

June 5, 1933.

Mr. B. E. Stoutenyer, District Counsel,
Bureau of Reclamation,
603 Post Office Building,
Portland, Oregon.

Dear Sir:

This is in reply to your letter of May 31st, pertaining to Permit No. 408, in which you state that Mr. Houghton believes a certificate should be limited to the amount of 350 cubic feet per second instead of 200. In view of the fact that the canal capacity is rated at 350 cubic feet per second, and probably the district may desire to appropriate its maximum capacity at times, I believe that the certificate may reasonably be limited in that amount. We will therefore issue a certificate limiting the maximum appropriation to 350 cubic feet per second with the further limitation that the appropriation shall not exceed 2 acre feet per acre during any thirty day period and shall not exceed 10 acre feet per acre throughout the irrigation season.

Unless we are requested otherwise it will be assumed that this is satisfactory and a certificate will be issued with such limitation when the next group of certificates are prepared.

Very truly yours,

CHAS. E. STRICKLIN,
State Engineer.

By

V. S. Bovelle, Assistant.

VSB:LN

UNITED STATES
DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION
603 Postoffice Building
Portland, Oregon
May 31, 1933

STATE ENGINEER
RECEIVED

JUN 1 1933

SALEM, OREGON

Mr. Chas. E. Stricklin,
State Engineer,
Salem, Oregon.

Dear Mr. Stricklin:

Referring to your letter of May 25 in regard to Permit No. 408, please find enclosed copy of letter of May 29 from Mr. A. C. Houghton, secretary of the West Extension Irrigation District.

We hope that you will find it possible to issue the certificate for the 350 second feet as suggested in Mr. Houghton's letter. If that is impossible, I believe it would be best to extend the time on the permit for another 5 years.

We do not think it is probable that the canal will be enlarged, but we do think that it is reasonable to expect that the full 350 c.f. capacity of the present canal will be used as there is plenty of land under the ditch to take that amount of water under the soil conditions prevailing in that section.

Very truly yours,

B. E. Stoutemyer
B. E. Stoutemyer
District Counsel

encl.

(Copy)

WEST EXTENSION IRRIGATION DISTRICT

Irrigon, Oregon

May 29, 1933

Mr. B. E. Stoutemyer, District Counsel,
U. S. Bureau of Reclamation,
Portland, Oregon.

Dear Mr. Stoutemyer:

Acknowledging your letter of May 27th with
enclosure of letter to you from Mr. Stricklin,
State Engineer.

The District makes the suggestion that the
proposal as stated by Mr. Stricklin would be satis-
factory except that if consistent it be changed to read,

"The total appropriation shall be limited
to 350 cubic feet per second of water of
continuous flow and shall not exceed 10
acre feet for each acre irrigated throughout
the irrigation season."

The main point, as we see it, is covered anyway in
the last portion of limitation to the 10 acre feet
per acre irrigated.

However, we offer no objection to the limitation
of the 200 cubic feet, but through former correspondence
gathered that the limitation might be placed at the
capacity of the canal, or 350 cubic feet per second.

Very truly yours,

(Sgd) A. C. Houghton

Secretary

May 25, 1933

Mr. B. E. Stoutemyer, District Counsel
Bureau of Reclamation
603 Postoffice Building
Portland, Oregon

Dear Mr. Stoutemyer:

In view of your letter of May 16, in regard to Permit No. 408, I presume a water right certificate should be issued in confirmation of the permit and we have made a study to determine what limitation on the use of water should be placed in the certificate.

Our records of measurements made on the West Extension Canal indicate that the maximum diversion which has been made during the past five years is 197 cubic feet per second. These measurements also indicate that the total quantity appropriated during the past four years has averaged between 11.8 and 14 acre-feet per acre at the point of diversion. I note Mr. Houghton in his affidavit states that the average ditch loss through evaporation and seepage amounts to 20% and 25%. We have decided upon a tentative limitation and it will be appreciated if you will advise me at your early convenience if you believe that the following limitation will be satisfactory:

"The total appropriation shall be limited to 200 cubic feet per second of water of continuous flow and shall not exceed 10 acre-foot per acre for each acre irrigated throughout the irrigation season."

200 cubic feet of water flowing continuously is equivalent to approximately 12,000 acre feet for a thirty-day period. Allowing an average loss of 20% to 25% this would amount to approximately 2 acre-feet per acre in each thirty-day period.

If this limitation appears satisfactory we will be glad to issue a certificate in the near future confirming the permit in that amount of water. If you believe that any changes should be made in the limitation, kindly advise.

Very truly yours

CHAS. E. STRICKLIN
State Engineer

By V. S. Bovelie, Ass't.

VSB EL

200 cu ft per second

400 acre feet per day

12,000 acre feet per ~~month~~ 30 day period

+25% loss or 20%

9,000 acre feet per 30 day period

4,879

= 1.8 feet per acre per 30 day period

5.5 months = 10 feet per acre.

$$\begin{array}{r} 1.8 \overline{) 10.0} \\ \underline{9 \ 0} \\ 10 \ 0 \end{array}$$
$$\begin{array}{r} 1.8 \overline{) 9000} \\ \underline{4879} \\ 41210 \\ \underline{39032} \end{array}$$

Matilla West Extension Canal
Quage (as shown by proof) 4,879.—

Acre feet appropriated:		Acre feet per Acre	
1929 —	57,000 — — — —	11.6 +	
1930 —	51,000 — — — —	10.4 +	
1931 —	59,000 — — — —	12.0 +	
1932 —	68,700 — — — —	14.0 +	

Seepage & evaporation loss 20 to 25%
according to Houghton's affidavit—

Capacity of canal 350 sec. ft.

