

B 108 Bend, City of
Bend, Ore

B-108

T 158

STATUS OF APPLICATION

Change in use; place of use + pt. of div
Date filed Dec. 29, 1958
Date returned for further data
Date application completed
Notice for publication mailed
Date notice published
Date of hearing
Place of hearing
Date of order 5-8-59 Vol. 10, page 79
Date of application of water 10-1-65
Proof mailed
Proof received
Certificate issued JUN 26 1966 Vol. 23, page 31685 WK

DESCRIPTION OF WATER RIGHT

Name of stream Tumalo Creek
Trib. of County of Deschutes
Use Irr.
Quantity of water No. of acres 77.2
Name of ditch Tumalo
Date of priority 1900
In name of
Tumalo Adjudication, Vol. 16, Page 191
App. No. Per No. Cert. No.
Certificate cancelled
Notation made on record by W. R. Can VR

FEES PAID

Date	Amount	Receipt No.
<u>12/29/58</u>	<u>25.00</u>	<u>20893</u>
<u>12/29/58 Pub.</u>	<u>30.00</u>	<u>20893</u>
Total		
	\$1 Cert. Fee	

FEES REFUNDED

Date	Amount	Check No.
<u>3-17-59</u>	<u>8.54</u>	<u>7572*</u>
<u>3-17-59</u>	<u>21.46</u>	<u>7573</u>

* Part - see B-109 refund

REMARKS

1974
TRANSFER TO ARCHIVES AFTER

Application for Transfer of Water Right

To the STATE ENGINEER OF OREGON:

I, City of Bend
(Name of applicant)

of Bend, County of Deschutes
(Postoffice)

State of Oregon, do hereby make application for change place of use

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

1. The source of present water right is Tumalo Creek & Deschutes River
(Name of stream)

2. The use to which the water is applied is Municipal Irrigation
(Irrigation; Mining; Power; Manufacturing; etc.)

3. The name of the ditch, canal or pipe line is Tumalo

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

corner of being within the
(Section or subdivision)

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

5. Give the number of acres irrigated in each smallest legal subdivision (40-acre tract). Only show the acreage which is being transferred. If the water is used for power, mining or other use, show 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
16	12	8				39.4												
16	12	9							37.8									

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

R.V. Gillispie - 39.4 (16-191) - 37.8 (16-191) 1907 R.V. Gillispie
(Attach separate sheet if necessary)

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

7. What is the priority date of your water right? June 1, 1907

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

of permit

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

10. Was your water right determined by State Engineer's order of Determination or Decree of Court?

..... If so, give title of proceedings Tumalo Creek Adjudication May 1, 1911
(Yes or No)

11. Is the water right recorded in your name? City of Bend
(If not, give name)

12. 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 $\frac{1}{4}$

(Attach separate sheet if necessary)

NOTE: Do not answer questions 13, 14, 15 and 16, if the application is not for change in point of diversion.

13. The proposed point of diversion is located 464.28 ft. N and 538.69 ft. W from the E corner of SE $\frac{1}{4}$ being within the NE $\frac{1}{4}$ of Section 7 Tp. 18 R. 10 E. W. M.,
(Smallest legal subdivision) (N. or S.) (E. or W.) (No. N. or S.) (No. E. or W.)
in the county of Deschutes The name of the ditch to be used is Columbia Southern

14. Are you the owner of the land on which the proposed point of diversion is to be located? No

15. 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.

16. Are there any diversions between your present point of diversion and the proposed point of diversion?

NOTE: Do not answer questions 17 and 18 if application is for change in point of diversion only.

17. Are the lands from which you propose to transfer your water right free of all encumbrances, including taxes, mortgages, liens, etc.? Yes
(Answer Yes or No)

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

NATURE OF ENCUMBRANCE	HELD BY	AMOUNT

19. Reasons for the proposed changes are Needed in the City of Bend for Municipal use.

AFFIDAVIT OF APPLICANT

STATE OF OREGON,

County of Deschutes

ss.

