

B 109 Bend City of Bend, Ore

159

B-109

STATUS OF APPLICATION

Change in use; place of use & pt. of div.
 Date filed Dec. 29, 1959
 Date returned for further data _____
 Date application completed _____
 Notice for publication mailed _____
 Date notice published _____
 Date of hearing _____
 Place of hearing _____
 Date of order 5-13-59 Vol. 10, page 84
 Date of application of water 10-1-65
 Proof mailed _____
 Proof received _____
 Certificate issued JUN 26 1964 Vol. 23, page 31665 WAC

DESCRIPTION OF WATER RIGHT

Name of stream Tumalo Creek
 Trib. of _____ County of Deschutes
 Use Irrigation
 Quantity of water _____ No. of acres 52.5
 Name of ditch Tumalo
 Date of priority 1900
 In name of _____
 _____ Adjudication, Vol. _____, Page _____
 App. No. _____ Per No. _____ Cert. No. _____
 Certificate cancelled _____
 Notation made on record by WAC WR

FEES PAID

Date	Amount	Receipt No.
12/30/58	25-	20903
12/30/58 <u>Pub.</u>	30-	20903
Total		
	\$1 Cert. Fee	

FEES REFUNDED

Date	Amount	Check No.
3/17/59	26.95 <u>→ to B-110</u>	C.T.7
3-17-59	3.05	7572*

* Part - see B-108 refund to city

REMARKS

Cert 31665 confirms this order

Trans B-109 completed on All Certificate

TO BE ENTERED WHERE CHECKED

INDEX CARDS:	Entered	Checked
Name		
Stream		
Pt. of Div.		
Calendar		
CHECKED TO RECORDS:		
Twp. & Rge.	WAC	
Decree-vault	WAC	
Decree-safe	WAC	
Cert. of W/R	WAC	
Per. Folder		
Chainindex		
Cross Ref.		
Power Claim		
Abstracts		

1974
TRANSFER TO ARCHIVES AFTER

Note:

2 ac. SWSE⁴, Sec. 11, T. 17 S, R 11 E, WM

from which the water is being
transferred has a date of
priority of April 28, 1905 and
not May 27, 1907
as described in order

transferred to

2 ac. NE⁴ NW⁴, Sec. 36, T. 16 S, R 11 E

(above - Vol. 6 p. 208)

Subsequently the 2 ac. was transferred

to SE⁴ SE⁴, Sec. 35, T. 16 S, R 11 E

(Vol 10 p 1) amended order

for final div see B-109

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 Section or subdivision 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	11	35													12.2	15.3	25.0	
															Sept. 1900		12 - Sept. 1900	
																	2 - 5/27/1907	
																	11 - 4/28/1905	

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

(Attach separate sheet if necessary)

These rights by
transfer - V. 10 p. 1

6. Are you the legal owner of the above described lands? No

(If not owner, explain your interest)

Owned by Deschutes County Municipal Improvement District

7. What is the priority date of your water right? 39.5 acres-Sept. 1900; 11.0 acres-April 28, 1905;
2.0 acres-May 27, 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

11. Is the water right recorded in your name?Deschutes County Municipal Improvement District
(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.)

[illegible]

(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 S.E. 1/4 being within the N.E. 1/4 of Section 7 Tp. 18 R. 10 E. W. M. in the county of Deschutes. The name of the ditch to be used is Tumalo Creek.

14. Are you the owner of the land on which the proposed point of diversion is to be located?

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, Manager of the City of Bend, 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 23rd day of December, 1958.

City of Bend

(Name of applicant)

W. T. Thompson
City Manager

Subscribed and sworn to before me this 23rd day of December, 1958.

[Notarial Seal]

Harry G. English
NOTARY PUBLIC FOR OREGON

My commission expires July 2, 1959

Remarks Contract with Deschutes County Municipal Improvement District dated

November 17, 1958

State Engineer's 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.

C O N T R A C T

THIS AGREEMENT, Made and entered into this 17th day of NOVEMBER 1958, by and between DESCHUTES COUNTY MUNICIPAL IMPROVEMENT DISTRICT, a Municipal Corporation, hereinafter called the "District", and CITY OF BEND, a Municipal Corporation and Political Subdivision of the State of Oregon, hereinafter called the "City",

W I T N E S S E T H :

THAT, WHEREAS, The District is an irrigation district, situated in Deschutes County, Oregon, and is the owner of the following described lands, together with vested water rights appurtenant thereto, in the amount of approximately 52.5 acres, to-wit:

NE1/4 SE1/4, Section 35	12.2 Acres
NW1/4 SE1/4, Section 35	15.3 Acres
SE1/4 SE1/4, Section 35	25.0 Acres

All in Township Sixteen (16) South, Range Eleven (11), E. W. M.,
Deschutes County, Oregon

Water to supply said lands with water under rights as above stated, being from the natural flow of Tumalo Creek, and

WHEREAS, The City is in need of additional water from Tumalo Creek with which to supply its inhabitants with water for municipal use, and is desirous of purchasing from the District the above described lands with the water right appurtenant thereto as hereinabove set forth, and transferring the place and manner of use of said water from an irrigation right to a municipal right for the City, to be diverted from Tumalo Creek by the City through its pipeline.

NOW, THEREFORE, It is mutually understood and agreed by and between the parties hereto, that the District will and does hereby agree to sell the above described premises, together with the water right appurtenant thereto to the City for the sum of TEN THOUSAND FIVE HUNDRED (\$10,500.00) DOLLARS, payable upon the execution of this contract.

It is further agreed that said purchase price above set forth is figured on a price of TWO HUNDRED (\$200.00) DOLLARS per acre of water right, and that, if the quantity thereof is changed while this agreement is in force, the parties agree to adjust the dollar figure to conform to the \$200.00 per acre of water right base figure.