Maximum diversion 197 sec. ft.

Average " 81.4 sec. ft.

200 sec. ft.
100 sec. ft. per acre

May 4, 1935

Mr. B. E. Stoutemyer.
District Counsel
605 Post Office Building
Portland, Oregon

Dear Sir:

Your letter of April 14, with which you submitted an affidavit from Mr. A. C. Houghton in connection with Permit No. 408, has been received.

Judging from the last paragraph of Mr. Houghton's affidavit which states "Any future development of lands within this District will of necessity be of lands which are 95% sandy and porous and even to irrigate the best of the lands under the main canal would require the full capacity of the present main canal", it would appear that the District contemplates the irrigation of additional lands in the future. If this is true it would seem that an application for an extension of time should be made rather than to submit final proof at this time.

A water right certificate can only confirm the right under the permit to the extent that the appropriation has been completed at the time of making final proof, and if additional lands are to be placed under water in the future it would be necessary to make a new application for permit in order to obtain a right to appropriate water for such lands if final proof is made at this time.

Since Mr. Houghton's affidavit indicates that future development is planned, I believe that action under the permit should be suspended until we have heard from you further. If it is desired to submit an application for an extension of time we will be glad to send you the necessary forms, or the application may be prepared in the form of a letter stating the amount of time which it is believed will be necessary to finally complete the full development of the project.

Very truly yours

CHAS. E. STRICKLIN
State Engineer

VSB EL

By V. S. Bovelie, Ass't.

UNITED STATES
DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION
603 Postoffice Building
Portland, Oregon
April 14, 1933

STATE ENGINEER
RECEIVED

APR 15 1933

Mr. Chas. E. Stricklin,
State Engineer,
Salem, Oregon.

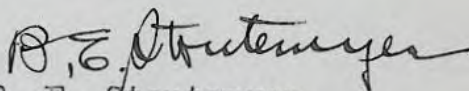
SALEM, OREGON

Dear Mr. Stricklin: Re - Permit 408, Umatilla Project.

Referring to the conference at our office on April 6 with regard to proof under Permit No. 408, which covers a filing on the waters of the Umatilla River:

In compliance with your suggestion that it might be well to make a showing as to the large amount of water necessary to irrigate lands of the character of those under the canal of the West Extension Irrigation District, we have taken up the matter with the manager of that district and are enclosing affidavit by A. C. Houghton, secretary and manager of the West Extension Irrigation District, which I believe covers the point which you had in mind.

Very truly yours,


B. E. Stoutemyer
District Counsel

encl.

ENGINEER
RECEIVED

MAR 21 1933

SALEM, OREGON

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

603 Postoffice Building,
Portland, Oregon, March 20, 1933.

Mr. Chas. E. Stricklin
State Engineer,
Salem, Oregon.

Permit 408 - Umatilla Project

Dear Mr. Stricklin:

On January 20 we wrote you our views as to the effect of - In re waters of Walla Walla River (16 Pac.(2) 939) - upon your action with respect to our permit No.408, Umatilla Project.

We have assumed that your letter of January 23, in which it is stated:

"Action under this permit has been suspended until we hear from you further as indicated in Mr. Coshow's letter of January 18"

was written before our letter of January 20 reached your office, but not having had any further word from you we are wondering if our letter mentioned has gone astray.

I shall be pleased to hear if you have received our letter of January 20.

Very truly yours

B. E. Stoutmeyer
B. E. STOUTMEYER
District Counsel

March 21, 1933.

Mr. B. E. Stoutemeyer, District Counsel,
United States Reclamation Commission,
Department of the Interior,
605 Post Office Bldg.,
Portland, Oregon.

Dear Mr. Stoutemeyer:

This will acknowledge receipt of your letter of March 20th relative to the final proof on Permit No. 408, and also your letter of January 20th. I had delayed answering this letter hoping that I would have an opportunity to discuss this with you in person but have not been in Portland since receipt of same.

There are many elements involving the issuance of a certificate allowing the quantity of water you have requested which I would appreciate having the opportunity to discuss with you. I assure you that it is the desire of this office to cooperate with you in every way possible and the only obstacle in the way of increasing the amount set forth in your permit, is our statute and decisions of our courts.

You understand of course, that this right was not initiated under the 1905 law which was interpreted in the in re Umatilla case. It has been the opinion in this office that the 1905 act was repealed by implication upon the passage of the 1909 Water Code. If this is the case we have not been operating under the 1905 act.

I expect to be in Portland within the next week or ten days and will call at your office for a further discussion in this matter.

Yours very truly,

CES/mvb

CHAS. E. STRICKLIN,
STATE ENGINEER

January 25, 1933

Mr. B. E. Stoutemyer
District Counsel
603 Post Office Building
Portland, Oregon

Dear Sir:

Re: Permit 408 - Umatilla Project.

We are in receipt of a remittance from the West Extension Irrigation District in the sum of \$1.00 as the fee due for recording the water right certificate under your Permit No. 408 in the county records. I am inclosing my receipt No. 15909 to you as you may desire to file it in your records. If not, you may kindly forward it to the West Extension Irrigation District.

Action under this permit has been suspended until we hear from you further as indicated in Mr. Coshov's letter of January 18.

Very truly yours

CHAS. E. STRICKLIN
State Engineer

By V. S. Bovelie, Ass't.

VSB EL

c.c. to West Extension Irrigation Dist.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

603 Postoffice Building
Portland, Oregon, January 20, 1933.

Mr. Chas. E. Stricklin,
State Engineer,
Salem, Oregon.

