

4167 Durst, Damon,
Franks

4167

Name Theodore Durst, James
W. Damon, & Lowell Franks
 Address P.O. Box 266 (Theodore Durst)
Mt. Vernon Or. 97865

Change in P.O.D.
 Date filed March 5, 1979
 Date of hearing May 9, 1979
 Place of hearing Canyon City
 Date of order 5-25-79 Vol. 32, page 150
 Date for application of water completed
 Proof mailed _____
 Proof received _____
 Certificate issued JUL 23 1979 Vol. 41, page 48347
FEB 9 1989 60014

DESCRIPTION OF WATER RIGHT

Name of stream John Day River
 Trib. of _____ County of Grant
 Use irrigation
 Quantity of water _____ No. of acres 4.6
 Name of ditch _____
 Date of priority 1862
 In name of McCallen Stockdale
John Day River Adjudication, Vol. 10, page 611
 App. No. _____ Per. No. _____ Cert. No. 25873
 Certificate cancelled _____
 Notation made on record by in DB

FEEES PAID

Date	Amount	Receipt No.
<u>3-5-79</u>	<u>85-</u> <u><2.00></u>	<u>9465</u>
TOTAL . . .		
<u>4-13-79</u>	<u>2 Cert. Fee</u>	<u>Trat. fr 946.5</u>
<u>Blue Mt. Eagle # 39.00 pd 4/30/79 OK #3309</u>		

FEEES REFUNDED

Date	Amount	Check No.
<u>4-30-79</u>	<u>9.00</u>	<u>3310</u>
<u>EX 20-</u> <u>POD 15-</u> <u>CAT 2-</u> <u>POB 39-</u> <u>76-</u>		

REMARKS

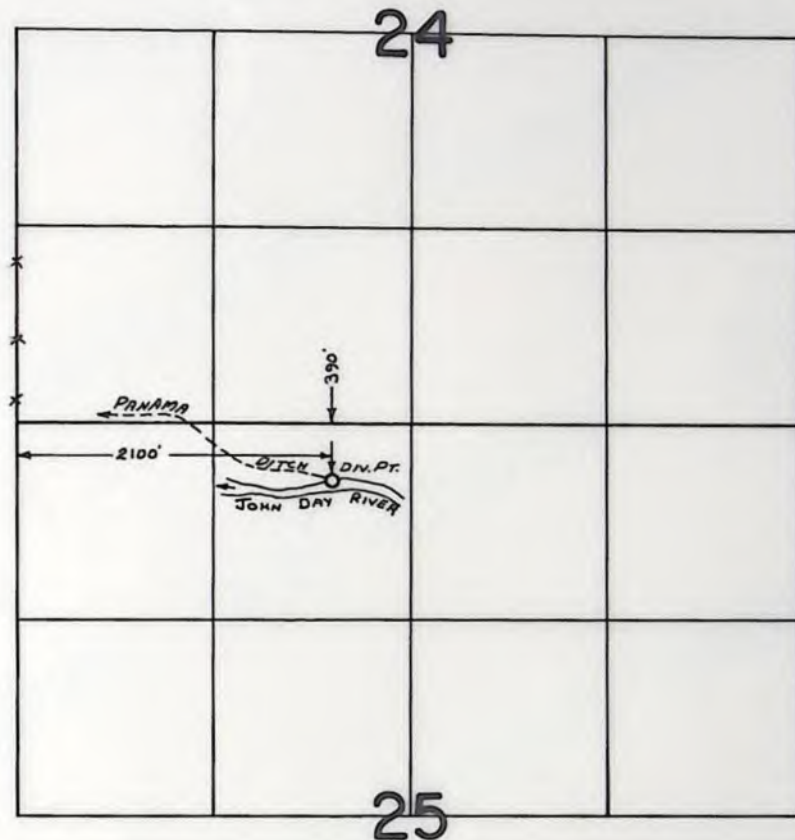
finish

W.R.I.S.

Assembled 7-3-89 by SDB
 Entered _____ by _____
 Verified _____ by _____

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

T.13S.,R.30E.,W.M.



FINAL PROOF SURVEY
UNDER

Transfer No. 4167

Application No. Permit No.