I, Walter T. Thompson- City Manager, 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 26th day of December, 1958

W. T. Thompson City Manager
(Name of applicant)

Subscribed and sworn to before me this 26th day of December, 1958

[Notarial Seal]

Larry A. English
NOTARY PUBLIC FOR OREGON

My commission expires July 2, 1959

Remarks Contract with Deschutes County Municipal Improvement District date of December 12, 1957

State Engineers office has map of City Water intake.

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.

Application for Transfer of Water Right

Name of
applicant

Date filed

Date returned for further data

Date application completed

Date notice published

Date of hearing

Place of hearing

Date of final order
of State Engineer

Date of issuance of certificate
confirming change

Recorded in State Record of Water Right Certificates,
volume, page

Fees paid

Receipt No.



NOTICE OF FILING
APPLICATION FOR A CHANGE
IN USE, PLACE OF USE
AND POINT OF
DIVERSION OF WATER

Notice is given hereby that the City of Bend has filed an application for the approval of a change in use, place of use and point of diversion of water from Tumalo Creek.

The Deschutes County Municipal Improvement District has a water right from Tumalo Creek for the irrigation of 12.2 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$, 15.3 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$ and 12 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 35, T. 16 S., R. 11 E., W.M., with a date of priority of Sept. 1900, and 11 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$, said Sec. 35, with a date of priority of April 28, 1905, and 2 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$, said Sec. 35, with a date of priority of May 27, 1907, and 39.4 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 8 and 37.8 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 9, T. 16 S., R. 12 E., W. M., with a date of priority of June 1, 1907. These lands are irrigated thru either the Tumalo Feed Canal or the Columbia Southern Canal, the point of diversion of the Tumalo Feed Canal being within SW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 23, T. 17 S., R. 11 E., W.M., and the point of diversion of the Columbia Southern Canal being within NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 2, T. 18 S., R. 10 E., W.M.

The City of Bend, Ore., proposes to transfer the water rights for the irrigation of the lands above described, to that of municipal purposes within the corporate limits of the City of Bend and surrounding territory served by its water supply pipeline and to divert the water at the City of Bend's intake from Tumalo Creek located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 7, T. 18 S., R. 10 E., W.M.

All persons interested are notified hereby that a hearing will be held in the county courthouse at Bend, Ore., on April 23, 1959, beginning at 9:30 A.M. All objections to the proposed changes, if any there are, will be heard at said time and place. Any objections shall be prepared in writing, one copy to be served on the City of Bend, Bend, Ore., and one copy filed with the State Engineer, Salem, Ore., together with a \$2 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 State Engineer without a hearing.

Dated at Salem, Ore., this 24th day of February 1959.

LEWIS A. STANLEY,
State Engineer

70-76-S2-C

Affidavit of Publication

STATE OF OREGON, COUNTY OF DESCHUTES,—ss.

I, Nell Wescoatt, being first duly sworn, depose and say that I am the Principal Clerk of the Publisher of The Bend Bulletin, a newspaper of general circulation printed and published at Bend in the aforesaid county and state, as defined by ORS 193.010 and ORS 193.020, that.....

Notice of Filing Application for a Change in Use,

Place of Use and Point of Diversion of Water

a printed copy of which is hereto annexed, was published in the entire issue of said newspaper for.....three.....successive and consecutive weeks in the following issues: February 27, March 6, 13, 1959

Subscribed and sworn to before me this.....13th.....day

of.....March....., 1959.

Mary Damon

Notary Public for Oregon

(My Commission Expires.....10/24/62.....)