Permit 408 - Umatilla Project

Dear Mr. Stricklin:

With further reference to your letter of December 31, 1932, upon the subject of our proof of beneficial use under Permit No. 408, Umatilla Project.

The application under which this permit was granted, originally, asked for a permit for 600 c.s.f. and was granted that amount with the following limitations and conditions:

"Limited to 600 cubic feet per second of the natural and unregulated flow of the Umatilla River, together with the water stored under Application No. 13 Reservoir permit No. 51, the total use of such natural and unregulated flow and of water drawn from the storage aforesaid not to exceed one eightieth of one cubic foot per second for each acre irrigated.

The amount of water appropriated shall be limited to the amount which can be applied to beneficial use and not to exceed 748.15 cubic feet per second."

Upon proof of beneficial use recently submitted, it is observed that the acreage under the West Extension of the Umatilla Project for which the permit was issued fell considerably short of the area proposed to be irrigated when the application for this permit was made.

If a certificate is issued for a right equal to the product of the number of acres irrigated and $1/80$ c.s.f. stated in the permit, only, it is recognized that the result will work to the detriment of the lands of the West Extension Irrigation District and fix a water duty far too high for lands of the character of those on the Umatilla Project.

We assume that you are inclined to issue a certificate for the quantity of water for which application was made for use on the Umatilla Project in connection with this permit, but for the recent decision of the Oregon Supreme Court in re Waters of Walla Walla River (16 Pac.(a) 939) in which the

"State Engineer's decision on application for permit for water right, from which no appeal was taken (was) held final" in a subsequent action by the permittee for a decree contrary thereto.

It is our opinion that if the permittee in this matter were a private individual having made application to appropriate the waters of the State under the provisions of Sec. 47-402, Oregon Code (1930), the rule announced by the Supreme Court would not limit your certificate to a water duty which may have been fixed by your predecessor, any more than can an adjudication decree establish a duty of water for all time to come and which may not later be re-opened, re-investigated, and re-established to the ultimate highest possible use of water.

"Duty of water" is never fixed but changes with the development of an irrigation project.

Hough v. Porter, 98 Pac. 1083
U. S. v. Conrad Inv.Co., 156 Fed.123;
Kinney on Irrigation and Water Rights,
2nd ed. pp. 1592-1595.

If it may be assumed that the State Engineer who issued the permit in question was of the opinion that 1/80 c.s.f. was the proper duty of water on the Umatilla Project, or if in fact it was the proper water duty at that time and by later use it has been demonstrated that your predecessor in office was in error, or on account of change of other factors which go to the determination of water duty, that more than 1/80 c.s.f. per acre is necessary for the successful irrigation of the land in question, in our opinion - aside from the possible interests of other appropriators in the stream - you could properly increase the water right within the maximum granted by the permit without doing violence to the rule announced by the Supreme Court in re Waters of Walla Walla River.

But, however the case of In re Waters of Walla Walla River may be construed as affecting appropriations of water by private individuals under the provisions of section 47-402

et seq., Oregon Code (1930), it seems to us that the present matter is controlled by the decision of *In re Waters of Umatilla River* (88 Ore. 376; 168 Pac.922; 172 Pac. 97) construing Chapter XII, Oregon Code (1930) upon the subject of "Appropriation of Water by the United States".

It has been hinted that the enactment of the water code by the Oregon State Legislature by implication repealed the chapter just cited. And while we do not believe the State Legislature intended any such implication, as witness the wording of sec.47-402 et seq. of the Code and the fact that the Code carries both chapters (Chap.IV and Chap.XII), it is unnecessary to further discuss the effect, if any, of the later legislation upon the earlier in as much as the later expressly saves vested rights such as the rights of the United States initiated under the provisions of Chapter XII are held to be, in *re Waters of Umatilla River* (supra).

While you are doubtless familiar with the decision in this case, both on original and rehearing, for the sake of convenient reference those parts of the opinion which we think are pertinent are quoted. Thus the Supreme Court in an opinion written by the late Justice Burnett held:

"* * *The remainder of the claim of the United States is based upon the act of February 22, 1905, which, so far as applicable here, is found in chapter 5, title 43 L. O. L. Section 2 of that act (section 6588 L.O.L.) reads thus:

(quoting sec.47-1201 of Chap.XII, Oregon Code, 1930)

We find in the record a notice addressed to the state engineer signed by John T. Whistler, United States district engineer, who, in turn, derives his authority from the Secretary of the Interior under the provisions of the act of Congress of June 17, 1902, c. 1093, 32 Stat. 388 (U.S.Comp. St. 1916, secs. 4700-4708), informing the state engineer that:

'The United States intends to use all the surplus and unappropriated waters of the Umatilla river and its tributaries in connection with the reclamation of certain arid lands as provided for under said act of Congress, and requests that said waters be withdrawn from further appropriation as provided under the laws of this state.'

No question is made but what the United States complied with the statutory rules promulgated by the Legislature of this state respecting the manner in which the general government could appropriate water in Oregon. The procedure under this act vested the United States with title to all the then unappropriated water of the Umatilla river with priority dating from September 6, 1905, above noted."

168 Pac. 922, 925

This decision was affirmed on rehearing (172 Pac. 97) in which former Justice McCamant, writing the opinion, said:

"(4) Appellant also contends that the circuit court erred in awarding the United States 350 cubic feet of water per second, and in failing to make this allowance conditional on the diligence of the government in completing its project. This portion of the decree followed the plain mandate of the statute. Section 6588, L. O. L. This portion of appellant's petition argues a legislative, not a judicial, question. By the statute quoted in the previous opinion the Legislature withdrew from further appropriation the waters of such streams as the United States should elect to utilize in the manner therein pointed out. The United States has accepted the grant and conformed to the terms thereof. The Legislature could not displace water rights which had vested prior to the acceptance by the United States of the provisions of the statute, but the plain precept of the law vested the United States with title to all waters not theretofore appropriated. The claim of the government is limited to 350 cubic feet, but this claim must be sustained, regardless of the diligence of the government in matters not specified in the statute, and regardless of the amount of water required to irrigate the lands served by the government ditches."