IN NAME OF

THEODORE DURST

.....JAMES W. DAMON & LOWELL FRANKS.....

Surveyed Aug. 25, 1983, by R. W. Cattel.....

STATE OF OREGON

COUNTY OF GRANT

CERTIFICATE OF WATER RIGHT

This Is to Certify, That McCALLEN STOCKDALE

of Mt. Vernon, State of Oregon, has a right to the use of
the waters of John Day River trib Columbia River
for the purpose of Irrigation of 85.4 acres

and that said right has been confirmed by decree of the Circuit Court of the State of Oregon for Grant County, and the said decree entered of record at Salem, in the Order Record of the STATE ENGINEER, in Volume 15, at page 461; that the priority of the right thereby confirmed dates from 1862 - Tract #1
1876 - Tract #2

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 1/40 cubic foot per second per acre irrigated from April 1 to Sept. 30; further limited to one acre-foot per acre per calendar month to July 1 and 3/4 acre-foot per acre thereafter; total five acre-feet per acre for season, measured at point of diversion.

A description of the lands irrigated under such right, and to which the water is appurtenant (or, if for other purposes, the place where such water is put to beneficial use), is as follows:

Tract #1

30.4 ~~35.0~~ acres in NW 1/4 - 46 Ac
15.0 acres in SW 1/4
Section 28,
T. 13 S., R. 30 E., W. M.

Tract #2

40.0 acres in SE 1/4 NW 1/4
Section 27,
T. 13 S., R. 30 E., W. M.

This certificate describes that portion of the water right confirmed by the prior certificate recorded at page 25873, Volume 17, State Record of Water Right Certificates, NOT modified by the provisions of an order of the Water Resources Director entered on May 25, 1979, approving transfer application No. 4167.

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 State Engineer, affixed

this 1st day of May, 1959.

LEWIS A. STANLEY

State Engineer

Recorded in State Record of Water Right Certificates, Volume 17, page 25873

T-4167

48347 + 60014

PAGE 1. OF 2.)

DRIVE

(FARRA STREET)

JNCIL

APPLICATION MAP FOR:

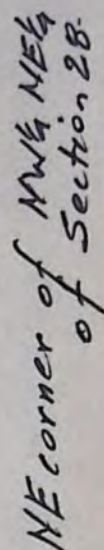
COUNTY

6 30 28 14

NW $\frac{1}{4}$ NE $\frac{1}{4}$

HWY.

SEE 1. OF 2.)



MR. THEODORE DURST, MR. JAMES W. OAMON, & MR. LOWELL FRANKS

APPROVED.

x Theodore Durst
x ~~James D. D.~~
x Samuel French

RECEIVED

MAR 5 1979

WATER RESOURCES DEPT.
SALEM, OREGON

THIS MAP PREPARED BY:

Charles J. Collett 1-11-79

FROM INFORMATION FURNISHED BY
THE APPLICANT.

