

4465 Lewis

Name William R. Lewis- Protested -
4465

By _____

Address Box 69
North Powder, OR 97867Change in add'l PODDate filed March 31, 1980Date of hearing June 5, 1980Place of hearing BakerDate of order 8-11-80 Vol. 33, page 566Date for application of water 10-1-81

Proof mailed _____

Proof received _____

Certificate issued **APR 25 1985** Vol. 48, page 52918

DESCRIPTION OF WATER RIGHT

Name of stream North Powder RiverTrib. of _____ County of BakerUse irrigation + stockQuantity of water _____ No. of acres 160[±] ac

Name of ditch _____

Date of priority 1890In name of O.D. ThomlinsonPowder River Adjudication, Vol. 1, page 408App. No. _____ Per. No. _____ Cert. No. 1515

Certificate cancelled _____

Notation made on record by _____

FEES PAID

Date	Amount	Receipt No.
<u>3/31/80</u>	<u>85.00</u>	<u>16895</u>
TOTAL . . .		
	Cert. Fee	
<u>The Democrat Herald #352 pd 5/30/80 Ck# 4235</u>		

FEES REFUNDED

Date	Amount	Check No.
<u>5/30/80</u>	<u>15⁰⁰</u>	<u>4236</u>

Ex 20
POD 15
POD 35
770

REMARKS

Card for C NOV 20 1981

Loss of Right For Add'l POD Sp. Or V 39, P 39, 2-19-85Authorized POD Harlan Sanders Ditch

W.R.I.S.

Assembled 2-19-85 by SP

Entered _____ by _____

Verified _____ by _____

INDEX CARDS:

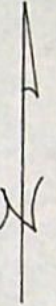
Entered LOR Checked

TO BE ENTERED WHERE CHECKED	INDEX CARDS:	Entered	Checked
☒	Name	<u>SP</u>	<u>SP</u>
☒	Stream	<u>SP</u>	<u>SP</u>
☒	Pt. of Div.	<u>SP</u>	<u>SP</u>
☒	Calendar	<u>SP</u>	<u>SP</u>
☒	CHECKED TO RECORDS:		
☒	Twp. & Rge.	<u>SP</u>	<u>SP</u>
☒	Decree-vault	<u>SP</u>	<u>SP</u>
☒	Decree-safe	<u>SP</u>	<u>SP</u>
☒	Cert. of W/R	<u>SP</u>	<u>SP</u>
☒	Per. Folder	<u>SP</u>	<u>SP</u>
☒	Chsindex	<u>SP</u>	<u>SP</u>
☒	Cross Ref.	<u>SP</u>	<u>SP</u>
☒	Power Claim	<u>SP</u>	<u>SP</u>
☒	Abstracts	<u>SP</u>	<u>SP</u>

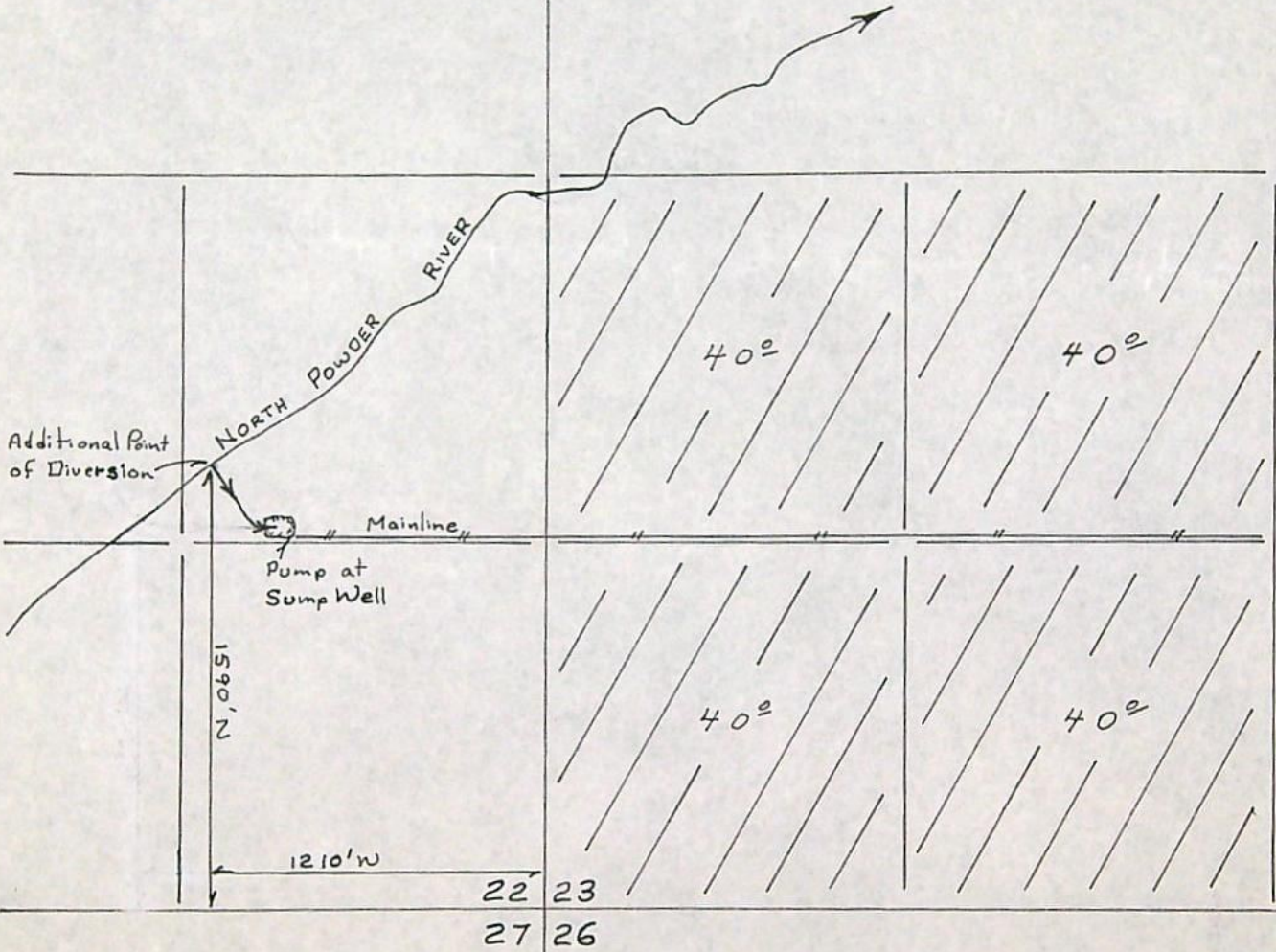
hew
SP

RECEIVED
MAR 21 1980
WATER RESOURCES DEPT
SALEM, OREGON

T-4465



T6S R39E



8" = 1 Mile Scale

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

BAKER COUNTY

IN THE MATTER OF THE APPLICATION)
OF WILLIAM R. LEWIS FOR APPROVAL)
OF AN ADDITIONAL POINT OF DIVER-)
SION OF WATER)

ORDER APPROVING
TRANSFER NO. 4465

On March 31, 1980, an application was filed in the office of the Water Resources Director by William R. Lewis for approval of an additional point of diversion of water from North Powder River, pursuant to the provisions of ORS 540.510 to 540.530.