172 Pac. 97, 100

By the statement that -

"This portion of appellant's petition argues a legislative, not a judicial, question"

it seems to us the author of the opinion did not even slightly infer that any legislative body, other than the Federal Congress, had any control over rights thus already vested in the United States. This was apparently the view of Attorney General Van Winkle who, on November 14, 1930, furnished Governor Norblad with a legal opinion as to the status of rights initiated by the United States under the Klamath Project.

For your convenience pertinent facts of the Attorney General's opinion are quoted as follows:

"Your question involves the application of section 2 of chapter 228, General Laws of Oregon, 1905, which appears as section 5791, Oregon Laws, reading as follows:

'Whenever the proper officers of the United States, authorized by law to construct works for the utilization of water within this state, shall file in the office of the state engineer a written notice that the United States intends to utilize certain specific waters, the waters described in such notice and unappropriated at the date of the filing thereof shall not be subject to further appropriation under the laws of this state, but shall be deemed to have been appropriated by the United States; provided, that within a period of three years from the date of filing such notice the proper officer of the United States shall file final plans of the proposed works in the office of the state engineer for his information; and provided further, that within four years from the date of such notice the United States shall authorize the construction of such proposed work. No adverse claims to the use of the water required in connection with such plans shall be acquired under the laws of this state except as for such amount of said waters described in such notice as may be formally released in writing by an officer of the United States thereunto duly authorized which release shall also be filed in the office of the state engineer. In case of failure of the United States to file such plans or authorized construction of such works within the respective periods herein provided, the waters specified in such notices, filed by the

United States, shall become subject to appropriation by other parties. Notice of the withdrawal herein mentioned shall be published by the state engineer in a newspaper published and of general circulation in the stream system affected thereby, and a like notice upon the release of any lands so withdrawn, such notices to be published for a period not exceeding thirty days."

After setting out the notice given by the proper officer of the United States of the appropriation of waters of Klamath River the Attorney General continues:

"It therefore appears that the requirements of the statute contained in section 5791, Oregon Laws, were fully complied with by the United States, resulting in the withdrawal from further appropriation under the laws of this state of the waters specified in such notice, which include all of the waters of Klamath River and all of its sources of supply not already appropriated.

Under date of October 24, 1930, Dr. Elwood Mead, Commissioner of the United States Bureau of Reclamation, Department of the Interior, in answer to my inquiry dated October 21, 1930, as to whether or not the United States, through any officer of that Bureau, or other authorized representative, has released in writing any part of the waters specified in the notice filed on behalf of said Bureau, with the State Engineer of Oregon, in May, 1905, states:

'In reply you are advised that we have no record of any release being made and none is now under contemplation * * *. The United States has no desire to retard development, and would be willing to release any water not needed, upon adequate assurance and showing that the rights of the government and the project water users would be in no way prejudiced thereby.'

Upon inquiry of the State Engineer, I am also advised that no such release has ever been filed in his office.

It therefore affirmatively appears that the appropriation of water made by the United States under its notice of withdrawal, pursuant to section 5791, Oregon Laws, is still in full force and effect."

The opinion of the Attorney General, after quoting from the opinion In Re Waters of Umatilla River (supra)

and commenting thereon, makes inquiry as to the effect of other state legislation upon the rights of the United States under the Klamath Project, and answers his inquiry thus:

"Attention has been called to the provisions found in section 5723, Oregon Laws, as amended by chapter 245, General Laws of 1929, under which the application in question has been referred by the State Engineer to the State Reclamation Commission, which provide:

"* * * in determining whether such proposed use would impair or be detrimental to the public interest, the state reclamation commission shall have due regard for conserving the highest use of such water for any and all purposes, including irrigation, domestic use, municipal water supply, power development, public recreation and the protection of commercial and game fishing or any other beneficial use to which the water may be applied, for which such water may have a special value to the public and also the maximum economic development of the waters involved; * * * An application may be approved for a less amount of water than that applied for, or may be approved upon terms, limitations and conditions necessary for the protection of the public interest, if there exists substantial reason therefor, * * *."

These provisions evidently apply to water which is available for appropriation, and not to water which has already been appropriated or withdrawn from appropriation, pursuant to statute."

The attorney general concludes:

"It would seem from the United States Reclamation Commissioner's letter, above quoted, that he would be willing to release such an amount of water as is not contemplated to be used within the near future, if provision can be made for releasing it only until such time as it may be needed by the government. There is no provision in the statute authorizing or providing for such a conditional or limited release by the government."

It will be seen that all of the unappropriated waters of Umatilla river as of September 6, 1905 have been withdrawn from appropriation except by the United States in the

development of its federal project (see opinion in re Waters of Umatilla River, supra); that the next move to divest that right must come from the Federal Government (see opinion of Attorney General, supra).

It is unquestionably the policy of the State of Oregon to cooperate to the highest degree in furthering the operation of the Reclamation Act in this State.

Sections 47-1201 to 47-1205 inc.

Sections 48-208, 48-501, and 48-901 to 48-903 inc.

" 60-1301 to 60-1303 inc., Oregon Code (1930)

Chapter 5, General Laws of Oregon, 1905.

