

3189

183 Michael F. Vandenberg
Star Route
Jasul, Or 97830

STATUS OF APPLICATION

Change in place of use
Date filed 4-1-75
Date of hearing _____
Place of hearing _____
Date of order 3-22-77 Vol. 28, page 406
Date for application of water 10-1-78
Proof mailed _____
Proof received _____
Certificate issued 16 1986 Vol. 50, page 54724

DESCRIPTION OF WATER RIGHT

Name of stream unnamed trib of Alder Creek
Trib. of _____ County of Wheeler
Use irrigation
Quantity of water _____ No. of acres 94
Name of ditch Akin
Date of priority 1895
In name of A. H. AKIN
John Day River Adjudication, Vol. 10, page 448
App. No. _____ Per. No. _____ Cert. No. 24821
Certificate cancelled _____
Notation made on record by _____

FEES PAID

Date	Amount	Receipt No.
<u>4-1-75</u>	<u>30.00</u>	<u>45947</u>
TOTAL . . .		
	Cert. Fee	

FEES REFUNDED

Date	Amount	Check No.

REMARKS

See T-3190
T-10804 v.79 p.199

to survey 3/78

INDEX CARDS:		Entered	Checked
<u>WA</u>	Name	☒	☐
<u>WA</u>	Stream	☒	☐
<u>WA</u>	Pt. of Div.	☒	☐
<u>WA</u>	Calendar	☒	☐
☒	CHECKED TO RECORDS:		
☒	Twp. & Rge.	☒	☐
☒	Decree-vault	☒	☐
☒	Decree-safe	☒	☐
☒	Cert. of W/E	☒	☐
☒	Per. Folder	☒	☐
☒	Chaindex	☒	☐
☒	Cross Ref.	☒	☐
☒	Power Claim	☒	☐
☒	Abstracts	☒	☐

T-3189

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

In the Matter of Transfer Application	)	FINAL ORDER
T-10805, Wheeler County	)	APPROVING A TEMPORARY
	)	CHANGE IN PLACES OF USE

Authority

ORS 540.505 to 540.580 establish the process in which a water right holder may submit a request to temporarily transfer the place of use and, if necessary to convey the water to the temporary place of use, the point of diversion authorized under an existing water right.

OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

Roberta Vandehay
20481 Winlock Lane
Fossil, Oregon 97830

Findings of Fact

1. On March 4, 2009, Roberta Vandehay filed an application to temporarily change the place of use under Certificates 54724 and 82920 for a period of 5 years. The Department assigned the application number T-10805.
2. The first right to be temporarily transferred is as follows:

Certificate: 54724 in the name of MICHAEL F VANDEHEY (confirmed by John Day River (F))

Use: Irrigation of 9.4 acres

Priority Date: 1895

Rate: 1/40 cubic foot per second per acre irrigated to June 1 and 1/80 cubic foot per second per acre thereafter; further limited to one acre-foot per calendar month to June 1 and four acre-feet per acre during season April 1 to September 30, measured at point of diversion

Source: Alder Creek, tributary to the John Day River

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	24 E	WM	31	SE NE	1340 feet South and 5 feet West from the NE Corner of Section 31

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	24 E	WM	31	SE SE	9.4

3. Temporary Transfer Application T-10805 proposes to temporarily change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	24 E	WM	31	NE SE	7.8
7 S	24 E	WM	31	SE SE	1.6

4. The portion of the second right to be temporarily transferred is as follows:

Certificate: 82920 in the name of Dorothy Roberta Hofier Vandehay (perfected under Permit S-44272)

Use: Irrigation of 9.4 acres

Priority Date: May 2, 1979

Rate: 0.24 cubic foot per second

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FORTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: Unnamed stream, tributary to Alder Creek

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	24 E	WM	32	SW NW	1370 feet South and 10 feet East from the NE Corner of Section 31

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	24 E	WM	31	NE SE	7.8
7 S	24 E	WM	31	SE SE	1.8

5. Temporary Transfer Application T-10805 proposes to temporarily change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	24 E	WM	31	SE SE	9.4

6. Notice of the application for temporary transfer was published on March 17, 2009 pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.