By Decree of the Circuit Court for Baker County, Oregon, entered March 18, 1918, in the Matter of the Determination of the Relative Rights of the Various Claimants to the Use of the Waters of Powder River and Its Tributaries, a water right was allowed in the name of O. D. Thomlinson for use of waters of North Powder River for irrigation of, among other lands, a certain 40.0 acres in NE 1/4 SW 1/4, 40.0 acres in NW 1/4 SW 1/4, 40.0 acres in SW 1/4 SW 1/4 and 40.0 acres in SE 1/4 SW 1/4, Section 23, Township 6 South, Range 39 East, W.M., being tabulated at Volume 1, page 408, with a date of priority of 1890, as evidenced by certificate recorded at page 1515, Volume 2, State Record of Water Right Certificates.

The authorized point of diversion is located 740 feet North and 2145 feet West from the Southeast Corner of Section 28, being within the SW 1/4 SE 1/4, Section 28, Township 6 South, Range 39 East, W.M. (Harlan Sanders Ditch).

The applicant proposes to establish an additional point of diversion at a point located 1590 feet North and 1210 feet West from the Southeast Corner of Section 22, being within the NE 1/4 SE 1/4 of Section 22, Township 6 South, Range 39 East, W.M.

Notice of the application, pursuant to ORS 540.520(2), was published in the Democrat-Herald, a newspaper printed and having general circulation in Baker County, Oregon, for a period of three weeks in the issues of April 14, 18 and 28, 1980.

Mr. V. Kent Searles, Watermaster, has filed a statement to the effect that the proposed additional point of diversion may be made without injury to existing rights.

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

NOW, THEREFORE, it hereby is ORDERED that the requested additional point of diversion, as described herein, without loss of priority, is approved.

It is FURTHER ORDERED that the quantity of water diverted at the new point of diversion, together with that diverted at the old point of diversion, shall not exceed the quantity of water available at the old point of diversion under the subject right, and shall not exceed 4.0 cubic feet per second from March 1 to July 1 and 2.0 cubic feet per second from July 1 to October 1.

It is FURTHER ORDERED that the following provisions shall be carried out prior to the diverting of water at the new point of diversion as herein confirmed:

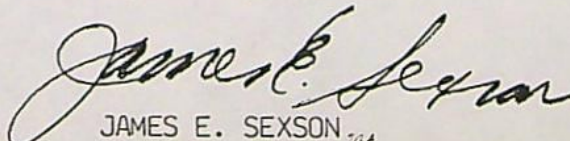
That the diversion works shall include an in line flow meter, a weir, or other suitable device for measuring the water to which the applicant is entitled;

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 construction work shall be completed and the additional point of diversion of water made on or before October 1, 1981.

It is FURTHER ORDERED that the certificate recorded at page 1515, Volume 2, 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, a confirming certificate of water right shall be issued to the applicant herein.

Dated at Salem, Oregon this 11th day of August, 1980.


JAMES E. SEXSON
Director

T-4465
RECEIVEDMAR 11 1980
WATER RESOURCES DEPT
SALEM, OREGON

Application for Transfer of Water Right

To the WATER RESOURCES DIRECTOR OF OREGON:

I, William R. Lewis
(Name of applicant)
of Box 69, North Powder,
(Mailing address) (City)
State of Oregon, 97867, 898-2124 do hereby make application for change
(Zip Code) (Phone number)
an additional 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? No, O.D. Thomlinson 1908
(If not, give name)
2. Was your water right determined by Decree of Court? Yes If so, give title of proceedings
(Yes or No) North Powder River Decree number of certificate 1515
3. Was your water right acquired by Water Right Permit? No If so, give number
(Yes or No)
of permit _____ Number of certificate _____

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.

4. The source of water is Harlan Sanders Ditch - North Powder River
5. What is the date of priority of your water right? 1890
6. The authorized point of diversion is located 740 ft. N and 2145 ft. W from the SE
(N. or S.) (E. or W.)
corner of Sec 28 being within the SW 1/4 SE 1/4 of Section 28 Tp. 6S R. 39E W. M.,
(No. N. or S.) (No. E. or W.)
in the county of Baker The name of the ditch used is Harlan Sanders

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

7. The Additional proposed point of diversion is located 1590 ft. N and 1210 ft. W from the SE
(N. or S.) (E. or W.)
corner of Sec 22 being within the NE 1/4 SE 1/4 of Section 22 Tp. 6S R. 39E W. M.,
(No. N. or S.) (No. E. or W.)
in the county of Baker The name of the ditch to be used is Unnamed

8. The use to which the water is applied is Irrigation and Stockwater
(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
6 S	39 E	23	NW $\frac{1}{4}$ SW $\frac{1}{4}$	40 acres
"	"	"	SW $\frac{1}{4}$ SW $\frac{1}{4}$	40 acres
"	"	"	SE $\frac{1}{4}$ SW $\frac{1}{4}$	40 acres
"	"	"	NE $\frac{1}{4}$ SW $\frac{1}{4}$	40 acres

(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~~ additional point of diversion
is to develop a sprinkler system.

15. Construction work will be completed on or before June 1, 1981

16. The water will be completely applied to the proposed use on or before June 1, 1981

Remarks

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, William R. Lewis, 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 26 day of March, 1980

William R. Lewis
(Name of applicant)

Subscribed and sworn to before me this 26th day of March, 1980

[Notarial Seal]

Alene Willis

NOTARY PUBLIC FOR OREGON

My commission expires Sept. 10-80

N. POWDER R.

WF T-0982-C1

*** OREGON WATER RESOURCES DEPARTMENT ***
 *** WATER RIGHTS DIVISION ***
 *** WATER RIGHT DATA INPUT FORM ***

 PAGE 1
 RUN ON: 3/20/81 AT: 9:08

WATER RIGHT NO. T000044651 PERMIT NO. 001408 CERTIF. NO.

NAME: WILLIAM R. LEWIS

ORIG. NO. C000015151 PREV. NO. C000015151 SUPER. NO.

ADDRESS: BOX 69

CITY/STATE/ZIP/COUNTY: NORTH POWDER, OR 97867 01

STREAM-ID 0940601820

RIV. MI.

WM. DIST. 08 W.R. TYPE SC STATUS V

CANCEL YEAR----

CONSTR. COMPLT--> 10 31 1981

YR. LAST USED----->

NEXT ACTION DUE-->

PRIORITY-----> 12 31 1890

PUT TO USE-----> 10 31 1981

LAST TRANS. DATE-->

LAST TRANS. TYPE-->

APPLICATION--> 03 31 1980

SURVEYED----->

EXAM. FEE-----> 20.00

RECORDING FEE-----> 15.00

PERMIT ISSUE--> 08 11 1980

CONCURRENCE----->

CYCLE STATUS----->

REPORTED FLAG----->

CONSTR. STRT.--> 08 11 1980

CERTIFIED----->

CORRES. INIT.----->

CORRES. DATE----->

 POINT-OF-DIVERSION DATA:
 TWP/SP. RGE SECT QTR/QTR STREAM-ID

RIV. MI.