It is apparently the opinion of the Attorney General that the provisions of Sec. 47-503, Oregon Code (1930) have no application to waters withdrawn from appropriation under the provisions of Chapter XII, Oregon Code (1930).

It follows, in our opinion, that the decision of the Supreme Court in Re Waters of Walla Walla River is not intended to limit your action with respect to waters so withdrawn from appropriation except by the United States.

We are not prepared to state what the present duty of water is on the Umatilla Project. It is apparently a much lower duty than 1/80 c.s.f. per acre. However, we think your certificate should be made to cover the quantity of water applied for in our application which based your Permit No. 408. In fact, under the Supreme Court decision in Re Waters of Umatilla River (supra) it seems to us to do less would be of highly questionable effect. You recall that in the case cited -

"The circuit court gave priority to the Western Company as of March 14, 1903, for 4109.68 acres, thus making it secondary to the United States as to the larger area"

168 Pac. 922, 925.

The right of the trial court to thus limit and subordinate the appropriation of the United States to the right claimed by the Western Company was questioned by the Supreme Court, the pertinent portion of the opinion reading:

"We may well doubt if there was any water left which could be applied to this 12,747.48-acre tract after the appropriation by the United States, for its notice demanded all the then unappropriated waters of the Umatilla river, and the statute in question expressly stated that waters 'unappropriated at the date of the filing thereof shall not be subject to further appropriation under the laws of this state, but shall be deemed to have been appropriated by the United States.' Under the provisions of the act it would seem that the decree was more favorable to the appellant than it could ask, but the general government has not appealed from the decree, and hence no further notice will be taken of that feature."

168 Pac. 922, 925

I appreciate your courtesy in holding the issuance of the certificate in abeyance until our views might be expressed, also for your loan of the volume of Advance Sheets of the Supreme Court containing the opinion in re Waters of Walla Walla River, which is being returned to you under separate cover.

Very truly yours

R. E. Stoutemyer
B. E. STOUTEMYER
District Counsel

(enclosure herewith
instead of under
separate cover)

Permit 408

January 18, 1933

Mr. B. E. Stoutemyer,
Attorney for Bureau of Reclamation,
603 Post Office Building,
Portland, Oregon.

Dear Sir:

We are mailing you under separate cover our copy of Advance Sheets for December 13, 1932, in which you will find, beginning on Page 559, the decision of the Supreme Court in re the waters of the Walla Walla River.

No further action will be taken in regard to permit 408, Umatilla Project, until we hear from you further.

Yours very truly,

CHAS. E. STRICKLIN,
State Engineer.

By W. F. Coshow, Assistant.

EC:
B.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

603 Postoffice Building
Portland, Oregon, January 13, 1933.

STATE ENGINEER
RECEIVED

Mr. Chas. E. Stricklin,
State Engineer,
Salem, Oregon.

JAN 14 1933

Permit 408 - Umatilla Project SALEM, OREGON

Dear Sir:

We are in receipt of your letter of December 31, 1932, and note that our proof of application of water to beneficial use was not accompanied by a recording fee of \$1.00. As we have no appropriation from which to pay this fee, we are writing the West Extension Irrigation District, for whose lands permit 408 was issued, asking that they pay this recording fee.

We agree with you that the limitation - which appears to have been made by your predecessor in office that the total use shall not exceed 1/80th of a cubic-foot per second for each acre irrigated - if applied to lands on the Umatilla project, would be injurious because, in our opinion, the lands under this project will probably require a greater amount of water per acre than any other lands in the state of Oregon.

We do not yet have a copy of the decision of the Supreme Court in case 2104 handed down December 13, 1932 in re: Waters of Walla Walla River, but expect to have this decision in the next issue of the Pacific Reporter Advance Sheets. If you have an extra copy available we will appreciate the use of same for a time, when it will be returned to you. As soon as we have had an opportunity to study this Supreme Court decision we will write you further in regard to this matter.

You are of course familiar with the case - In Re Waters of Umatilla River (168 Pac. 922) in which a later hearing was granted and supplemental opinion filed (172 Pac. 97). In this case it was held that if the officer of the United States had complied with the withdrawal act of the State Legislature of 1905, title to the water for which notice of appropriation was given vested in the United States and was not subject to limitations

either as to the time of beneficial use or in respect to the number of acres upon which it was proposed to use the water thus appropriated. In the case above referred to, quoting from the opinion written by Judge McCamant, it was held:

"The claim of the government is limited to 350 cubic feet, but this claim must be sustained, regardless of the diligence of the government in matters not specified in the statute, and regardless of the amount of water required to irrigate the lands served by the government ditches."

172 Pac. 97, 100.

Under this decision of the Oregon Supreme Court, it would seem that the apparent limitation imposed by your predecessor in office in granting permit 408 would not be effective.

We are awaiting with interest receipt of the recent decision of the Supreme Court, and will be much obliged to you if you will hold this matter in abeyance until we have had an opportunity to study the decision and write you further.

Very truly yours

B. E. Stoutemyer
B. E. STOUTEMYER
District Counsel

December 31, 1932.

Mr. D. E. Stoutemyer,
District Counsel,
603 Postoffice Building,
Portland, Oregon.

Dear Mr. Stoutemyer:

This will acknowledge receipt of your letter of December 27, with which you submitted final proof under Permit No. 408 in the name of the United States Reclamation Service. The proof appears to be in satisfactory form except that you failed to remit the fee of \$1.00 for recording the water right certificate in the county records. This fee must be paid before we can issue a certificate and send it to the county clerk for recording.