Temporary Transfer Review Criteria

7. Water has been used within the last five years according to the terms and conditions of the rights. There is no evidence available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
8. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights is present.
9. The proposed change would not result in enlargement of the rights.
10. The proposed change would not result in injury to other water rights. This finding is made through an abbreviated review recognizing that the transfer may be revoked under ORS 540.523(6) if the Department later finds that the transfer is causing injury to any existing water right.

Conclusions of Law

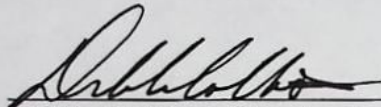
The temporary change in places of use proposed in Temporary Transfer Application T-10805 is consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

Now, therefore, it is ORDERED:

1. The temporary change in places of use proposed in Temporary Transfer Application T-10805 is approved.
2. The former places of use **shall not** be irrigated as part of these water rights during the 2010, 2011, 2012, 2013 and 2014 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2014 irrigation season.
4. The approval of this temporary transfer may be revoked or modified if the Department finds the change causes injury to any existing water right.
5. A subsequent application for permanent transfer of Certificates 54724 and 82920 shall be subject to a full and complete review to determine consistency with the requirements of OAR Chapter 690, Division 380. Approval of this temporary transfer does not establish a precedent for approval of a subsequent application filed for a permanent transfer.
6. The use of water at the temporary place of use authorized by this transfer shall be in accordance with the terms and conditions of Certificates 54792 and 82920.
7. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.

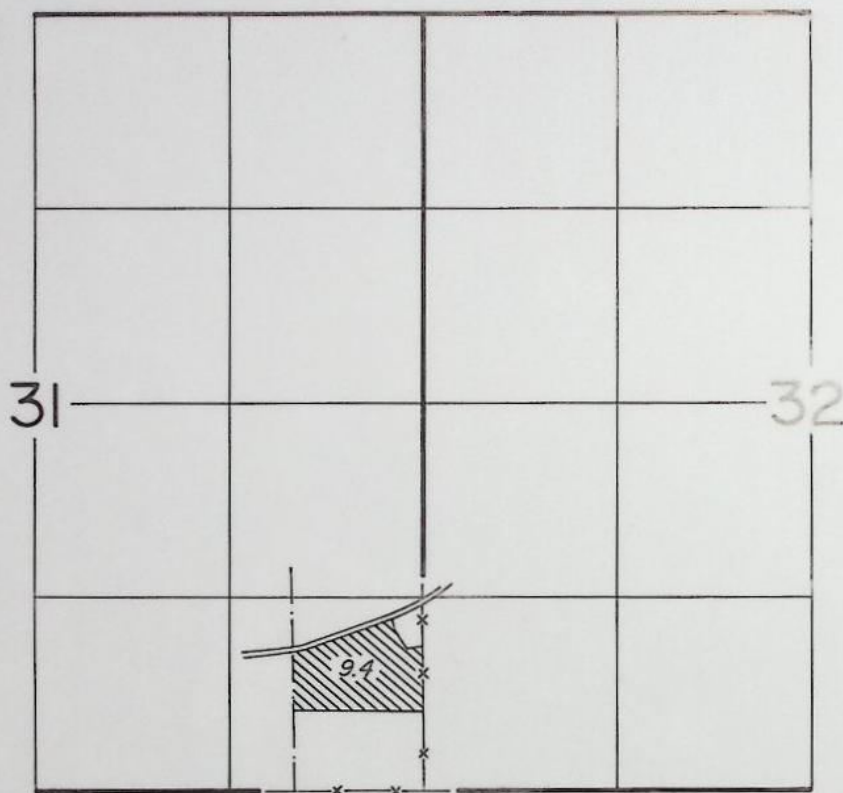
8. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
9. The use of the remaining water rights described by Certificates 54724 and 82290 shall continue to be in accordance with the terms and conditions of Certificates 54724 and 82290.

Dated at Salem, Oregon this 24th day of November, 2009.


Phillip C. Ward, Director *PCW*

Mailing Date: DEC 1 1 2009

T.7S.,R.24E.,W.M.



