutes R. Adjudication, Vol. 16, page 48
 App. No. _____ Per. No. _____ Cert. No. 29052
 Certificate cancelled _____
 Notation made on record by _____

Date	Amount	Receipt No.
3-7-75	25.00	45540
TOTAL . . .		
	Cert. Fee	

FEES REFUNDED

Date	Amount	Check No.

Survey 2-79

Surveyed 2/15/85 - Pescock & O'Brien

REMARKS

TO BE ENTERED WHERE CHECKED	INDEX CARDS:	
	Entered	Checked
<input checked="" type="checkbox"/> Name	<u>WH</u>	
<input checked="" type="checkbox"/> Stream	<u>WH</u>	
<input checked="" type="checkbox"/> Pt. of Div.		
<input checked="" type="checkbox"/> Calendar	<u>WH</u>	
CHECKED TO RECORDS:		
<input checked="" type="checkbox"/> Twp. & Rge.	<u>WH</u>	
<input checked="" type="checkbox"/> Decree-vault	<u>WH</u>	
<input checked="" type="checkbox"/> Decree-date	<u>WH</u>	
<input checked="" type="checkbox"/> Cert. of W/R	<u>WH</u>	
<input type="checkbox"/> Per. Folder		
<input type="checkbox"/> Chainindex		
<input type="checkbox"/> Cross Ref.		
<input type="checkbox"/> Power Claim		
<input type="checkbox"/> Abstracts		