Upon checking over the proof I note that the number of acres actually irrigated is considerably less than those described in the permit. When a water right certificate is issued it confirms the right to the use of water upon those lands which have been actually irrigated, and the total amount of water is limited in accordance with the amount allowed per acre in the permit.

This permit grants the right to the use of 600 second-feet of water with the further limitation that the total use shall not exceed 1/80th cubic foot per second for each acre irrigated. There is some question in my mind as to whether or not 1/80th cubic foot per second is sufficient for the irrigation of an acre of land in that vicinity. If 1/80th cubic foot per second is sufficient for the irrigation of one acre the certificate may properly limit the total quantity of water to the amount required for the number of acres which have been actually irrigated.

However, if that quantity of water is not sufficient for the irrigation of an acre of ground, there is some question as to whether or not the State Engineer has authority to increase the quantity per acre, particularly in view of the Supreme Court's decision in Case No. 2104 handed down December 13, 1932, in re: Waters of Walla Walla River. The Court decided in this case that where the State Engineer has approved an application for a less amount of water than that specified in the application and the applicant not appealing from the decision of the State Engineer such determination became final. It would, therefore, appear that where the State Engineer has limited a permit to a specified quantity of water for each acre to be irrigated, and such limitation has not been appealed, that such determination would also be final and the quantity could not be increased at the time of making final proof.

H. E. Stoutemyer.

Dec. 31, 1932.

It is, therefore, requested that you advise us at your early convenience whether or not you believe 1/80th cubic foot per second of water is sufficient for the irrigation of one acre of land in that vicinity, and that you also kindly give us your opinion as to whether or not the State Engineer may have the legal authority to increase the amount of water allowed for each acre at the time of issuing a water right certificate if it is made to appear to his satisfaction that the quantity specified in the permit is not sufficient.

Very truly yours

CHAS. E. STRICKLIN
State Engineer

By V. S. Bovelie, Ass't.

VSB EL

UNITED STATES
DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

603 Postoffice Building
Portland, Oregon
December 14, 1932

STATE ENGINEER
RECEIVED

DEC 15 1932

SALEM, OREGON

Mr. Chas. E. Stricklin,
State Engineer,
Salem, Oregon.

My dear Mr. Stricklin:

Replying to your letter of December 12 concerning Permit No. 408 in the name of the U. S. Reclamation Service.

As we do not have all of the required data, we are sending copy of your letter and the form of proof to Mr. Tice, superintendent at McKay reservoir, with request that he take up the matter with the officers of the West Extension Irrigation District and in cooperation with the officers of the district complete the form. I am enclosing copy of my letter of today to Mr. Tice, which I believe is self-explanatory.

Very truly yours,

B. E. Stoutemyer
B. E. Stoutemyer
District Counsel

encl.

*File -
no reply*

BBS:RAG

603 Postoffice Building
Portland, Oregon
December 14, 1932

From District Counsel
To Reservoir Superintendent, McKay Dam, Pendleton, Oregon
Subject: Permit 408. Umatilla project.

1. I am enclosing copy of letter of December 12 from the State Engineer, with the enclosures received therewith as follows:

Proof of appropriation of water, with attached
list of lands
Blue print (3 sheets) of amended maps filed in
1928

and also copy of our letter of November 23 to the State Engineer, together with copies of notice of completion of construction and notice of completion of application of water to beneficial use.

2. Permit 408 was secured back in 1909 and has a date of priority of March 28, 1909. The permit and the list of lands to be irrigated has been amended and the time extended, but the time for completion of work and the time for beneficial use was up on October 1, 1932. This permit is intended to cover the return flow water and natural flow water of the Umatilla river used on the West Extension division of the Umatilla project.

3. The form of proof of appropriation of water requires a complete description of the works used in connection with the West Extension project. It also requires that we fill in after each subdivision described in the attached list the number of acres actually irrigated. We do not have in this office the means of complying with such requirements and it is requested that you take the enclosed form to the office of the West Extension Irrigation District and in cooperation with the officers of the district fill out the form as required. In case any of the water has been used on lands other than those described in the attached list, it may be advisable to include a list of the lands which have been actually irrigated.

4. The required affidavit of appropriator should also be filled out and signed before a notary.

5. When the form of proof has been completed, kindly return the proof and maps to this office.

- - - -

B B Stoutenmyer

encls

cc (with cc of letters) - Washington
Denver

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

STATE ENGINEER
RECEIVED
DEC 29 1932
SALEM, OREGON

603 Postoffice Building
Portland, Oregon, December 27, 1932.

Mr. Chas. E. Stricklin,
State Engineer,
Salem, Oregon.

Dear Sir:

Permit 408 - Umatilla Project

Referring again to your letter of December 12 concerning Permit No. 408 in the name of the United States Reclamation Service, for water from the Umatilla River for use in connection with the West Extension division of the Umatilla Project.

Please find enclosed Proof of Appropriation of water. The enclosed proof of appropriation has been sworn to by Mr. C. L. Tice, Reservoir Superintendent of the McKay Reservoir, as agent representing the holder of the permit.

If any additional information is desired in connection with this permit, please let us know and we will try to furnish it.

Very truly yours

enc.

B. E. Stoutemyer
B. E. STOUTEMYER
District Counsel

December 12, 1932.

Mr. B. E. Stoutenyer,
District Counsel,
Bureau of Reclamation,
805 Post Office Bldg.,
Portland, Oregon.

Dear Sir:

This is in reply to your letter of November 23rd, with which you submitted the notice of completion of construction and of complete application of water under Permit No. 408, in the name of the U. S. Reclamation Service.