FINAL PROOF SURVEY
UNDER

TRANSFER NO. 3189

IN NAME OF

Michael F. Vandehey

Surveyed SEPT. 12, 1979, by *dl Brown*

RECEIVED

MAR - 9 1977

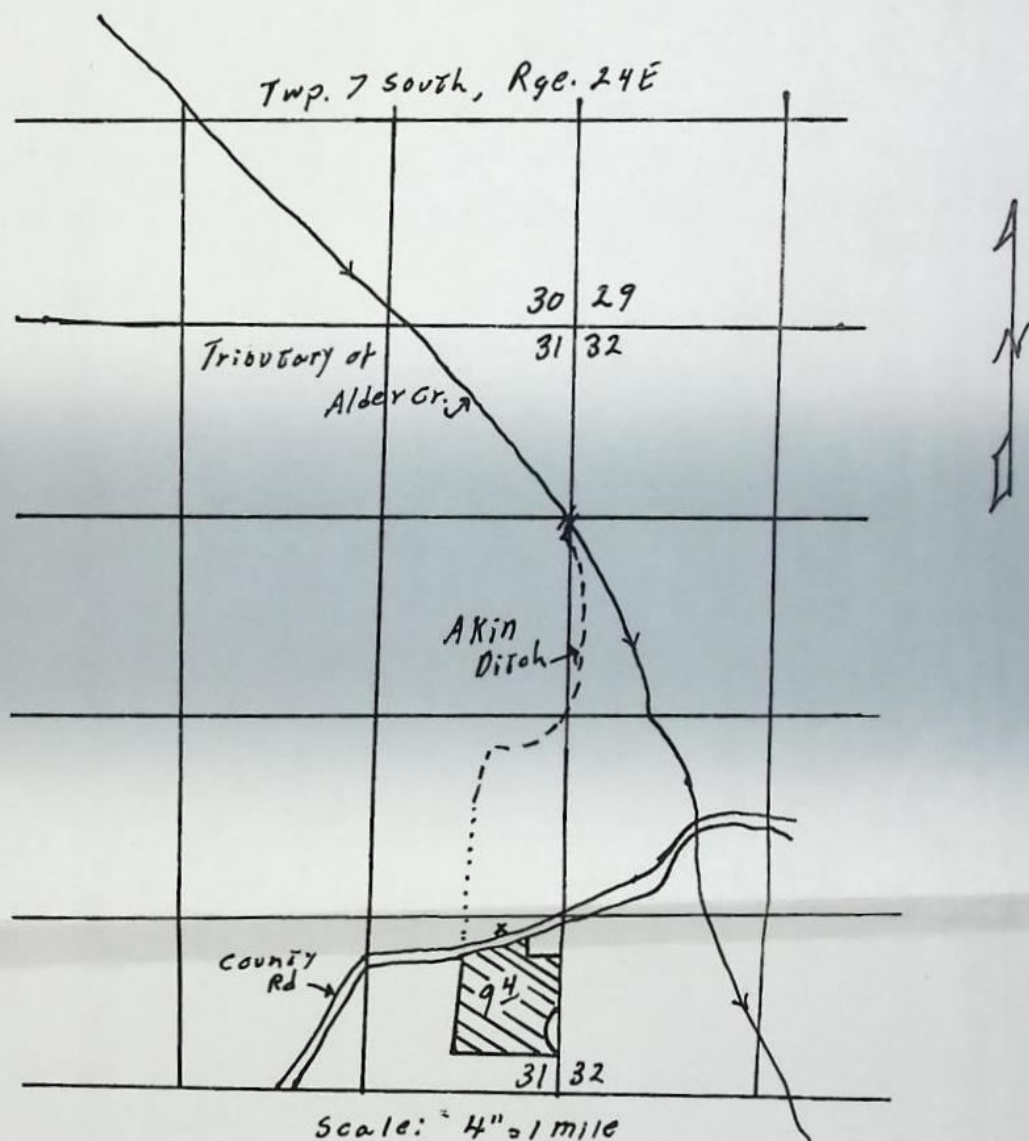
WATER RESOURCES DEPT.
SALEM, OREGON

7-3189

RECEIVED

APR 1 1975

STATE ENGINEER
SALEM, OREGON



- Existing Ditch
- Pipeline (gravity system)
- ~> Tributary Alder Cr.
- ▨ Place of Use
- X Point of Diversion