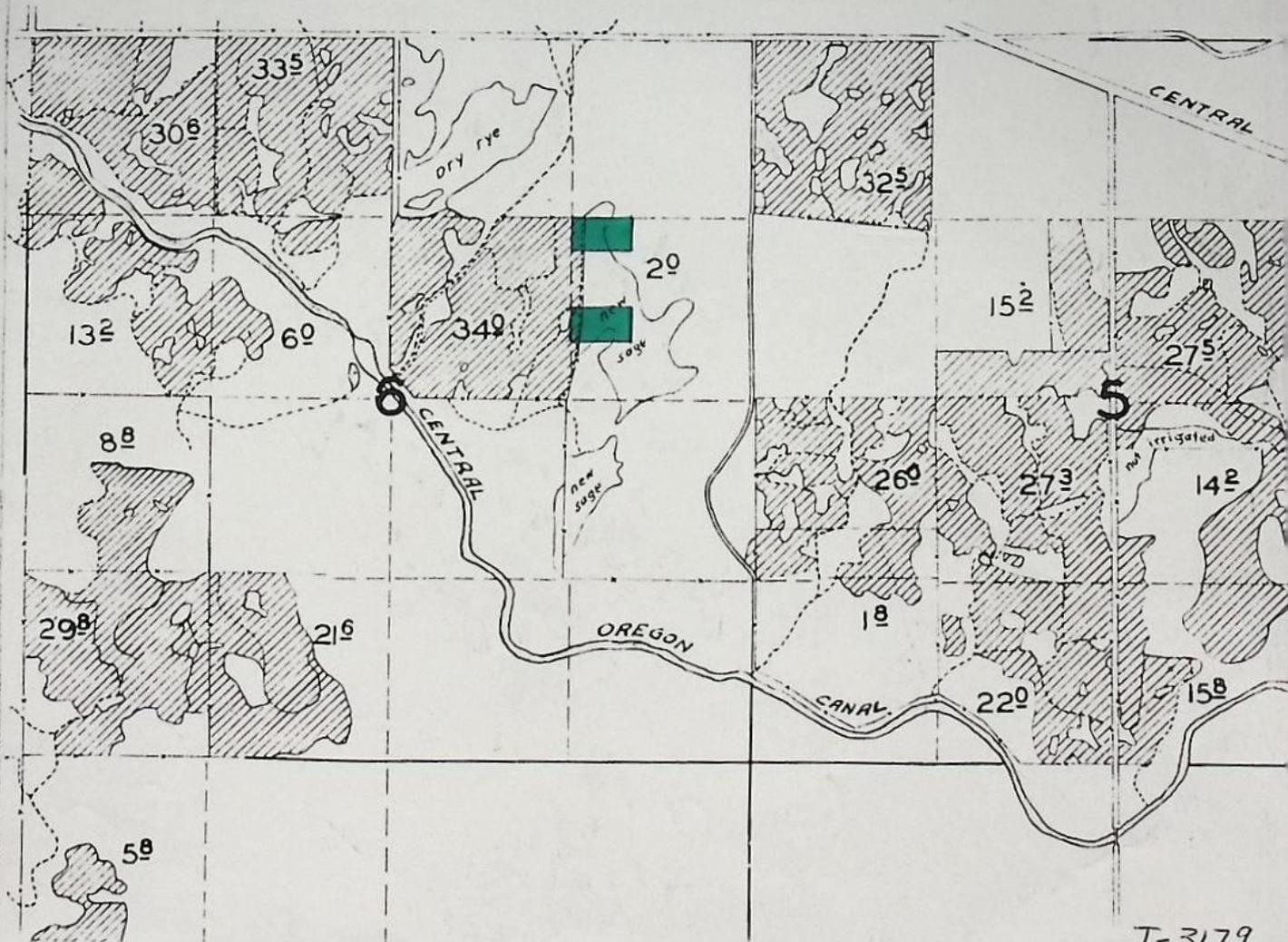
328

■ Transfer to 4⁰ acres

RECEIVED

MAR 7 1975

STATE ENGINEER
SALEM, OREGON



BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

Deschutes County

IN THE MATTER OF THE APPLICATION)
OF R. WAYNE AND DELLA HAMBY (CENTRAL)
OREGON IRRIGATION DISTRICT) FOR THE)
APPROVAL OF A CHANGE IN PLACE OF USE)
OF WATER FROM DESCHUTES RIVER)

ORDER APPROVING
TRANSFER NO. 3179

On March 7, 1975, R. Wayne and Della Hamby 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, 4.0 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 23, Township 17 South, Range 12 East, W.M., being tabulated in the name of Ha-Vi Farms, 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, owners of the lands above described, propose to transfer the water right therefrom, without loss of priority, to 4.0 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 6, Township 18 South, Range 13 East, W.M.

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 March 6, 1974.

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 4.0 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 23, Township 17 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 4.0 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 6, 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

NOTICE OF COMPLETE APPLICATION
OF WATER TO BENEFICIAL USE

Transfer No. 3179

I, HOWARD A. PEACOCK. hereby certify that
on 5-12-, 1975, the water has been applied to the
lands to which the water right was transferred by an order of the State
Engineer dated _____, approving an application for a
change in place of use of water from _____.

12-29-77
Date

H. A. Peacock
Signature

RECEIVED
APR 6 1978
WATER RESOURCES DEPT
HEM OREGON

URGENT. Please process immediately.

Application No. 3179

Application for Extension of Time for Transfer of Water Right

RECEIVED
FEB 10 1978
WATER RESOURCES DIVISION
DEPT. OF AGRICULTURE

To the WATER RESOURCES DIRECTOR OF OREGON:

I, PAUL LATIMER O'BRIEN and LEONA LUCILLE MARIA LUCERO (O'BRIEN)
(Name of applicant)
of 2102 Lakeview Circle #229, Lewisville
(Mailing address) (City)
State of Texas, 75067 (214) 221-1998
(Zip Code) (Phone number)

do hereby make application for an extension of time within which to complete
a change in: () point of diversion
(X) place of use
() use heretofore made of water

under the terms of an order of the Water Resources Director entered on
October 17, 1975, 19, approving transfer application No. 3179,
in the name of R. Wayne & Della Hamby (Central Oregon Irrigation District)

The following has been accomplished toward completion of the
change within the time allowed, which expired on October 1, 1976:

A headgate has been installed for delivery of water to the property.

(If for irrigation, how many acres, total, are now irrigated)

*If you are not the applicant named above, please explain your interest in
this matter. _____

Rec 1065
\$10.00

To fully complete the change, it will be necessary to accomplish the following: An easement must be obtained from the headgate to the property line and permanent means of delivery must be installed.

I am unable to complete the change under the terms of the order, within the time allowed, because (see enclosed report)

and request that the time for completion be extended to October 1978.

AFFIDAVIT OF APPLICANT

I, Louise Lucille Marie Lucero (O'Brien) being first duly sworn, depose and say that I have read the above and foregoing application for extension of time; that I know the contents thereof, and the facts stated therein are true.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of February, 1978.

Subscribed and sworn to before me this 8 day of February, 1978.

[Notarial Seal]

Aylene Reynolds
Notary Public for Oregon

My commission expires 2-28-79

MAIL COMPLETED APPLICATION AND FEE IN THE AMOUNT OF \$ 10.00

TO:

Water Resources Department
MILL CREEK OFFICE PARK
555 13th STREET N.E.
SALEM, OREGON 97310

RECEIVED
FEB 10 1978

We bought this property from Jay C. Scott and Nadine Scott on January 24, 1974. In our contract, the Scotts promised us a headgate and a ditch for delivery of water to the property line.