RATE

STATUS

S OR P

** REMARKS: - - - - -

** DATED-->

0605 390E 28 D C 0940601820

4,000

V

P

** POD: 1) HARLAN SANDERS DITCH,

0605 390E 22 D A 0940601820

1

C

1

** 740' N & 2145' W FM SE COR S 28;

** 2) 1590' N & 1210' W FM SE COR

** S 22. ADDS. POD TO E 1515.

** ADDITIONAL POD NOT USED.

 PLACE-OF-USE DATA:
 TWP/SP. RGE SECT QTR/QTR CNTY

USE % CNSMTV

ACRES

STATUS

S OR P

0605 390E 23 C A 01 1R 100 40.00

V

P

C B 40.00

C C 40.00

C D 40.00

V.O.I.S.

A-11-12-19-85 1,500

B-11-12-19-85 1,500

V.O.I.S. 1,500

AUG 10 1983

WATER RESOURCES DEPT.
SALEM, OREGON

REPORT ON INSPECTION UNDER TRANSFER
OF WATER RIGHT FOR CHANGE IN: PO

POD

POU

USE:

Add'l POD

Transfer No. 4465

County Dakota

Old Certificate No. 1515

1. Name

Name William R. Lewis

Address

Address Box 69, North Powder, OR 97867

2. Source of Supply

Source of Supply *N. Powder R.*

Trib of

3. Use

Use in 160° ac + stock

4. Amount of Water

5. Priority Date

1890

6. Proposed Point of Diversion

Proposed Point of Diversion 1590' N & 1210' W from SE Cor, S22,
W/ in NE 1/4 SE 1/4, S22, T6S, R.39E, WM

7. Completion Date

10-1-81

8. Place of Use:

[illegible]

Info: Mr Lewis stated that he wrote a letter saying that he would not do the project.

h. L. L.
8-5-83



STATE OF OREGON

INTEROFFICE MEMO

TO: TRANSFERS, WATER RIGHTS DIVISION

DATE: APRIL 14, 1980FROM: ** V. Kent Searles, WatermasterSUBJECT: WATER RIGHT TRANSFER APPLICATION NO. 4465IN THE NAME OF William R. Lewis

RECEIVED

APR 16 1980

WATER RESOURCES DEPT
SALEM, OREGON

In my opinion the proposed change in add'l POD from N. Powder 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? YES
(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 . . .
_____ (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 _____

** V. Kent Searles
Watermaster's signature or initials

NOTICE OF WATER
RIGHT TRANSFER
APPLICATION NO. 4465

The Water Resources
Director of Oregon has
received and filed an ap-
plication by William R. Lewis
for approval, without loss of
priority, of an additional point
of diversion under a certain
water right.

The affected water right is
described by the certificate
recorded at page 1515, Volume
2, State Record of Water Right
Certificates, in the name of
O.D. Thomlinson, and is for
the use of not to exceed 4 cubic
feet per second from March 1
to July 1 and 2 c.f.s. from July
1 to Oct 1, from North Powder
River, under a priority date of
1890, for irrigation of a certain
40.0 ac in NE 1/4 SW 1/4, 40.0 ac
in NW 1/4 SW 1/4, 40.0 ac in SW 1/4
SW 1/4 & 40.0 ac in SE 1/4 SW 1/4,
Sec 23, T 6S, R 39E, WM.

The authorized point of
diversion is located 740 ft N &
2145 ft W from the SE Corner
of Sec 28, being within the
SW 1/4 SE 1/4 of Sec 28, T 6S, R
39E, WM (Harlan Sanders
Ditch).

The applicant proposes to
establish an additional point of
diversion at a point located
1590 ft N & 1210 ft W from the
SE Corner of Sec 22, being
within the NE 1/4 SE 1/4 of Sec
22, T 6S, R 39E, WM.

Pursuant to ORS 540.520(2),
a hearing is scheduled for 9:30
a.m. on Thursday, June 5,
1980, at the Baker County
Courthouse, Baker, Oregon.
Any objections to the proposed
change must be prepared in
writing: one copy to be served
on the applicant at Box 69,
North Powder, OR 97867; and
one copy filed in the office of
the Water Resources Director,
Salem, OR 97310; and together
with a \$10 filing fee, at least 10
days prior to the date set for
hearing. Rules for filing ob-
jections will be furnished upon
request.

IF NO OBJECTIONS ARE
FILED, THE APPLICATION
MAY BE APPROVED BY
THE WATER RESOURCES
DIRECTOR WITHOUT A
HEARING.

Dated at Salem, Oregon this
7th day of April, 1980.

James E. Sexson,
Director

Legal No. 92
Publish: April 14, 1980

AFFIDAVIT OF PUBLICATION

Baker, Oregon, April 30, 1980

STATE OF OREGON,
County of Baker

ss.

I, Tricia Bevers, being first duly sworn,
depose and say that I am the Principal Clerk of the Baker Democrat-Herald
which is a Daily (except Sunday) newspaper of general circulation published in Baker, in said
county and state; that such newspaper is made up of at least four pages of five columns each
and of at least 17 3/4 inches in depth of type matter; that such newspaper was regularly and un-
interruptedly published once each week for at least twelve consecutive months immediately pre-
ceding the first publication of the attached Legal Advertisement #92
Water Right Transfer, and has more than 200 bona fide subscribers within
said county; that the Legal Advertisement
of which the one hereto attached is a true and correct copy as printed, was published in the
regular and entire issue of said newspaper, and not in any supplement thereof, once each
week for three successive and consecutive times
being published three times commencing with the issue dated the
14th day of April, 1980, and ending with the issue dated the
28th day of April, 1980, and that the dates of publication were
April 14, 1980-April 21, 1980-April 28, 1980

Tricia Bevers

Subscribed and sworn to before me this 12th

day of May, 1980

Jaquelyn L. Lumer
Notary Public for Oregon.

My commission expires 8/22/81, 1981

NOTICE OF WATER
RIGHT TRANSFER
APPLICATION NO. 4465
The Water Resources
Director of Oregon has
received and filed an ap-
plication by William R. Lewis
for approval, without loss of
priority, of an additional point
of diversion under a certain
water right.

The affected water right is
described by the certificate
recorded at page 1515, Volume
2, State Record of Water Right
Certificates, in the name of
O.D. Thomlinson, and is for
the use of not to exceed 4 cubic
feet per second from March 1
to July 1 and 2 c.f.s. from July
1 to Oct 1, from North Powder
River, under a priority date of
1890, for irrigation of a certain
40.0 ac in NE 1/4 SW 1/4, 40.0 ac
in NW 1/4 SW 1/4, 40.0 ac in SW 1/4
SW 1/4 & 40.0 ac in SE 1/4 SW 1/4,
Sec 23, T 6S, R 39E, WM.

The authorized point of
diversion is located 740 ft N &
2145 ft W from the SEL Corner
of Sec 28, being within the
SW 1/4 SE 1/4 of Sec 28, T 6S, R
39E, WM (Harlan Sanders
Ditch).

The applicant proposes to
establish an additional point of
diversion at a point located
1590 ft N & 1210 ft W from the
SE Corner of Sec 22, being
within the NE 1/4 SE 1/4 of Sec
22, T 6S, R 39E, WM.

Pursuant to ORS 540.520(2),
a hearing is scheduled for 9:30
a.m. on Thursday, June 5,
1980, at the Baker County
Courthouse, Baker, Oregon.
Any objections to the proposed
change must be prepared in
writing: one copy to be served
on the applicant at Box 69,
North Powder, OR 97867; and
one copy filed in the office of
the Water Resources Director,
Salem, OR 97310; and together
with a \$10 filing fee, at least 10
days prior to the date set for
hearing. Rules for filing ob-
jections will be furnished upon
request.