C O N T R A C T

THIS AGREEMENT made and entered into between the City of Bend, a MUNICIPAL CORPORATION and political subdivision of the State of Oregon, hereinafter called the City, and Deschutes County Municipal Improvement District, a Municipal corporation of the State of Oregon, hereinafter called the District,

WITNESSETH:

THAT WHEREAS the City, in order to obtain an additional water supply from Tumalo Creek for domestic use for its inhabitants is purchasing the following described premises located within the County of Deschutes, State of Oregon, more particularly described as follows:

The Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section Eight (8), and the Southwest Quarter of the Northwest Quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section Nine (9), both in Township Sixteen (16) South, Range Twelve (12) East of the Willamette Meridian, Deschutes County, Oregon,

AND WHEREAS the above described lands lie within the District, which is an irrigation district, organized and existing under and by virtue of the laws of the State of Oregon, and which lands have a water right appurtenant to the respective tracts in the aggregate amount of 77.2 acres and are subject to levy and assessment for the operation and maintenance of the District and the payment of outstanding indebtedness including outstanding bonds.

That the District through its irrigation system is required to maintain a system sufficient to furnish water to its residents and that the revenue to be derived from the lands within its boundaries including the lands hereinabove specifically described for the furnishing of water thereto is necessary for the operation and maintenance of the District and the releasing or transferring of the water right appurtenant to the above lands to the City would decrease the revenue of the District but would not decrease the maintenance and operation expense and in order to maintain the District so as to be able to furnish water to all the lands requiring water under the District's irrigation system it is necessary to maintain an acreage as large as the present acreage within the District including the lands hereinabove specifically described.

AND WHEREAS it is the desire of the City to transfer the water rights appurtenant to the lands hereinabove specifically described from said lands and apply the same for domestic use for the inhabitants of the City; the effect of which transfer would remove the water rights from said lands and leave the same dry and they would, therefore, no longer be subject to assessment for the payment of operation and maintenance expenses and outstanding obligations and indebtedness including bonds, and that to release these lands from the obligation of the payments of said outstanding indebtedness including bonds would result in an increased burden on the balance of the lands in the District for the payment thereof.

NOW, THEREFORE, IT IS HEREBY MUTUALLY UNDERSTOOD AND AGREED that the City does hereby specifically undertake and agree with the District that it will perpetually pay to the District a like amount per irrigable acre for all the water transferred from the above described premises each year as is assessed or levied against the balance of the acreage within the District for the payment of operation and maintenance and the payment of outstanding indebtedness, including outstanding bonds and for replacements and capital repairs, but in no event shall the City be required to pay any greater sum per acre of water right transferred to it than shall be charged and paid by any

other irrigable acre of land within the District for any of the purposes set out in this paragraph or otherwise; such payments to be made upon presentation of a statement of the amount to the City by the District during the months of January and July of each year.

In consideration of the foregoing, the District does hereby agree to approve such transfer and to execute such instruments as may be necessary to make and execute for said transfer; provided, it is understood by both the parties hereto that this agreement is conditioned upon the approval of such transfer by the State Engineer of the State of Oregon, with which approval this agreement shall be considered as of no force and effect.

IT IS FURTHER UNDERSTOOD AND AGREED that if and when such transfer of water rights shall be made from said described lands and tracts, the District shall thereafter be under no obligation to furnish any water to any part of said land, but until said transfer is actually made and the water rights removed or transferred to the City, the City may demand and receive water therefor, if the same shall be put to farming use by the City or its tenants.

IN WITNESS WHEREOF THE CITY OF BEND has caused this contract to be signed by its duly authorized officers, this 12th day of December, 1957 by Resolution duly adopted and the DESCHUTES COUNTY MUNICIPAL IMPROVEMENT DISTRICT has caused this contract to be signed by its duly authorized officers this 12th day of December, 1957, by Resolution duly adopted.

CITY OF BEND:

by Web Loy
Mayor

Attest: by Julia S. Johnson
City Manager Recorder

Attest: W. T. Thompson
City Recorder. Manager

DESCHUTES COUNTY MUNICIPAL IMPROVEMENT DISTRICT

by Geo. J. Heilman
President

by James S. Frakes
Secretary

STATE OF OREGON :
County of Deschutes: ss.