At the time of purchase no one informed us of the necessity of transferring water rights nor of putting the water to use within a specific period of time.

One year passed. We paid the balance we owed the Scotts. Jay and his wife had meantime gone to Alaska. Steve Scott, acting as his father Jay's agent, informed us in writing that certain problems had been encountered, but that the headgate and ditch were being arranged.

Time passed. We learned that a headgate had been installed, largely through the efforts of our northerly neighbor, Howard A. Peacock, who also bought his property from Jay Scott and was to receive water by the same ditch and weir. No ditch was ever installed.

In a recent phone conversation with Steve Scott, he informed us that the headgate was located at the NW corner of the Peacock property. We finally located Mr. Peacock and found out that in fact the headgate was located on a ditch running entirely through an easterly neighboring property belonging to Howard Cross.

Although an easement across Peacock's property to ours was written into Peacock's contract with J. Scott, no easement from the weir across Cross's property to Peacock's was ever obtained by Scott. Therefore, no ditch.

In all the time which has passed since we bought our property, no Scott ever contacted us about water delivery. Steve never furnished the ditch he promised to us and the Peacocks.

Nor did we ever hear a word from COI until late January, 1978, when we received a notice of water rights transfer which skips the Scotts entirely and orders us to demonstrate beneficial use by October 1976.

We called Robert Anderson of COI, who told us that Steve Scott had certainly been aware all along of this deadline and the importance of it, although he (Scott) never got a word to us about it. Anderson suggested we contact you which we did immediately.

In applying for this extension we point out the following:

The Scotts made little effort to comply with their agreement with us.

No easement was ever obtained for delivery of water to our property.

We were never informed of any of the developments relating to our water rights by either the Scotts or COI until January of this year.

We propose the following remedy to be applied under the terms of the extension:

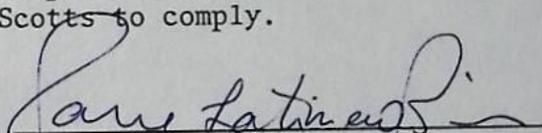
We ourselves have made contact with Howard Cross, which the Scotts were either unable or unwilling to do. Together with Mr. Peacock, we are attempting to establish an easement for delivery of water by underground pipe to both our properties.

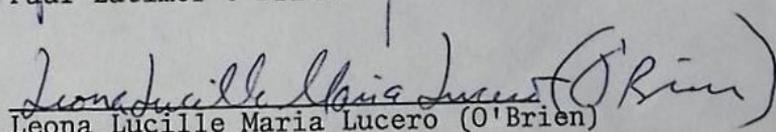
Mr. Peacock has recently managed to fill a pond on his land from a hand dug ditch running across the Cross land with no easement.