IF NO OBJECTIONS ARE
FILED, THE APPLICATION
MAY BE APPROVED BY
THE WATER RESOURCES
DIRECTOR WITHOUT A
HEARING.

Dated at Salem, Oregon this
7th day of April, 1980.

James E. Sexson,
Director

Legal No. 92
Publish: April 14, 1980

NOTICE OF WATER
RIGHT TRANSFER
APPLICATION NO. 4465
The Water Resources
Director of Oregon has
received and filed an ap-
plication by William R. Lewis
for approval, without loss of
priority, of an additional point
of diversion under a certain
water right.

The affected water right is
described by the certificate
recorded at page 1515, Volume
2, State Record of Water Right
Certificates, in the name of
O.D. Thomlinson, and is for
the use of not to exceed 4 cubic
feet per second from March 1
to July 1 and 2 c.f.s. from July
1 to Oct 1, from North Powder
River, under a priority date of
1890, for irrigation of a certain
40.0 ac in NE 1/4 SW 1/4, 40.0 ac
in NW 1/4 SW 1/4, 40.0 ac in SW 1/4
SW 1/4 & 40.0 ac in SE 1/4 SW 1/4,
Sec 23, T 6S, R 39E, WM.

The authorized point of
diversion is located 740 ft N &
2145 ft W from the SEL Corner
of Sec 28, being within the
SW 1/4 SE 1/4 of Sec 28, T 6S, R
39E, WM (Harlan Sanders
Ditch).

The applicant proposes to
establish an additional point of
diversion at a point located
1590 ft N & 1210 ft W from the
SE Corner of Sec 22, being
within the NE 1/4 SE 1/4 of Sec
22, T 6S, R 39E, WM.

Pursuant to ORS 540.520(2),
a hearing is scheduled for 9:30
a.m. on Thursday, June 5,
1980, at the Baker County
Courthouse, Baker, Oregon.
Any objections to the proposed
change must be prepared in
writing: one copy to be served
on the applicant at Box 69,
North Powder, OR 97867; and
one copy filed in the office of
the Water Resources Director,
Salem, OR 97310; and together
with a \$10 filing fee, at least 10
days prior to the date set for
hearing. Rules for filing ob-
jections will be furnished upon
request.

IF NO OBJECTIONS ARE
FILED, THE APPLICATION
MAY BE APPROVED BY
THE WATER RESOURCES
DIRECTOR WITHOUT A
HEARING.

Dated at Salem, Oregon this
7th day of April, 1980.

James E. Sexson,
Director

Legal No. 92
Publish: April 14, 1980

NOTICE OF WATER
RIGHT TRANSFER
APPLICATION NO. 4465
The Water Resources
Director of Oregon has
received and filed an ap-
plication by William R. Lewis
for approval, without loss of
priority, of an additional point
of diversion under a certain
water right.

The affected water right is
described by the certificate
recorded at page 1515, Volume
2, State Record of Water Right
Certificates, in the name of
O.D. Thomlinson, and is for
the use of not to exceed 4 cubic
feet per second from March 1
to July 1 and 2 c.f.s. from July
1 to Oct 1, from North Powder
River, under a priority date of
1890, for irrigation of a certain
40.0 ac in NE 1/4 SW 1/4, 40.0 ac
in NW 1/4 SW 1/4, 40.0 ac in SW 1/4
SW 1/4 & 40.0 ac in SE 1/4 SW 1/4,
Sec 23, T 6S, R 39E, WM.

The authorized point of
diversion is located 740 ft N &
2145 ft W from the SEL Corner
of Sec 28, being within the
SW 1/4 SE 1/4 of Sec 28, T 6S, R
39E, WM (Harlan Sanders
Ditch).

The applicant proposes to
establish an additional point of
diversion at a point located
1590 ft N & 1210 ft W from the
SE Corner of Sec 22, being
within the NE 1/4 SE 1/4 of Sec
22, T 6S, R 39E, WM.

Pursuant to ORS 540.520(2),
a hearing is scheduled for 9:30
a.m. on Thursday, June 5,
1980, at the Baker County
Courthouse, Baker, Oregon.
Any objections to the proposed
change must be prepared in
writing: one copy to be served
on the applicant at Box 69,
North Powder, OR 97867; and
one copy filed in the office of
the Water Resources Director,
Salem, OR 97310; and together
with a \$10 filing fee, at least 10
days prior to the date set for
hearing. Rules for filing ob-
jections will be furnished upon
request.

IF NO OBJECTIONS ARE
FILED, THE APPLICATION
MAY BE APPROVED BY
THE WATER RESOURCES
DIRECTOR WITHOUT A
HEARING.

Dated at Salem, Oregon this
7th day of April, 1980.

James E. Sexson,
Director

Legal No. 92
Publish: April 14, 1980

AFFIDAVIT OF PUBLICATION

Baker, Oregon, April 30, 1980

STATE OF OREGON,
County of Baker

ss.

I, Tricia Bevers, being first duly sworn,
depose and say that I am the Principal Clerk of the Baker Democrat-Herald
which is a Daily (except Sunday) newspaper of general circulation published in Baker, in said
county and state; that such newspaper is made up of at least four pages of five columns each
and of at least 17 1/4 inches in depth of type matter; that such newspaper was regularly and un-
interruptedly published once each week for at least twelve consecutive months immediately pre-
ceding the first publication of the attached Legal Advertisement #92
Water Right Transfer, and has more than 200 bona fide subscribers within
said county; that the Legal Advertisement

of which the one hereto attached is a true and correct copy as printed, was published in the
regular and entire issue of said newspaper, and not in any supplement thereof, once each
week for three successive and consecutive times
being published three times commencing with the issue dated the

14th day of April, 1980, and ending with the issue dated the
28th day of April, 1980, and that the dates of publication were
April 14, 1980-April 21, 1980-April 28, 1980

Tricia Bevers

Subscribed and sworn to before me this 12th

day of May, 1980

Jaqueline L. Lumer
Notary Public for Oregon.

My commission expires 8/22/81, 1982

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

BAKER COUNTY

IN THE MATTER OF TRANSFER	)	
APPLICATION 4465 IN THE	)	LOSS OF RIGHT
NAME OF WILLIAM R. LEWIS	)	

Transfer Application 4465, in the name of William R. Lewis, proposed an additional point of diversion of water from North Powder River under a certain right with a priority date of 1890, to irrigate a certain

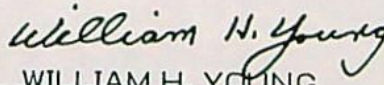
40.0 acres NE 1/4 SW 1/4
40.0 acres NW 1/4 SW 1/4
40.0 acres SW 1/4 SW 1/4
40.0 acres SE 1/4 SW 1/4
Section 23
Township 6 South, Range 39 East, WM,

from the Harlan Sanders Ditch, which is the authorized point of diversion, and from an additional point of diversion to be located 1590 feet North and 1210 feet West from the Southeast Corner of Section 23, being within the NE 1/4 SE 1/4 of Section 22, Township 6 South, Range 39 East, WM.