SHEET #2 OF 2

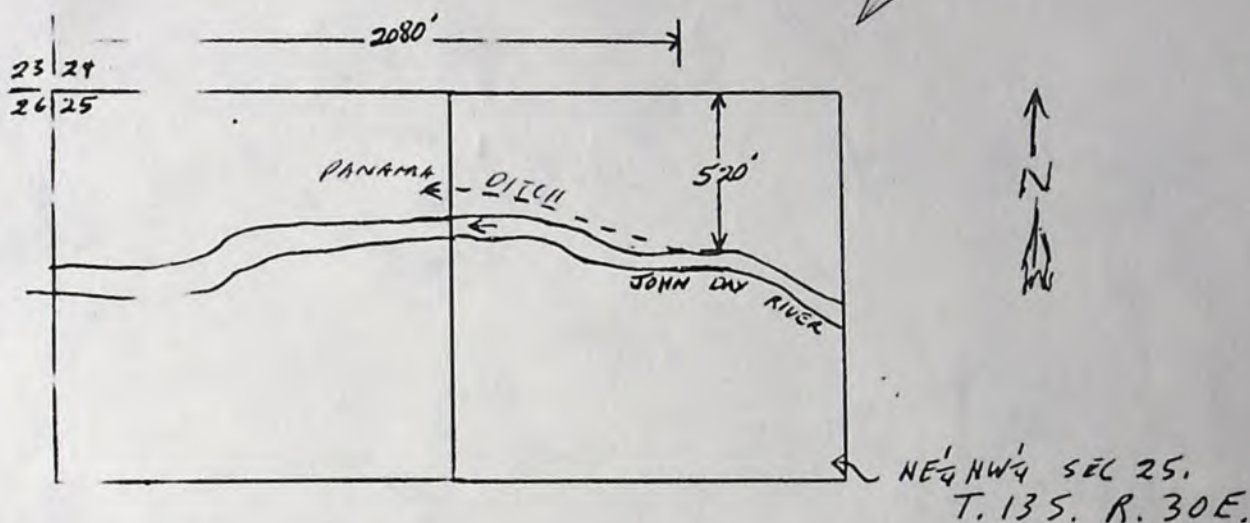
APPLICATION MAP

APPLICATION MAP FOR:

MR. THEODORE DURST, JAMES W. DAMON, & LOWELL FRANKS

X Theodore Durst
X James W. Damon
X Lowell Franks } APPROVED

NEW POINT OF DIVERSION
PANAMA DITCH



SCALE 8" = 1 MILE

OLD PT. DIVERSIONS PER. ADJUDICATION
WAS THE (FRY-INGLE) & (WALLACE LEMONS) DITCHES, BOTH HAVING
THE SAME POINT OF DIVERSION OUT OF THE JOHN DAY RIVER
BEING FROM OR LOCATED AT:

OLD POINT { 1200 FT S. AND 1175 FT. E. FROM NW 1/4 COR.
OF SEC 26, BEING WITHIN THE NW 1/4 NE 1/4 OF SEC 26,
T. 13 S. R. 30 E W.M.

RECEIVED

MAR 5 1979

WATER RESOURCES DEPT.
SALEM, OREGON

THIS MAP PREPARED BY:

Charles J. O'Brien 1-11-79
FROM INFORMATION FURNISHED BY
THE LAND OFFICE

66.23

FAHAMA

Ok cut
Æ

REPORT ON INSPECTION UNDER TRANSFER
OF WATER RIGHT FOR CHANGE IN: POD
POU
USE
Add'l POD

Transfer NO. 4167 County GRANT

Old Certificate NO. 25873 ⁴⁶²²

932-4445
932-4563
210 PAJL

1. Name Theodore Durst, James W. Damon & Lowell Franks
Address PO Box 266 (Durst) Mt. Vernon, OR 97865

2. Source of Supply John Day River, Trib of _____

3. Use irrigation

4. Amount of Water _____ Priority Date 1862

5. Proposed Point of Diversion $\overline{520}$ ft S & $\overline{2080}$ ft E from the NW Corner of Sec 25,
within $\overline{NE\frac{1}{4}}$ $\overline{NW\frac{1}{4}}$, Sec 25, T 13S, R 30E, WM

6. Completion Date _____ COMPLETED

7. Place of Use:

NOW ON PANAMA DITCH

[illegible]

OWNERS: AS INDICATED ON ATTACHED MAP.

INFO: TED DURST

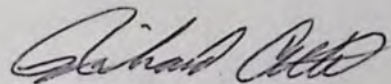
SOURCE: JOHN DAY RIVER

DIVERSION: 5' CMP W/ SCREW GATE

REMARKS: FRY-INGLE DITCH NO LONGER USED FOR THIS LAND

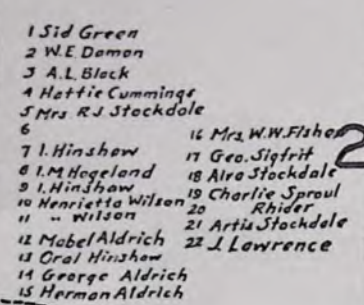
TIE: FENCE CORNER SAID TO BE SEC. CORNER COMMON TO
SECTIONS 23, 24, 25 & 26, T13S, R30E. AND FENCE LINE TO NORTH

8-25-1983



AST. WM - DIST. 4

Proposed Pt. of Div.