It is further understood and agreed by and between the parties hereto that the District, through its irrigation system, is required to maintain a system sufficient to furnish water for irrigation in accordance with the amount of water per acre required and allotted under the Decree of the Circuit Court of the State of Oregon for Deschutes County, for approximately 6,800 acres of land, and that the revenues thereby derived from the said lands within the District, including the lands hereinabove described, are necessary for the operation and maintenance of said District, and for rehabilitation, repair or any indebtedness which the District now owes, and that in order to maintain the District so as to be able to furnish water to all the lands under its irrigation system, it is necessary that the District retain revenue for the water rights hereinabove described; the City, therefore, agrees, as a part of the consideration of this contract and transfer of said water right and land, to perpetually pay to the District a like amount per irrigable acre for all of the water right transferred from the above described premises, each year as is assessed and levied against the balance of the acreage within the District, for the payment of operation and maintenance and other expenses of the District as may now exist or may hereafter arise, but in no event shall the City be required to pay any greater sum per acre on the above described water right to be transferred to it than shall be charged and paid on any other irrigable acre of land within the District for any of the purposes set forth in this paragraph; such payments to be made upon the presentation of a statement by the District to the City during the months of January and July of each year.

As further consideration, the City does hereby covenant and agree that upon the completion of the transfer of the Tumalo Creek water right for the 52.5 acres to it by the District through and with the approval of the State Engineer of the State of Oregon, it will reconvey to the District by quitclaim deed all of the above described lands.

It is further understood and agreed, and the City does hereby particularly agree, that upon the execution of this contract by the City and the District, the City will forthwith make application to the State Engineer of the State of Oregon to have the said water rights transferred from an irrigation right for said lands to a municipal right to be diverted through the pipeline of the City. The District agrees that it will join in an application to transfer the right from an irrigation right to one for municipal

use, and execute any instruments that will expedite the transfer.

IT IS FURTHER UNDERSTOOD AND AGREED That the City shall only receive by such transfer the Tumalo Creek water rights aforesaid and all permit rights appurtenant to said lands shall be transferred back to said District and the City agrees to execute such instruments as may be necessary to make and effectuate such transfer of permit rights back to said District.

It is understood by both parties hereto, that this agreement is conditioned upon the approval by the State Engineer of the State of Oregon, without which approval this agreement shall be considered as of no force or effect.

SIGNED In duplicate by the "District," by its President and Secretary this 17 day of November, 1958, by authority of and pursuant to a resolution duly adopted by the Board of Directors of the "District" on this 17 day of November, 1958.

DESCHUTES COUNTY MUNICIPAL IMPROVEMENT DISTRICT

By: Geo. Heilman President.

By: James S. Frakes Secretary.

SIGNED in duplicate by the "City," by its Mayor and City Recorder this 17 day of November, 1958, by authority of and pursuant to a resolution duly adopted by the City Commission of the "City" on this 16th day of May, 1958.

CITY OF BEND

By: M. L. Rogers Mayor.

By: Julia S. Johnson City Recorder.

STATE OF OREGON)
ss.

County of Deschutes)

On this 17 day of November, 1958, before me appeared Geo. Heilman and James S. Frakes, both to me personally know, who, being duly sworn, did say that he, the said Geo. 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 Geo. Heilman and James S. Frakes acknowledged said instrument to be the free act and deed of said Corporation.

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

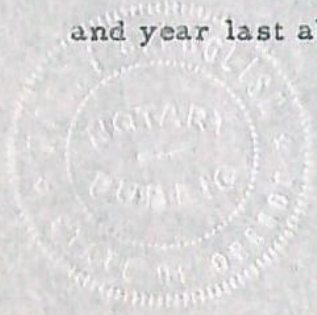
John W. Copehaver
Notary Public for Oregon

My Commission expires 12/16/59

STATE OF OREGON)
 : ss.
County of Deschutes)

On this 3rd day of NOVEMBER, 1958, before me appeared M. L. ROGERS and JULIA S. JOHNSON, both to me personally known, who, being duly sworn, did say that he, the said M. L. Rogers is the Mayor, and she, the said Julia S. Johnson is the City Recorder of the CITY OF BEND, a Municipal 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 City Commission, and M. L. ROGERS and JULIA S. JOHNSON acknowledged said instrument to be the free act and deed of said Corporation.

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


Harry A. English
Notary Public for Oregon
My Commission expires July 2, 1959

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.

(a) 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 12.2 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and 15.3 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 35, Township 16 South, Range 11 East, W. M., with a date of priority of September 1900, and 25 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, said Section 35, of which 12 acres have a date of priority of September 1900, 11 acres have a date of priority of April 28, 1905 and 2 acres have a date of priority of May 27, 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 November 17, 1958 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 52.5 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 52.5 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 land from which the water is being transferred 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 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 52.5 acres described in the second paragraph herein, proposes to transfer the Tumalo Creek water right appurtenant thereto 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 12.2 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and 15.3 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 35, Township 16 South, Range 11 East, W. M., with a date of priority of September 1900, and 25 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, said Section 35, of which 12 acres have a date of priority of September 1900, 11 acres have a date of priority of April 28,

1905 and 2 acres have a date of priority of May 27, 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.

It is FURTHER ORDERED that the quantity of water heretofore used for the irrigation of 52.5 acres from Tumalo Creek described in paragraph 2 hereof and by this order transferred to municipal purposes by the City of Bend, Oregon, shall be limited to a maximum diversion of 0.75 cubic foot 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 94.5 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 NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 35, Township 16 South, Range 11 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 NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 35, Township 16 South, Range 11 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 13th day of May, 1959.

/s/ Lewis A. Stanley

LEWIS A. STANLEY
State Engineer