On this 12th day of December, 1957, before me appeared Web Loy and Walter T. Thompson, both to me personally known, who being duly sworn did say that he, Web Loy is the Mayor, and he, the said Walter T. Thompson did say that he, Walter T. Thompson is the City Manager of the City of Bend, the within named Municipal Corporation and that the seal affixed to said instrument is the corporate seal of said City of Bend, and that the said instrument was signed and sealed in behalf of said Corporation by authority of its City Commission, and the said Web Loy and Walter T. Thompson acknowledged said instrument to be the free act and deed of said Corporation.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my official seal on the day and year last above written.

Gerryle English
Notary Public for Oregon
My Commission Expires: July 2, 1959.

STATE OF OREGON :
County of Deschutes: ss.

On this 12th day of December, 1957, before me appeared Geo. J. Heilman and James S. Frakes, both to me personally known, who being duly sworn did that he, the said Geo. J. Heilman is the President, and he, the said James S. Frakes is the Secretary of Deschutes County Municipal Improvement District, the within named Corporation, and that the seal affixed to said instrument is the corporate seal of said Corporation, and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said Geo. J. Heilman and

EX-107-4
said James S. Frakes and _____ acknowledged
said instrument to be the free act and deed of said Corporation.

IN WITNESS WHEREOF I have hereunto set my hand an official seal,
on the day and year last above written.

W. H. De Remond

Notary Public for Oregon

My Commission Expires: 1/10/61.

BEFORE THE STATE ENGINEER OF OREGON

Deschutes County

IN THE MATTER OF THE APPLICATION)
OF THE CITY OF BEND, OREGON, FOR)
THE APPROVAL OF A CHANGE IN USE,)
PLACE OF USE AND POINT OF DIVER-)
SION OF WATER FROM TUMALO CREEK)
AND A CHANGE IN PLACE OF USE OF)
WATER FROM DESCHUTES RIVER.)

ORDER

APPROVING APPLICATION

On December 29, 1958, the City of Bend, Oregon, filed an application in the office of the State Engineer for the approval of a change in use, place of use and point of diversion of water from Tumalo Creek and a change in place of use of water from Deschutes River pursuant to the provisions of ORS 540.510 to 540.530.

In the adjudication proceedings determining the relative rights to the use of the waters of Tumalo Creek and its tributaries a water right was established for the irrigation of 39.4 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 8 and 37.8 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 9, Township 16 South, Range 12 East, W. M., with a date of priority of June 1, 1907. These lands are irrigated through either the Tumalo Feed Canal or the Columbia Southern Canal, the point of diversion of the Tumalo Feed Canal being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 23, Township 17 South, Range 11 East, W. M., and the point of diversion of the Columbia Southern Canal being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 2, Township 18 South, Range 10 East, W. M. The right to the use of water from Tumalo Creek for the irrigation of these lands is limited to a rate of flow of one-seventieth of one cubic foot per second per acre and the quantity of water diverted during the irrigation season from April 15 to October 15 of each year is limited to a diversion of not to exceed 1.8 acre feet per acre.

In the Deschutes River adjudication proceedings the Deschutes County Municipal Improvement District was adjudicated a right to the use of 9.5 cubic feet per second of the waters of Deschutes River with a date of

priority of 1905, which right was made appurtenant to all lands within the district.

The district has made proof of application of water to a beneficial use under Permits Nos. 624 and 19628 for supplemental supply for the irrigation of, among other lands, the lands involved herein. Permit No. 624 is for the use of water stored in Crescent Lake Reservoir and Permit No. 19628 is for the use of water from Tumalo, Crater and Little Crater Creeks and three spring branches.

An agreement dated December 12, 1957 between the City of Bend and Deschutes County Municipal Improvement District provides that the right to the use of water from Tumalo Creek only for the irrigation of 77.2 acres is to be transferred to the City of Bend for municipal purposes. The agreement further provides that the City of Bend will perpetually pay to the Deschutes County Municipal Improvement District the annual assessments for operation and maintenance, the payment of outstanding indebtedness including outstanding bonds, and for replacements and capital repairs on the basis of 77.2 acres, each acre to be assessed equally as all other lands within the district are assessed.