Water Resources Department
MILL CREEK OFFICE PARK

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

PHONE 378-3066

May 30, 1979

Theodore Durst, James W. Damon
and Lowell Franks
P.O. Box 266
Mt. Vernon, Oregon 97865

RE: File No. T-4167

Gentlemen:

Enclosed is a certified copy of the order of the Water Resources Director approving water right transfer application No. 4167 for a change in point of diversion of water from John Day River.

In line with the general practice of this office, a survey will be made at a later date.

Sincerely,

Wayne J. Overcash
Water Rights Engineer

WJO:lcj
cc: Jerry Rodgers, Watermaster

WATER RESOURCES DEPT
555 13th ST NE 1685
SALEM OR 97310

Application for Transfer of Water Right **RECEIVED**

MAR 5 1979

To the WATER RESOURCES DIRECTOR OF OREGON:

**WATER RESOURCES DEPT.
SALEM, OREGON**

P.O. Box 266 *P.O. Box 38* *P.O. Box 1*
I, Mr. Theodore Durst, Mr. James W. Damon, & Mr. Lowell Franks
(Name of applicant)

of Mt Vernon
(Mailing address) 932-4622 (City)
State of Oregon 97865 932-4445
(Zip Code) 932-4503 do hereby make application for change
in point of diversion
(In point of diversion; place of use; use heretofore made of the water)

1. Is the water right recorded in your name? Stockdale, McCallen
(If not, give name)
2. Was your water right determined by Decree of Court? Yes If so, give title of proceedings
John Day Adjudication number of certificate C-25873
(Yes or No)
3. Was your water right acquired by Water Right Permit? NO If so, give number
of permit Number of certificate
(Yes or No)

NOTE: If the entire right of record is not directly involved in the requested change, only that part of the right that is directly involved should be considered in answering the balance of the questions on this form.

From the John Day River through the following:

4. The source of water is Fry Ingle ditch & Wallace Lemons ditch
5. What is the date of priority of your water right? 1862
Pt. div. of record (both the same)
6. The ~~authorized point of diversion~~ point of diversion is located 1200 ft. S. and 1175 ft. E. from the N $\frac{1}{4}$
(N. or S.) (E. or W.)
corner of Sec. 26 being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26 Tp. 13S. R. 30 E. W. M.,
(No. N. or S.) (No. E. or W.)
in the county of Grant The name of the ditch used is see # 4 this sheet.

NOTE: Answer question if the application is for change in point of diversion.

existing *

7. The ~~proposed~~ point of diversion is located 520 ft. S. and 2080 ft. E. from the NW
(N. or S.) (E. or W.)
corner of Sec. 25 being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 25 Tp. 13 S. R. 30 E. W. M.,
(No. N. or S.) (No. E. or W.)
in the county of Grant The name of the ditch to be used is Panama Ditch

* Water has been used out of this ditch for at least 30 years.

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

Location of area irrigated, or place of use if other than irrigation:

Township North or South	Range E. or W. of Willamette Meridian	Section	List $\frac{1}{4}$ - $\frac{1}{4}$ of Section	Number Acres To Be Irrigated
13 S.	30 E.	28	NW $\frac{1}{4}$ NE $\frac{1}{4}$ TAX LOT 401	3.6 ac. (Durst)
13 S.	30 E.	28	NW $\frac{1}{4}$ NE $\frac{1}{4}$ TAX LOT 300	0.3 ac. (Damon)
13 S.	30 E.	28	NW $\frac{1}{4}$ NE $\frac{1}{4}$ TAX LOT 700	0.7 ac. (Franks)

(If more space required, attach separate sheet)

9. Are you the legal owner of the above described lands? YES
(If not owner, explain your interest)

10. To your knowledge, has any portion of the water right above described undergone a period of five or more consecutive years of nonuse? NO
(Yes or No)

NOTE: Answer questions 11, 12 and 13 if application is for change in use or place of use.

11. 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)

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

NATURE OF ENCUMBRANCE	HELD BY	AMOUNT

13. The use to which the water is to be applied is
(Irrigation, power, mining, manufacturing, domestic supplies, etc.)

Location of area to be irrigated, or place of use if other than irrigation:

Township North or South	Range E. or W. of Willamette Meridian	Section	List $\frac{1}{4}$ - $\frac{1}{4}$ of Section	Number Acres To Be Irrigated

(If more space required, attach separate sheet)

14. Reasons for the proposed changes are The Fry Ingle and Wallace Lemons ditches have not reached these properties for many years, as were filled up and not maintained. Water was brought to the properties via pipe and ditch from the Panama Ditch for many years now, being from time water was no longer conveyed through the Fry Ingle and Wallace Lemons to our properties.