The order of the Water Resources Director, entered August 11, 1980, approving Transfer Application 4465, provided "...that said water so transferred shall be applied to beneficial use on or before October 1, 1981."

The applicant has failed to make proof to the satisfaction of the Water Resources Director that the proposed change was accomplished within the provisions of the order, therefore, the right to divert at the proposed additional point of diversion has been lost. The aforesaid Harlan Sanders Ditch is the only authorized point of diversion.

Dated at Salem, Oregon this 19th day of February, 1985.


WILLIAM H. YOUNG
Director

7046C

Rt. 1, Box 127A
Haines, Oregon 97833
July 23, 1980

RECEIVED

JUL 24 1980

WATER RESOURCES DEPT
SALEM, OREGON

Water Resources Director
Salem, Oregon 97310

Attention: James W. Carver

Dear Sir:

I wish to withdraw my protest dated May 23, 1980, to Water Right Transfer Application Number 4456 for William R. Lewis an additional point of diversion on North Powder River.

We have negotiated an alternative acceptable to both of us.

Respectfully,

Myron Miles

Myron Miles

MEM/dm

cc: Lewis
Searles

I certify that on May 23, 1980, I mailed, with prepaid postage, a copy of a letter of protest to the application for Water Right Transfer No. 4456 addressed to the director of Water Resources, to William R. Lewis at P. O. Box 69, North Powder, Oregon 97867.

Myron Miles

Myron Miles
Rt. 1, Box 127A
Haines, Oregon 97833

This 23rd day of May 1980.

Notary Public State of Oregon

Alice Willis

My term expires Sept. 10-81

Rt. 1 Box 127A
Haines, Oregon 97833
May 23, 1980

RECEIVED
MAY 27 1980
WATER RESOURCES DEPT
SALMON, OREGON

Water Resources Director
Salem, Oregon 97310

Dear Sir:

In regard to Water Right Transfer Application No. 4456, I protest the granting of an additional point of diversion to William R. Lewis on the North Powder River in NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 23, T. 6 S., R. 39 E.

The move downstream from the authorized point of diversion in the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 28, T. 6 S., R. 39 E. to the requested diversion point would make available to Mr. Lewis additional water returning to the North Powder River below his authorized point of diversion. I presently utilize this water under permit no. 8754 in the Peterson Ditch to irrigate land in Sections 23 and 24 of T. 6 S., R. 39 E.

I request this application, No. 4456, be denied.

Respectfully,

Myron Miles

Myron Miles

MEM/dm
Encl.

Filed 5-27-80
10- Paid per
Rec # 17853 Jue

of one hundred and sixty (160) acres of his said lands, more particularly described in the order of determination herein.

That for the proper irrigation of the lands under the Harlan-Sanders Ditch, one inch to the acre until July 1st is necessary, and thereafter one-half inch to the acre is sufficient.

acres is entitled to one hundred fifty eight (158)

That M. F. Wilcox, with one hundred and fifty-eight (158) inches until July 1st, and thereafter to seventy-nine inches. That O. D. Thomilson is entitled to one hundred and sixty (160) inches until July 1st, and thereafter to eighty (80) inches. That the rights of Frank McAllister and Chris Johnson are fully set forth in the finding relative to the Jacobson Ditch. That Andrew O. Lun, having thirty-seven (37) acres irrigated through the Harlan-Sanders Ditch, and which requires one second-foot or forty (40) inches, to furnish the required head, is entitled to forty (40) inches until July 1st, and thereafter to nineteen inches. That S. W. Holmes, having two hundred and fifty-nine and one-half (259½) acres, is entitled to two hundred and fifty-nine and one-half (259½) inches until July 1st, and thereafter to one hundred and thirty (130) inches.

LVIII.

NORTH POWDER M. AND M. MILL RACE DITCH:- That the Mill Race Ditch of the North Powder Milling and Mercantile Company, a corporation, incorporated under the laws of the State of Oregon, taps North Powder River at a point on the right bank in the SE¼ NE¼, of Section 28, Tp. 6 S. R. 39 E. W. M. diverting the waters of North Powder River down to the flouring mill of said company, for the purpose of producing and developing power for the operation of said mill, and that said ditch has a maximum carrying capacity of thirty five and five-tenths (35.5) second feet, or fourteen hundred and twenty (1420) miner's inches. That in the year 1870, the predecessors in interest of said company commenced, and within two years thereafter, completed the construction of a flouring mill on the left bank of North Powder River, in Union County, Oregon, and diverted water from the river at a point about one mile west of the Mill site, through a Mill Race constructed for that purpose, and made an appropriation of the waters of said stream to the extent of one thousand (1000) inches of said waters, miner's measurement, under six inch pressure, or twenty-five (25) second feet, that thereafter and within a reasonable time, said predecessors put the amount so appropriated to beneficial use, for the development of said power and operation of said mill.

That on the 12th day of January, 1898, at a regular term of the Circuit Court of the State of Oregon, for the County of Union, in the certain suit wherein the North Powder Milling Company, a predecessor of said above named corporation, was plaintiff, and one W. A. Coughanour, claimant to the waters of Anthony Creek herein, and another, were defendants, a decree was entered wherein and whereby it was determined and decreed that said plaintiff was the owner of one thousand (1000) inches of water,

miner's measurement, under six inch pressure, of the natural flow of said North Powder River, and its tributaries, above the diversion point of said Mill Race, to be used for the purpose of generating power for the operation of said Mill at any and all seasons of the year; and said defendant was forever inhibited and enjoined from in any manner diverting from the channel of Anthony Creek, or North Powder River, at any point or points above the head of plaintiff's mill race, any of the waters flowing in said stream, when such diversion would have effect of preventing one thousand (1000) inches of water from reaching the head of plaintiff's Mill Race, as then located, in the natural channel of North Powder River, unobstructed, for the use of plaintiff and its said Mill; that upon appeal to the Supreme Court of the State of Oregon, from said decree, the same was affirmed in all things.

U 378

That from the conclusion of law and findings of fact in said suit, and said decree, and the opinion of the Supreme Court therein, as well as the proofs of the various parties herein, and the record and testimony in this proceeding, it is found that on October 4th, 1880, the predecessors in interest of said Coughanour, defendant in said suit, posted at a point on the left bank of Anthony Creek about eleven (11) miles above the head of said Mill Race, and filed for record in the office of the County Clerk of said Union County, a notice of appropriation, subscribed by them, to the effect that they intended to, and would appropriate two thousand (2000) inches of the waters of said creek, to be diverted at said point and conducted in ditches and flumes, to the town of North Powder, to be used for agricultural, mining and mechanical purposes; and that the said predecessors of said claimant, immediately thereafter commenced the construction of that certain ditch, known herein and heretofore referred to as the Coughanour Ditch, and the same was thereafter and in March, 1886, completed, and the waters of said Creek diverted and conducted through said ditch down to and upon said lands, now owned by Coughanour; that said Coughanour is now the owner of about one thousand three hundred and sixty (1360) acres of lands of an arid character, requiring for the profitable cultivation thereof, the application of water during the irrigation season; and of which lands, over one thousand (1000) acres appear to be susceptible of irrigation with the waters diverted through said ditch; that said Coughanour raises, and has raised, with the aid of said waters so diverted; valuable crops of grass, hay, grain, fruits, and vegetables; but that the larger portions of said lands are cultivated to crops of grain of various kinds, and particularly wheat; and said lands are summerfallowed each succeeding year, or every other year, so that about one-half of the said grain lands so summerfallowed are irrigated the same year; that the irrigation season for wheat and other grains grown upon said lands, commencing April of subsequent to the 15th day of each year, and terminates prior to July 1st of each year, that said lands were first irrigated in the year 1887; that by a gradual increase in the irrigated area of lands, about eight hundred (800) acres of said lands were reclaimed and irrigated prior to the year 1900; and that in the year 1900 and by gradual increase thereafter, until the year 1909, about three hundred and forty-eight (348) acres were added to the cultivated and reclaimed area of lands.