RECEIVED

APR 1 1975

STATE ENGINEER
SALEM, OREGON

RECEIVED

MAR 17 1977

WATER RESOURCES DEPT.
SALEM, OREGON

7-3189

Application for Transfer of Water Right

To the STATE ENGINEER OF OREGON:

I, Michael F. Vandehey

(Name of applicant)

of Star R. Fossil, County of Wheeler

(Postoffice)

State of Oregon, do hereby make application for changePlace of Use

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

1. The source of present water right is Unnamed Tributary of Alder Cr., Trib. of John Day 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 Akin ditch4. The point of diversion is located 1340 ft. S and 5 ft. W from the NE

(N. or S.)

(E. or W.)

corner of Sec. 31 being within the SE 1/4 NE 1/4

(Section or subdivision)

of Section 31 Tp. 7S R. 24E W. M., in the County of Wheeler

(No. N. or S.)

(No. E. or W.)

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

Twp.	Range	Sec.	NE 1-4				NW 1-4				SW 1-4				SE 1-4			
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4
7S	24E	31													8.1			1.3

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

7.1 ac

(Attach separate sheet if necessary)

6. Are you the legal owner of the above described lands? Yes - Contract buyer

(If not owner, explain your interest)

7. Has water been used beneficially for the purposes indicated herein during the past 5 years? yes8. What is the date of priority of your water right? 18959. Was your water right acquired by State Engineer's Permit? NO If so, give number

(Yes or No)

of permit

We agree to the above Transfer x Marvin W. Britt
 x Louise Britt
 Date 3-12-77

10. Do you hold a water right certificate? Yes If so, give number of certificate 24821
(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 John Day Adjudication
(Yes or No)

12. Is the water right recorded in your name? A.H. Akin
(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 $\frac{1}{4}$
75	24E	31																9.4

(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
Mortgage Contract 2-4	Marvin Britt	\$28,000

20. Reasons for the proposed changes are To put the oldest water right

on a more valuable crop.

AFFIDAVIT OF APPLICANT

STATE OF OREGON,

County of Polk

} ss.

I, Michael J. Vandehey, 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 25 day of March, 19 75

Michael J. Vandehey
(Name of applicant)

Subscribed and sworn to before me this 25 day of March, 19 75

[Notarial Seal]

Patricia Hyatt
NOTARY PUBLIC FOR OREGON

My commission expires Feb. 25, 1979

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.

Gibraltar Onion Skin
MILLEPS FALLS
ALL COTTON

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

Wheeler County

IN THE MATTER OF THE APPLICATION)
OF MICHAEL F. VANDEHEY FOR THE)
APPROVAL OF A CHANGE IN PLACE OF)
USE OF WATER FROM ALDER CREEK)

ORDER APPROVING
TRANSFER NO. 3189

On April 1, 1975, Michael F. Vandehey filed an application in the office of the Water Resources Director for the approval of a change in place of use of water from Alder Creek pursuant to the provisions of ORS 540.510 to 540.530.

Certificate of water right recorded at Page 24821, Volume 17, State Record of Water Right Certificates, in the name of A. H. Akin, describes an existing right of record which includes the use of water from Alder Creek for irrigation of 8.1 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ and 1.3 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31, Township 7 South, Range 24 East, W.M., with a date of priority of 1895.

Water for the said right is diverted through the Akin ditch from a point located 1340 feet South and 5 feet West from the Northeast corner of Section 31, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, Township 7 South, Range 24 East, W.M.

The applicant herein, contract buyer of the lands above described, proposes to change, without loss of priority, the place of use to irrigate a certain 9.4 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31, Township 7 South, Range 24 East, W.M.

The owners of record and contract seller, Marvin W. and Louise Britt, have submitted a statement of concurrence with the proposed change.

Mr. Robert F. Main, Jr., Watermaster of District No. 4, has filed a statement to the effect that the proposed change in place of use may be made without injury to existing rights.

Gibraltar Onion Skin
MILLEPS FALLS
ALL COTTON

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

NOW, THEREFORE, it hereby is ORDERED that the requested change in place of use described herein, without loss of priority, is approved.

It is FURTHER ORDERED that said water so transferred shall be applied to beneficial use on or before October 1, 1978.