15. Construction work will be completed on or before Completed

16. The water will be completely applied to the proposed use on or before Completed

Remarks _____

THIS APPLICATION PREPARED BY:

Charles J. O'Neil 1-11-79

FROM INFORMATION FURNISHED BY
THE APPLICANT.

NOTE: THIS APPLICATION MUST BE ACCOMPANIED BY A MAP OR MAPS SHOWING THE BEFORE AND AFTER LOCATIONS OF THE POINT OF DIVERSION AND/OR PLACE OF USE, AS THE CASE MAY BE.

AFFIDAVIT OF APPLICANT

I, THEODORE DURST, 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 22 day of FEB, 1979.

Theodore Durst
(Name of applicant)

Subscribed and sworn to before me this 22 day of FEB, 1979.



Charles J. O'Neil
NOTARY PUBLIC FOR OREGON

My commission expires 4-6-82

AFFIDAVIT OF APPLICANT

I, James W. Damon, 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 1st day of March, 1979.

James W. Damon
(Name of applicant)

Subscribed and sworn to before me this 1st day of March, 1979.

[Notarial Seal]

Geraldine Brockway
NOTARY PUBLIC FOR OREGON

My commission expires 12/9/80

USE, AS THE CASE MAY BE.

AFFIDAVIT OF APPLICANT

I, Lowell Franks, 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 1st day of March, 1979.

Lowell Franks
(Name of applicant)

Subscribed and sworn to before me this 1st day of March, 1979.

[Notarial Seal]

Geraldine Brockway
NOTARY PUBLIC FOR OREGON

My commission expires 12/9/80



STATE OF OREGON

INTEROFFICE MEMO

TO: TRANSFERS, WATER RIGHTS DIVISION

DATE: 3-19, 1979.

FROM: ** Jerry Rodgers, Watermaster

RECEIVED

MAR 21 1979

WATER RESOURCES DEPT.
SALEM, OREGON

SUBJECT: WATER RIGHT TRANSFER APPLICATION NO. 4167

IN THE NAME OF Durst, Damon & Franks

In my opinion the proposed change in point of diversion from John Day River
MAY BE MADE WITHOUT INJURY WOULD RESULT IN INJURY* to an existing water right.

Headgate notices HAVE HAVE NOT been issued for diversion from the sources which
serves this right.

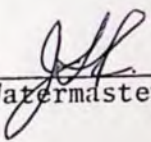
If for change in point of diversion, is there any intervening point of diversion
between the authorized and the proposed points of diversion? No
(yes or no)

In my opinion, the order approving the subject transfer application should include
the following in regard to the appropriator installing suitable measuring devices
in the diversion works:

- ____ (1) PRIOR to the diverting of water at the new point of diversion . . .
X (2) When in the judgment of the watermaster it becomes necessary . . .

* The approval of this transfer application would result in injury to other water
rights because _____

**


Watermaster's signature or initials

AFFIDAVIT OF PUBLICATION

STATE OF OREGON

County of Grant

ss.

I, John Gaterud, being first duly sworn, depose and say that I am the owner, editor, publisher, manager, principal clerk of THE BLUE MOUNTAIN EAGLE, a newspaper of general circulation, as defined by ORS 193.010 and 193.020; printed and published at John Day, in the aforesaid county and state; that

the notice of water right transfer application
No. 4167

....., a printed copy of which is hereto attached, was published in the entire issue of said newspaper for three successive and consecutive weeks in the following issues:

March 15, 22 and 29, 1979 *ck*

John Gaterud
Subscribed and sworn to before me this 2nd day of April

1979

Karla J. Dalton
Notary Public for Oregon

My commission expires Feb

Cost of this publication was \$ 39.00

(Seal)

Public Notices

NOTICE OF WATER RIGHT TRANSFER APPLICATION NO. 4167

Notice is given hereby that an application has been filed in the office of the Water-Resources Director by Theodore Durst, James W. Damon and Lowell Franks for approval of a change in point of diversion of water from John Day River, pursuant to the provisions of ORS 540.510 to 540.530.