The notices are considered to be in satisfactory form, and a form for making final proof of the appropriation is enclosed, together with a blue print of the amended map submitted under this permit. All items in the proof form applicable to the development should be fully answered, and it may be necessary to attach a separate sheet in order to give a full description of the works as completed. We believe that as full a description as possible should be given in order that the records may clearly show the actual development as made. The proper affidavit should be made and the proof should then be returned to this office with a fee of \$1.00 for recording the water right certificate in the county records.

It will not be necessary that you obtain the affidavit of witnesses since when the proof form is returned to us it will be sent to the watermaster for his report.

Very truly yours,

CHAS. E. STRICKLIN,
State Engineer.

By

V. S. Bovelle, Assistant.

VSB:LN
encl.

237
UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

603 Postoffice Building
Portland, Oregon
November 23, 1932

STATE ENGINEER
RECEIVED

NOV 25 1932

SALEM, OREGON

Mr. Chas. E. Stricklin,
State Engineer,
Salem, Oregon.

Dear Sir:

We are in receipt of your card dated November 22, 1932, advising that according to the terms of Permit No. 408 the water should be completely applied to the proposed use on or before October 1, 1932, and your card of the same date advising that according to the terms of Permit No. 408 construction work was required to be completed on or before October 1, 1932.

I am enclosing a form of notice of completion of works and form of notice of application of water to beneficial use under this permit.

It is my understanding that this permit is in connection with the West Extension canal of the Umatilla project and that the water has been applied to beneficial use on the lands lying under that canal to the extent of the canal capacity, which I find, by reference to one of the reports, was estimated at 375 second-feet.

If the enclosed forms are not satisfactory or if any additional information is required, please let us know.

Very truly yours,

B. E. Stoutemyer
B. E. Stoutemyer
District Counsel

2 encls.

Handwritten notes:
- *Handwritten signature/initials*
- *420-422*
- *Carda Record Vol 1*

NOTICE OF COMPLETION OF CONSTRUCTION

THE UNITED STATES OF AMERICA, acting for this purpose through the United States Bureau of Reclamation, the holder of Permit 408 issued by the State Engineer of the State of Oregon for the appropriation of the waters of Umatilla River in accordance with the tenor of such permit as amended by the order made by the State Engineer under date of June 8, 1928, has completed the construction of the works described in said permit as amended, prior to the 1st day of October, 1932, being within the time limitation as fixed in said permit as amended or as extended by the State Engineer for the completion of construction work.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of September, 1932.

THE UNITED STATES OF AMERICA

By D. E. Stoutenmyer
District Counsel, United States
Bureau of Reclamation

Address: 603 Postoffice Building,
Portland, Oregon.

NOTICE OF COMPLETE APPLICATION OF WATER TO
A BENEFICIAL USE

THE UNITED STATES OF AMERICA, acting for this purpose through the United States Bureau of Reclamation, the holder of Application No. 237, being Permit No. 408, issued by the State Engineer of the State of Oregon for the appropriation of 600 second-feet of the waters of Umatilla River, in accordance with the tenor of such permit as amended by the order made by the State Engineer under date of June 8, 1928, and the limitations endorsed thereon by the State Engineer, completely applied to a beneficial use water to the amount of canal capacity (estimated at 375 second-feet), on the 1st day of October, 1932, being the time limitation as fixed in said permit or as extended by the State Engineer for the complete application of water to a beneficial use.

IN WITNESS WHEREOF, I have hereunto set my hand
this 30th day of September, 1932.

THE UNITED STATES OF AMERICA

By R. E. Stoutemyer
District Counsel,
United States Bureau of Reclamation

Address: 603 Postoffice Building,
Portland, Oregon

July 24, 1924.

Mr. H. M. Schilling,
Superintendent,
Hermiston, Oregon.

Dear Sir:

I am in receipt of your letter of July 21st with reference to the status of the water right of the U. S. Reclamation Service for the West Extension Division of the Umatilla Project, which was filed under the 1909 act.

Our records show that on March 28th, 1909, E. G. Hopson, Supervising Engineer for the U. S. Reclamation Service, filed Application No. 13, for the construction of the Umatilla Reservoir for storage of 175,000 acre feet from Umatilla River, and Application No. 237 for the appropriation of 748.15 second feet of water from Umatilla River and the stored water, for irrigation of a total of 59,850 acres. The land to be irrigated was situated in Townships 3, 4, and 5 North, Ranges 22, 23, 24, 25, 26, 27 and 28 East, W. M.

The permits granted under the above applications were numbered R 51 and 408 respectively, and it is my understanding that this development was known as the West Extension of the Umatilla Project.

The terms of these permits allowed until September 13, 1911, to complete construction, and September 13, 1915, to apply the water. An extension of time was allowed by the State Water Board until June 1, 1920, to complete the construction work, and until October 1, 1920, to apply the water.

On January 3, 1921, we received a letter from your office stating that the United States had abandoned the reservoir and water rights covered by permits Nos. 408 and R 51, and I am enclosing herewith a copy of our reply for your information.

We have received nothing further in regard to these permits, and would be glad to have you advise what action has been taken by your department.

Yours respectfully,

ER:H
Enclosure.

Rhea Luper,
State Engineer.

U.S. Bureau of Reclamation,
 by H. M. Schilling, Project Supt.,
 Hermiston, Oregon

Ap. 9668

73,250 acre feet, from McKay Reservoir
 for irrigation of lands already having
 a partial water right.