It is FURTHER ORDERED that 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, the certificate of water right heretofore issued to A. H. Akin and recorded at Page 24821, Volume 17, State Record of Water Right Certificates, be canceled, and in lieu thereof a new confirming certificate of water right shall be issued to the applicant herein.

Dated at Salem, Oregon, this 22nd day of March, 1977.

/s/ JAMES E. SEXSON
Director

ALL COPIES
MILLERS FALLS
GIVE TO THE OREGON STATE

RECEIVED

APR 1 1975
STATE ENGINEER
SALEM, OREGON

T-3189

Application for Transfer of Water Right

To the STATE ENGINEER OF OREGON:

I, Michael F. Vandeker
(Name of applicant)

Home Ph. 468-2357
Bus. Ph. 768-2132

of Star M. Fossil, County of Wheeler
(Postoffice)

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 unnamed tributary of Alder Cr., Trib. of John Day 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 Akin ditch

4. The point of diversion is located 1340 ft. S and 5 ft. W from the NE
(N. or S.) (E. or W.)

corner of Sec. 31 being within the SE 1/4 NE 1/4
(Section or subdivision)

of Section 31 Tp. 7S R. 24E W. M., in the County of Wheeler
(No. N. or S.) (No. E. or W.)

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

Twp.	Range	Sec.	NE 1-4				NW 1-4				SW 1-4				SE 1-4			
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4
75	24E	31													8.1			1.3

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

9.4 ac

(Attach separate sheet if necessary)

6. Are you the legal owner of the above described lands? yes - Contract buyer
(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? 1895

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

of permit

10. Do you hold a water right certificate? Yes If so, give number of certificate 24821
(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 John Day Adjudication
(Yes or No)

12. Is the water right recorded in your name? A.H. Akin
(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 $\frac{1}{4}$
75	24E	31																9.4

(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
Mortgage Contract <u>2.11</u>	Marvin Britt	\$28,000

20. Reasons for the proposed changes are To put the oldest water right
on a more valuable crop.

AFFIDAVIT OF APPLICANT

STATE OF OREGON,
County of Wheeler } ss.

I, Michael F. Vandeker, 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 25 day of March, 19 75

Michael F. Vandeker
(Name of applicant)

Subscribed and sworn to before me this 25 day of March, 19 75

[Notarial Seal]

Patricia Hyatt
NOTARY PUBLIC FOR OREGON

My commission expires Feb. 25, 1979

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.

NOTICE OF COMPLETE APPLICATION
OF WATER TO BENEFICIAL USE

Transfer No. 3189

I, Michael F. Vandenberg hereby certify that
on February 27, 1978, 1978, the water has been applied to
the lands to which the water right was transferred by an order of the
Water Resources Director dated March 22, 1977, approving an appli-
cation for a change in place of use of water from Alder Creek
through Atkin Ditch.

February 27, 1978
Date

Michael F. Vandenberg
Signature

RECEIVED
MAR 1 1978
WATER RESOURCES DEPT.
SALT LAKE CITY

TO: Wayne Overcash

DATE: March 26, 1976

FROM: Bob Main

SUBJECT: Transfers T-3189, T-3190

RECEIVED
MARCH 29 1976
WATER RESOURCES DEPT.
SALEM, OREGON

Both these transfers can be made without injury to existing rights, provided Cert. 25999 is valid. I have heard farmers on Alder Creek state that this right was abandoned. Not being able to reach them by phone, I have sent letters to all involved. A copy is enclosed.

There are no intervening diversions between the old and new diversion points.

Bob

075 1979-A
9-12-79 SCS

AS
66-71-8
up down

County WHEELER

- [illegible]

~~58605~~
NCR

AUG 14, 1979

INFO: MR VANDEHEY
SOURCE: ALDER CREEK
USE: IRRIGATION

DIVERSION: DIRECT, through HEADGATE THROUGH AKIN DITCH

PIPE: 5" steel Buried MAIN
3" LATERAL 1800'

heads: 20, RB 30's $\frac{1}{2}$ gal @ 45 psi, $\frac{1}{64} \times 0$

crop: alfalfa

lift: see puzd

h₀: PTS-1979-A

surveyed Sept 12, 1979
JLB

Al Brom
F.E.

need inspection of land.