The certificate recorded at page 25873, Volume 17, State Record of Water Right Certificates, in the name of McCallen Stockdale, describes a right which includes the use of water from John Day River for irrigation of a certain 4.6 acres in NW¼ NE¼ of Sec. 28, T. 13 S., R. 30 E., W.M., with a date of priority of 1862.

The authorized point of diversion of record for said right is located 1200 feet S and 1175 feet E from the N¼ Corner of Sec. 28, being within the NW¼ NE¼ of Sec. 28, T. 13 S., R. 30 E., W.M. (Fry Ingle-Wallace Lemons Ditch).

The applications herein, owners of the lands above described, propose to change the point of diversion therefrom, without loss of priority, to an existing point of diversion located 520 feet S and 2080 feet E from the NW Corner of Sec. 25, being within the NE¼ NW¼ of Sec. 25, T. 13 S., R. 30 E., W.M. (Panama Ditch).

All persons interested are notified hereby that a hearing will be held at the county courthouse at Canyon City, Ore., on May 9, 1979, 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 each

RECEIVED

APR 05 1979

WATER RESOURCES DEPT.
SALEM, OREGON

to be served on Theodore Durst, P.O. Box 286, Mt. Vernon, OR 97865; James W. Damon, P.O. Box 38, Mt. Vernon, OR 97865; and Lowell Franks, P.O. Box 1, Mt. Vernon, OR 97865; and one copy filed with the Water Resources Department, Salem, OR 97310, together with a \$10 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 WATER RESOURCES DIRECTOR WITHOUT A HEARING. Administrative rules pertaining to the filing of a protest will be furnished by the Water Resources Department upon request.

Dated at Salem, Ore., this seventh day of March, 1979.

JAMES E. SEXSON
Director
11-13

62

378-3066

May 2, 1979

Theodore Durst, James W. Damon
and Lowell Franks
P.O. Box 266
Mt. Vernon, Oregon 97865

RE: File No. T-4167

Gentlemen:

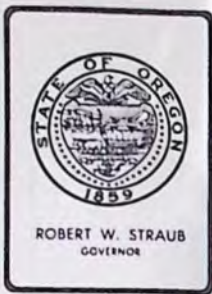
The statutory fees and the cost of publication of notice, necessary to your water right transfer application No. 4167, amount to a total of \$76.. The total of payments received in connection with the application exceeded this amount by \$9.\$

Our refund check No. 3310 is enclosed.

Sincerely,

James W. Carver, Jr.
Engineer

JWC:lcj



Water Resources Department

MILL CREEK OFFICE PARK

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

PHONE 378-3066

March 7, 1979

The Blue Mountain Eagle
P.O. Box 448
John Day, Oregon 97845

RE: File No. T-4167

Gentlemen:

Enclosed is a notice for publication in the March 15, 22 and 29, 1979 issues of your newspaper.

If, for any reason, the notice cannot be published on the three dates specified above, please return it to this office.

Upon completion, please forward an affidavit of publication and statement for this service to this office.

Sincerely,

Wayne J. Overcash
Water Rights Engineer

WJO:1cj

cc: Theodore Durst, James W. Damon & Lowell Franks
cc: Jerry Rodgers, Watermaster

The Blue Mountain Eagle

OREGON'S OLDEST WEEKLY NEWSPAPER

Eagle/print

**The Blue Mountain Eagle
Commercial Printing
Department**

P. O. Box 48

John Day, Oregon 97845

Phone: (503) 575-0710

Date March 31, 1979

RECEIVED

APR 05 1979

Water Resources Dept.

555 13th St. NE

Salem, OR 97310

WATER RESOURCES DEPT.

SALEM, OREGON

DATE	ITEMS	CHARGES	CREDITS	BALANCE
3-15	Legal -- Notice of water right transfer application no. 4167			
	3 insertions, 72 lines	39.00		\$39.00

RECEIVED

MAY 04 1979

WATER RESOURCES DEPT.
SALEM, OREGON