That since the year 1880 and prior to 1900, many intervening rights of

appropriation have been initiated, both from said Anthony Creek and from said North Powder River; and that the irrigation of said additional lands, commencing in the year 1900, was the initiation of a new and distinct right of appropriation as of the year 1900,

That S. W. Holmes, and his predecessors, have since the year 1888, diverted and used the waters flowing from said Mill Race, and into the tail race thereof, through a ditch known as the Sanders Ditch, for the irrigation of one hundred and seven and one-half ($107\frac{1}{2}$) acres of his said lands, more particularly described in the order of determination herein; that said lands were reclaimed and irrigated within a reasonable time since the year 1888, but that said claimant has no rights of appropriation of the waters of North Powder River, by virtue of said use, but his right of use is confined to the waters flowing in said tail race, down to the head of said ditch.

That for the proper irrigation of the lands belonging to the said S. W. Holmes, one inch to the acre is required until July 1st, and thereafter,, one-half inch to the acre is sufficient, and that said claimant is entitled to one hundred and seven and one-half inches of said tail race waters until July 1st, and thereafter to fifty-four (54) inches.

LIX.

CONTEST OF C. E. DAVIS AND OTHERS AGAINST ANDREW LUN; - That within the time permitted by law, C. E. Davis, A. E. Davis, W. J. Welch, W. S. Doherty, E. H. Pratt, P. L. Smith and Chris Johnson, claimants herein, filed a statement of contest against the rights claimed by Andrew Lun herein; and the same was duly and regularly set for hearing; upon notice to all parties thereto, given according to law; that the same came regularly on for hearing upon the 28th day of July, 1911, at the hour of ten o'clock A. M. pursuant to such notice, at the City Hall in the City of North Powder, Union County, Oregon, and testimony therein was taken, and a record thereof made and filed in this proceeding. 379

That from the testimony taken in said contest, and from the evidence herein, and exhibits introduced, it is found and determined:

1. That the defendant, Andrew Lun, is the owner and in possession of about fifteen (15) acres of land along the east side of the $E\frac{1}{2}$ of the $NW\frac{1}{4}$ of Section 28; also all that part of the $NW\frac{1}{4}$ of Section 27, lying southeast of the railroad, and being about one hundred and fifty (150) acres; also all that part of the $SE\frac{1}{4}$ of the $SW\frac{1}{4}$ of Section 22, lying southeast of the railroad, and being about twenty-five and six-tenths (25.6) acres; also all that part of the $SW\frac{1}{4}$ $SW\frac{1}{4}$ of Section 22, lying southeast of the railroad and being about two (2) acres; also all that part of the $NW\frac{1}{4}$ $SE\frac{1}{4}$ of Section 22, lying southeast of the railroad and being about eleven and six-tenths (11.6) acres; all of the $NE\frac{1}{4}$ $SE\frac{1}{4}$ of Section 22; and also three (3) acres in the southeast corner of the $SE\frac{1}{4}$ $NE\frac{1}{4}$ of Section 22; also all of the $SW\frac{1}{4}$ $SE\frac{1}{4}$ of Section 22, excepting four (4) acres in a square located in the Southeast corner thereof; all of said property being situated in township 6 S. R. 39 E. W. M., and in Union and Baker Counties, Oregon; that

BEFORE THE STATE ENGINEER OF OREGON

Baker County

IN THE MATTER OF THE APPLICATION OF)
JOHN W. DAVIS AND WILLIAM E. DAVIS)
FOR A CHANGE IN POINT OF DIVERSION)
OF WATER FROM NORTH POWDER RIVER.)
-----)

ORDER APPROVING

APPLICATION NO. D-44

On October 31, 1946, John W. Davis and William E. Davis of North Powder, Oregon, filed an application for the approval of a change in point of diversion of water from North Powder River, pursuant to the provisions of Section 116-606, O. C. L. A.

By decree of the Circuit Court for Union County, Oregon, dated May 1, 1916, in the matter of the determination of the relative rights to the waters of North Powder River, and its tributaries, a water right was recognized in the name of S. W. Holmes from Powder River with a date of priority of 1887 for the irrigation of 259½ acres, as follows:

21½ acres in NE¼ NE¼
35 acres in NW¼ NE¼
30 acres in SE¼ NW¼
Section 23
37 acres in NW¼ SW¼
Section 24
23½ acres in NE¼ NE¼
38½ acres in NW¼ NE¼
34 acres in SE¼ NE¼
40 acres in NE¼ NW¼
Section 26
T. 6 S., R. 39 E. W. M.

The above lands are irrigated by means of the Harlan-Sanders ditch, the point of diversion of said ditch being located approximately 865 feet north and 2216 feet west from the southeast corner of Section 28, and being within the SW¼ SE¼, said Section 28, Township 6 South, Range 39 East, W. M.

John W. Davis and William E. Davis, owners of the above described land, proposes to use the Jacobson ditch for the irrigation of the lands in Sections 24 and 26, and to continue the use of the Harlan-Sanders ditch for the irrigation of the lands in Section 23. The point of diversion of the Jacobson ditch is located approximately 145 feet north and 3148 feet west from the southeast corner of Section 28, and being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$, said Section 28, Township 6 South, Range 39 East, W. M.

Notice by publication, as provided by Section 116-606, O.C.L.A., was not given in connection with this application for the reason that said section provides that in applications for a change in point of diversion of less than one-fourth mile and where there are no intervening diversions between the old diversion of the applicant and his proposed new diversion, no notice shall be required to be published.

No objections having been filed and it appearing from a report submitted by Mr. Floyd Willis, Watermaster of District No. 14, 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 proposed change in point of diversion of water from North Powder River, to-wit:

From the point of diversion of the Harlan-Sanders ditch, located approximately 865 feet north and 2216 feet west from the southeast corner of Section 28 and being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$, said Section 28, Township 6 South, Range 39 East, W. M.,

To the point of diversion of the Jacobson ditch, located approximately 145 feet north and 3148 feet west from the southeast corner of Section 28, and being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$, said Section 28, Township 6 South, Range 39 East, W. M.

for the irrigation of 37 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 24; 23 $\frac{1}{2}$ acres in the

$NE\frac{1}{4}\ NE\frac{1}{4}$, $38\frac{1}{2}$ acres in the $NW\frac{1}{4}\ NE\frac{1}{4}$, $3\frac{1}{4}$ acres in the $SE\frac{1}{4}\ NE\frac{1}{4}$, and 40 acres in the $NE\frac{1}{4}\ NW\frac{1}{4}$, Section 26, Township 6 South, Range 39 East, W.M., with a date of priority of 1887, be and the same is hereby approved.