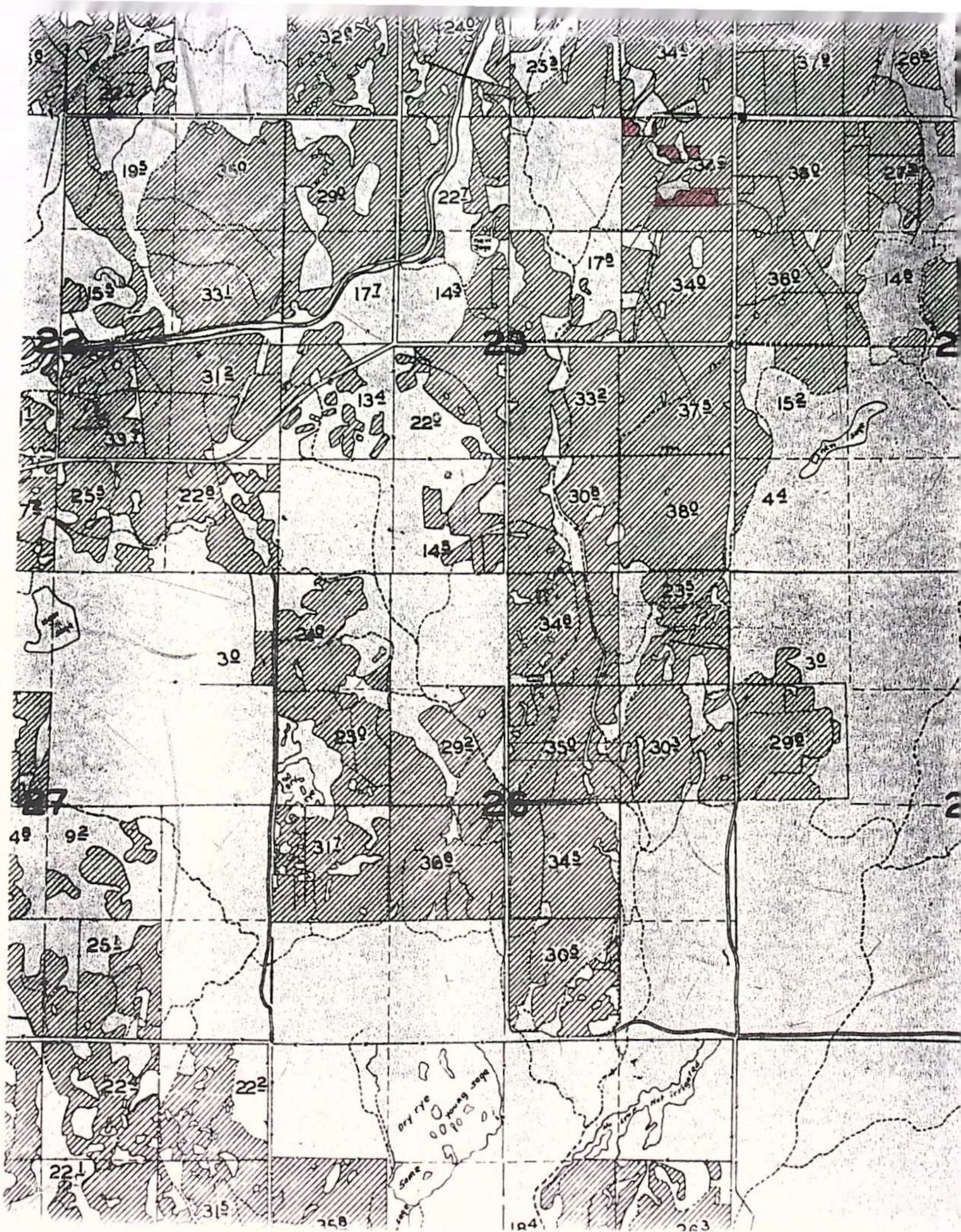
While we are completing negotiations with Mr. Cross, Mr. Peacock has expressed his agreement to deliver water to us across his property.

In spring and early summer, we shall bring water onto the land and put it to beneficial use.

We maintain that our failure to do so until now has been because of misinformation and lack of information, lack of easements and promised means of delivery. In no way has it been because of unwillingness on our part to comply with the terms set forth by the Water Resources Department and COI. We are in a position that in order to comply, we must accomplish by our own efforts and money that which was promised us in contract by the Scotts. We now think it will be cheaper and faster for us to do it ourselves than to try to force the Scotts to comply.


Paul Latimer O'Brien


Leona Lucille Maria Lucero (O'Brien)



RECEIVED

MAR 7 1975

STATE ENGINEER
SALEM, OREGON

Application for Transfer of Water Right

To the STATE ENGINEER OF OREGON:

I, R. Wayne and Della Hamby
(Name of applicant)

of Bend
(Postoffice), County of Deschutes

State of Oregon, do hereby make application for change

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 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

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 $\frac{1}{4}$
17S	12E	23	4															

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? Oct. 31, 1900 & Dec. 2, 1907

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

of permit

10. Do you hold a water right certificate? No If so, give number of certificate 29052
(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 Deschutes River
(Yes or No)

12. Is the water right recorded in your name? Ha-Vi Inc. Farms - page 48 of 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 $\frac{1}{4}$
18S	13E	6				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 _____ 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
<u>Cont. of Sale (Cash)</u>	<u>W. Hamby</u>	<u>_____</u>
<u>Sealey</u>	<u>W. Hamby</u>	<u>_____</u>

20. Reasons for the proposed changes are More beneficial use

AFFIDAVIT OF APPLICANT

STATE OF OREGON,

County of Deschutes } ss.

I, Wayne & Della Hamby, 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 25th day of July, 1975.

x R. Wayne Hamby
(Name of applicant)

y Della Hamby

Subscribed and sworn to before me this 25th day of July, 1975.

[Notarial Seal]

Jane Lister
NOTARY PUBLIC FOR OREGON

My commission expires 7-24-76.

Remarks Approved by the Board of Directors of the Central Oregon Irrigation

District at regular meeting held March 6, 1974.

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.