It is the desire of the district to divest the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 8 and SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 9, Township 16 South, Range 12 East, W. M., of all remaining water rights. That part of the 9.5 cubic feet per second right from Deschutes River appurtenant to the above lands is to be transferred to the remaining lands within the district and that part of the right from Tumalo, Crater and Little Crater Creeks and three spring branches under Permit No. 19628 and storage from Crescent Lake Reservoir under Permit No. 624 for supplemental irrigation of said lands is to be eliminated from the certificates of water right being issued to the district.

The applicant herein, owner of 77.2 acres described in the second paragraph herein, proposes to transfer the water right from Tumalo Creek with a date of priority of June 1, 1907 for irrigation purposes to that of municipal use within the corporate limits of the City of Bend, Oregon and surrounding territory served by its water supply pipeline and to divert the water at the City of Bend's intake from Tumalo Creek in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 7, Township 18 South, Range 10 East, W. M.

Notice of the filing of the application was given by publication setting forth a time and place certain for hearing objections to the proposed change in use, place of use and point of diversion of water, if any there were, namely: at the county courthouse in Bend, Oregon on April 23, 1959, beginning at 9:30 o'clock a.m. The notice was published in the Bend Bulletin, a newspaper printed and having general circulation in Deschutes County, Oregon, for a period of three weeks in the issues of February 27, and March 6 and 13, 1959. The date set for hearing in said notice was not less than thirty days after the last publication of the notice.

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

NOW, THEREFORE, it hereby is ORDERED that the water right from Tumalo Creek hereinbefore described as appurtenant to 39.4 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 8, and 37.8 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 9, Township 16 South, Range 12 East, W. M., with a date of priority of June 1, 1907, be severed therefrom and simultaneously and without loss of priority transferred to the City of Bend, Oregon for municipal use within the corporate limits of the said city and surrounding territory served by its water supply

pipelines and said water shall be diverted at the City of Bend's intake from Tumalo Creek located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 7, Township 18 South, Range 10 East, W. M.

It is FURTHER ORDERED that the water so transferred shall be applied to beneficial use by the City of Bend, Oregon, on or before October 1, 1965 or within such extension of time as may be granted by the State Engineer for good cause shown.

138.96
It is FURTHER ORDERED that the quantity of water heretofore used for the irrigation of 77.2 acres from Tumalo Creek described in paragraph 7 hereof and by this order transferred to municipal purposes by the City of Bend, Oregon, shall be limited to a maximum diversion of 1.103 cubic feet per second, beginning on April 15 and ending on October 15 of each year, and the total quantity diverted during said period shall not exceed ~~129.96~~ acre feet, measured at the existing meters in the city's parallel pipelines.

It is FURTHER ORDERED that that part of the right to the use of 9.5 cubic feet per second of the waters of Deschutes River with a date of priority of 1905, appurtenant to the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 8, and the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 9, Township 16 South, Range 12 East, W. M., be severed therefrom and simultaneously and without loss of priority transferred to the remaining lands having water rights within the Deschutes County Municipal Improvement District.

It is FURTHER ORDERED that the right to the use of water from Tumalo Creek, Crater and Little Crater Creeks and three spring branches under Permit No. 19628, and water stored in Crescent Lake Reservoir under Permit No. 624, for the irrigation of the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 8, and the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 9, Township 16 South, Range 12 East, W. M., be eliminated from the certificates of water right in the process of being issued to the Deschutes County Municipal Improvement District, now Tumalo Irrigation District.

It is FURTHER ORDERED that upon receipt of proof satisfactory to the State Engineer of application of water to beneficial use for municipal purposes within the corporate limits of the City of Bend, Oregon, and surrounding territory served by its water supply pipelines, a certificate of water right shall be issued to the City of Bend, Oregon, to the extent to which the water has been used beneficially.

Dated at Salem, Oregon this 8th day of May, 1959.

/s/ Lewis A. Stanley

LEWIS A. STANLEY
State Engineer