Dated at Salem, Oregon, this 26th day of March, 1947.

CHAS. E. STRICKLIN
State Engineer

MADE IN U.S.A.
ESTEECK WEE CO
196117d Union 2811

STATE OF OREGON
COUNTY OF BAKER

CERTIFICATE OF WATER RIGHT

This is to Certify, That **GERALD L. PETERSEN**

of **North Powder**, State of **Oregon**, has made proof to the satisfaction of the **STATE ENGINEER** of Oregon, of a right to the use of the waters of **The Tail Race of the North Powder Milling and Mercantile Company**, which waters have been returned to the **North Powder River** a tributary of **Powder River** for the purpose of **Irrigation** under Permit No. 8754 of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Oregon; that the priority of the right hereby confirmed dates from **September 21, 1928**;

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 **5.09 cubic feet per second**.

The point of diversion is located in the **NE $\frac{1}{4}$ SE $\frac{1}{4}$** of Section 22, Township 3S, Range 59E, W. M. The use hereunder for irrigation shall conform to such reasonable rotation system as may be ordered by the proper state officer.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to one-eightieth of one cubic foot per second per acre, or its equivalent in case of rotation.

A description of the lands irrigated under the right hereby confirmed, and to which such right is appurtenant (if for irrigation or any other purpose), is as follows: 40 acres in the **SW $\frac{1}{4}$ NE $\frac{1}{4}$** , 37 acres in the **SE $\frac{1}{4}$ NE $\frac{1}{4}$** , 40 acres in the **NE $\frac{1}{4}$ SE $\frac{1}{4}$** , 40 acres in the **NW $\frac{1}{4}$ SE $\frac{1}{4}$** , 25 acres in the **SW $\frac{1}{4}$ SS $\frac{1}{4}$** , 25 acres in the **SE $\frac{1}{4}$ SE $\frac{1}{4}$** , Section 23, and 40 acres in the **SW $\frac{1}{4}$ SE $\frac{1}{4}$** , Section 24, Township 6 South, Range 39 East, Willamette Meridian, in Baker County, Oregon.

Nothing herein contained shall be so construed as to require the **North Powder Milling and Mercantile Company** to operate its mill or canal.

*Modified 6-3-34
Deeds Vol 13 p. 6*

The right to the use of the water for any purpose is restricted to the lands or place of use herein described.

After the expiration of fifty years from the date of this certificate or on the expiration of any federal power license issued in connection with this right, and after not less than two years notice in writing to the holder hereof, the State of Oregon, or any municipality thereof, shall have the right to take over the dams, plants and other structures and all appurtenances thereto which have been constructed for the purpose of devoting to beneficial use the water rights specified herein, upon condition that before taking possession the State or municipality shall pay not to exceed the fair value of the property so taken, plus such reasonable damages, if any, to valuable, serviceable and dependable property of the holder of this certificate, not taken over, as may be caused by the severance therefrom of the property taken in accordance with the provisions of section 5728, Oregon Laws.

WITNESS the signature of the State Engineer,

affixed this **25th** day
of **November**, **1931**

CHAS. E. STRICKLIN

State Engineer.

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE
COUNTY OF BAKER

CHARLES E. HUTCHIN, in his own behalf, and)
in behalf to all others similarly situated,)
Plaintiff,)

Vs. .)

DECREE OF CORRECTED MANDATE

CHARLES E. STRICKLIN, State Engineer of the)
State of Oregon, and Gerald Peterson,)
Defendants.)

Now on this 3rd day of June, 1934, the above entitled matter comes on for the making and entry of decree on the corrected Mandate of the Supreme Court of the State of Oregon in the above entitled cause, plaintiff appearing by his attorneys, Hallock, Donald and Banta, of Baker, Oregon, defendant, Gerald Peterson, appearing by his attorneys, Hubbard & Godwin, of Baker, Oregon, and the defendant, Charles E. Stricklin, appearing not, either in person, or by counsel, and it appearing to the Court:

That this is a suit in equity in connection with which there was heretofore and on the 11th day of January, 1933, entered by the above entitled court a certain decree from which the above named defendant, Gerald Peterson, appealed to the Supreme Court of the State of Oregon, that thereafter and following consideration of said appeal by said Supreme Court said court caused to be made, filed and transmitted to the Clerk of the above entitled court a certain Mandate and said Mandate was later recalled and a corrected Mandate duly made by said Supreme Court on the 22nd day of May, 1934, and thereafter, on May 31st, 1934, duly transmitted to and filed with the Clerk of the above entitled court, and that said corrected Mandate was and is in words and figures as follows, to-wit:

(Heading and title omitted)

The Court on May 1st, 1934, having granted a motion on recalling mandate in this case, and the Mandate having been returned by the Clerk of Baker County and now being in possession of the Clerk of this Court, it is, therefore, ordered that the decree and mandate of this court be corrected to read as follows:

This cause at Pendleton on October 31st, 1933, having been duly tried, argued and submitted upon and concerning all questions arising upon the transcript record and evidence and then reserved for further consideration, and the court having fully

considered all said questions as well as suggestions of counsel in their argument and briefs, finds there is error as alleged.

It is, therefore, CONSIDERED, ORDERED AND DECREED that the decree of the court below in this cause rendered and entered be and the same is in all things reversed and set aside:

The Court having fully considered the allegations of the parties, and the evidence adduced, finds that the equities of the case are with the appellant and that plaintiff has not made out a case entitling him to equitable relief; it is, therefore, CONSIDERED, ORDERED AND DECREED that the decree of the Court below be and the same is hereby reversed and set aside, and the injunction against defendants is hereby dissolved.

It is further ORDERED AND DECREED that the defendant, Gerald Peterson, be declared to be entitled to the right to the use of the waters of North Powder River, a tributary of Powder River, for the purpose of irrigating the lands described in his water right certificate, except during the months of July and August of each year. Such right is limited to the amount actually and beneficially used for said purposes, not to exceed 3.09 cubic feet per second, is limited to one eightieth of one cubic foot per second per acre, or its equivalent in case of rotation, with a date of relative priority of September 21, 1928, the point of diversion being located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, township 6 S., Range 39, E., W.M., with right to be in accordance with the water right certificate issued to said defendant by the State Engineer, of date November 25, 1931.

It is further ORDERED AND DECREED that neither the North Powder Milling and Mercantile Company, nor the plaintiff, nor the upper irrigators from the North Powder River, have a right to change the place of use of the 25 second feet of water awarded to the Milling Company for power purposes to a place of use above the mill canal, or change the character of use from one of power purposes or a non-consuming use at the mill, to one for the purpose of irrigating the lands of the plaintiff and the upper irrigators, which would consume all, or nearly all, of such water, so as to deprive defendant, Peterson, of the waters to which he is entitled by virtue of his appropriation, namely, 3.09 second feet at the head of his ditch limited to one-eightieth of one cubic foot per second per acre, or its equivalent in case of rotation, except during the months of July and August of each year.

It is further ORDERED AND DECREED that if after satisfying Peterson's needs, the Milling Company desires to make an arrangement with the upper irrigators for the change of use and place of use of the balance of the 25 second feet awarded to the Milling Company, and it can be done without prejudice to the rights of others, proper application should be made to the State Engineer in accordance with the provisions of Section 47-712, Oregon Code, 1930.

It is further ORDERED AND DECREED that if it so desires, the Milling Company may, for short periods of time when it does not desire, or need, to use all or any part of

the water to which it is entitled, allow the Watermaster to distribute its waters to the other users in accordance with their respective rights, but this arrangement must not interfere with the rights of Peterson, or must be done after his rights have been supplied.

This decree shall be construed in accordance with the opinion filed herein.

It is further ORDERED AND DECREED that the appellant recover of and from respondent his costs and disbursements in this court taxed at \$235.50.

It is further ORDERED that this cause be remanded to the court below from which the appeal was taken, with directions to enter a decree in accordance herewith.

Now, Therefore, based upon said corrected Mandate, it is ORDERED, ADJUDGED AND DECREED as follows:

IT IS ORDERED, ADJUDGED AND DECREED that the decree of the above entitled court made and entered in this cause on the 11th day of January, 1933, and hereinabove more particularly referred to is in all things reversed and set aside and the injunction recitals therein contained are hereby dissolved.

It is further ORDERED, ADJUDGED AND DECREED that the defendant, Gerald Peterson, be declared to be entitled to the right to the use of the waters of North Powder River, a tributary of Powder River, for the purpose of irrigating the lands described in his water right certificate, except during the months of July and August of each year. Such right is limited to the amount actually and beneficially used for said purposes, not to exceed 3.09 cubic feet per second, and is limited to one-eightieth of one cubic foot per second per acre, or its equivalent in case of rotation, with a date of relative priority of September 21, 1928, the point of diversion being located in the NE¹/₄SE¹/₄ of Section 22, Tp. 6 S., R. 39 E., W.M., and such right to be in accordance with the water right certificate issued to said defendant by the State Engineer, of date November 25, 1931.

And it is further ORDERED, ADJUDGED AND DECREED that neither the North Powder milling and Mercantile Company, nor the Plaintiff, nor the upper irrigators from the North Powder River, have a right to change the place of use of the 25 second feet of water awarded to the Milling Company for power purposes to a place of use above the mill canal, or change the character of use from one for power purposes or a non-consuming use at the mill, to one for the purpose of irrigation of the lands of plaintiff and the upper irrigators, which would consume all, or nearly all, of such water, so as to deprive defendant Peterson of the water to which he is entitled by virtue of his appropriation, namely, 3.09 second feet at the head of his ditch, limited to one-eightieth of one cubic foot per second per acre, or its equivalent in case of rotation, except during the months of July and August of each year.

And it is further ORDERED, ADJUDGED AND DECREED that if, after satisfying Peterson's needs, the Milling Company desires to make an arrangement with the upper irrigators,

for the change of use and place of use of the balance of the 25 second feet awarded to the Milling Company, and it can be done without prejudice to the rights of others, proper application should be made to the State Engineer in accordance with the provisions of Section 47-712, Oregon Code, 1930.

And it is further ORDERED, ADJUDGED AND DECREED that if it so desires, the Milling Company may, for short periods of time when it does not desire or need to use all or any part of the water to which it is entitled, allow the watermaster to distribute its water to the other users in accordance with their respective rights, but this arrangement must not interfere with the rights of Peterson, or must be done after his rights have been supplied.

And it further appearing to the court that Respondent has fully paid and discharged appellant's cost bill in the Supreme Court,

It is further ORDERED AND DECREED that Appellant's Cost Bill in the Supreme Court in the sum of \$235.50, is, and the same is hereby declared and decreed to be paid and discharged in full.

W. W. WOOD,
Circuit Judge.

A true copy. A. B. Combs, Jr., Co. Clerk.

STATE OF OREGON)
) SS
County of Marion)

I, CHAS. E. STRICKLIN, State Engineer of Oregon, do hereby certify that the foregoing copy of DECREE ON MANDATE has been compared with the original and that it is a full and correct copy of such decree as the same was received in this office and entered of record herein.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of September, 1939.

CHAS. E. STRICKLIN,
State Engineer

NOTICE OF WATER
RIGHT TRANSFER
APPLICATION NO. 4465

The Water Resources Director of Oregon has received and filed an application by William R. Lewis for approval, without loss of priority, of an additional point of diversion under a certain water right.

The affected water right is described by the certificate recorded at page 1515, Volume 2, State Record of Water Right Certificates, in the name of O.D. Thomlinson, and is for the use of not to exceed 4 cubic feet per second from March 1 to July 1 and 2 c.f.s. from July 1 to Oct 1, from North Powder River, under a priority date of 1890, for irrigation of a certain 40.0 ac in NE 1/4 SW 1/4, 40.0 ac in NW 1/4 SW 1/4, 40.0 ac in SW 1/4 SW 1/4 & 40.0 ac in SE 1/4 SW 1/4, Sec 23, T 6S, R 39E, WM.

The authorized point of diversion is located 740 ft N & 2145 ft W from the SE 1/4 Corner of Sec 28, being within the SW 1/4 SE 1/4 of Sec 28, T 6S, R 39E, WM (Harlan Sanders Ditch).

The applicant proposes to establish an additional point of diversion at a point located 1590 ft N & 1210 ft W from the SE Corner of Sec 22, being within the NE 1/4 SE 1/4 of Sec 22, T 6S, R 39E, WM.

Pursuant to ORS 540.520(2), a hearing is scheduled for 9:30 a.m. on Thursday, June 5, 1980, at the Baker County Courthouse, Baker, Oregon. Any objections to the proposed change must be prepared in writing: one copy to be served on the applicant at Box 69, North Powder, OR 97867; and one copy filed in the office of the Water Resources Director, Salem, OR 97310; and together with a \$10 filing fee, at least 10 days prior to the date set for hearing. Rules for filing objections will be furnished upon request.

IF NO OBJECTIONS ARE FILED, THE APPLICATION MAY BE APPROVED BY THE WATER RESOURCES DIRECTOR WITHOUT A HEARING.

Dated at Salem, Oregon this 7th day of April, 1980.

James E. Sexson,
Director

Legal No. 92
Publish: April 14, 1980

AFFIDAVIT OF PUBLICATION

Baker, Oregon, April 30, 1980

STATE OF OREGON,
County of Baker

ss.

I, Tricia Bevers, being first duly sworn, depose and say that I am the Principal Clerk of the Baker Democrat-Herald which is a Daily (except Sunday) newspaper of general circulation published in Baker, in said county and state; that such newspaper is made up of at least four pages of five columns each and of at least 17 3/4 inches in depth of type matter; that such newspaper was regularly and uninterruptedly published once each week for at least twelve consecutive months immediately preceding the first publication of the attached Legal Advertisement #92 Water Right Transfer, and has more than 200 bona fide subscribers within said county; that the Legal Advertisement

of which the one hereto attached is a true and correct copy as printed, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, once each week for one successive and consecutive time being published one times commencing with the issue dated the 14th day of April, 19, 80, and ending with the issue dated the 14th day of April, 19, 80, and that the dates of publication were April 14, 1980

Tricia Bevers

Subscribed and sworn to before me this 30th day of April, 19 80.

Shepherd Fuge
Notary Public for Oregon.

My commission expires September 8, 19 82.

RECEIVED
MAY 5 1980
WATER RESOURCES DEPT
BAKER, OREGON

OK
SAB