July 9, 1927

June 1, 1932

October 1, 1932

a filed

12-22-22 do not comply
1-2-23 " " "
1-24-23 " " "
3-2-27 " " "
5-3-27 " " "
6-7-28 " " "
7-20-27 " " "
8-20-27 " " "
9-25-27 " " "
6-7-27 " " "

NOTICE OF BEGINNING OF CONSTRUCTION

I, U. S. Bureau of Reclamation, the holder of Application No. 9668, being
McKay Reservoir Permit No. 7400, issued by the State Engineer of the State of Oregon
(Reservoir or Enlargement) acre-
 for the appropriation of 73.250 ~~second~~ ^{square} feet of the waters of McKay Creek
 in accordance with the tenor of such permit and the limitations endorsed thereon by the State Engineer,
 began the actual construction of the works described therein on the day of July, 1923,
 being within the time limitation as fixed in said permit for the beginning of construction work.

Work on Reservoir was begun in July, 1923 and is now complete. Diversions
 The appropriator should state the manner of beginning construction work, number of men and teams employed, the amount of work completed up to the date of this
being made from reservoir and proof of completion of works to be made shortly.
 statement, and any additional information which may tend to show the beginning of work in good faith.

IN WITNESS WHEREOF, I have hereunto set my hand this 7 day of July, 1927.

603 Postoffice Bldg., Portland, Ore.
(Present Address)

U. S. BUREAU OF RECLAMATION

By

(Signature of Applicant)

Fill out, detach, and mail to the State Engineer, Salem, Oregon.

Samuel L. Davis
 Associate District Counsel

NOTICE OF COMPLETION OF CONSTRUCTION

I, U. S. Bureau of Reclamation, the holder of Application No. 9668, being
McKay Reservoir Permit No. 7400, issued by the State Engineer of the State of Oregon
(Reservoir or Enlargement)
 for the appropriation of 73.250 ^{acre} ~~second~~ feet of the waters of McKay Creek
 in accordance with the tenor of such permit and the limitations endorsed thereon by the State Engineer,
 have completed the construction of the works described therein the 10th day of May, 1927,
 being within the time limitation as fixed in said permit or as extended by the State Engineer for the
 completion of construction work.

Remarks:

.....
 If the works have a less capacity than as described in the permit, or you have definitely abandoned your plan of irrigating any of the lands described

.....
 in your permit, you should so state in order that our records may not be unnecessarily encumbered.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of September, 1927

603 Postoffice Bldg., Portland, Ore.

(Present Address)

U. S. BUREAU OF RECLAMATION

By

(Signature of Applicant)

R. E. Montemeyer
 District Counsel

Fill out, detach, and mail to the State Engineer, Salem, Oregon.

Form D should be used in reporting progress of work if more than one year has been allowed for completion.

November 19, 1938.

Mr. B. E. Stoutemyer,
District Counsel,
603 Postoffice Bldg.,
Portland, Oregon.

Dear Mr. Stoutemyer:

During May and June of this year, we had considerable correspondence with you which resulted in amendments to permits Nos. 408 and 7400. My last letter concerning these amendments was mailed on June 8th and copies of the orders approving the amendments were mailed to you on that date.

On examining our record, I find that we apparently overlooked making an order extending the time for the completion of the development under permit No. 408. This is only a formality and I am writing you this letter in order to make the extension a matter of record for your file. The time limit for completion of construction and complete application of water under permit No. 408 is being extended until October 1, 1939, to correspond with the time limit fixed in permit No. 7400.

Yours very truly,

REEA LUPIN
State Engineer

LAS/W

BY
Lewis A. Stanley.

June 8, 1928

Mr. E. E. Stoutenyer,
District Counsel,
603 Postoffice Building,
Portland, Oregon.

Dear Mr. Stoutenyer:

In accordance with the suggestion made in your letter of June 5th I have amended the orders previously forwarded to you concerning the amendments to Permits Nos. 408 and 7400. The suggested paragraph for the amendment to Permit No. 408 has been incorporated in this order and I have made the correction to the land description by changing "Section 31" to read "Section 25" on page 6 of the tabulation.

Copies of these orders are being enclosed for your files and copies are also being mailed to Mr. Houghton, the Secretary-Manager of the West Extension Irrigation District at Irrigon.

Yours very truly,

Elmer Inger,
State Engineer.

LAS:HB

UNITED STATES RECLAMATION SERVICE

OFFICE OF
DISTRICT COUNSEL

603 Postoffice Building
Portland, Oregon, June 5, 1928.

Mr. Rhea Luper,
State Engineer,
Salem, Oregon.

Dear Mr. Luper:

In further reference to your letter of May 24, 1928, upon the subject to amendment of permits numbered 408 and 7400:

The proposed orders of amendment of these permits which you kindly submitted for our consideration before entering the same, appear to be satisfactory with the possible exception as hereinafter noted, and of course with the exception taken by your office as indicated in your letter of May 25th.

It is apparent that our application for amendment of Permit No. 7400 is in error in asking that the permit authorize the use of return flow from the Hermiston Division of the project upon the lands of the West Extension except as that return flow may be from the use of McKay stored waters upon the former division. However it would seem that Permit No. 408 may be properly amended to provide that the return flow to Umatilla River above the diversion point, and consisting of waste, seepage and drainage waters from the natural flow of the Umatilla River as well as from Cold Springs reservoir storage, beneficially used upon the Hermiston division of the project, may be considered as a portion of the duly appropriated waters for use on the West Extension and a part of its water supply. With this in mind, we are suggesting an amendment to your proposed order in respect to permit No. 408 to include the following paragraph:

"It has been the actual practice to irrigate a portion of these lands in the West Extension of the Umatilla Project from the return flow to the Umatilla River above the point of diversion for said lands, which return flow is from the canal and reservoir construction of the Hermiston division of said project and results directly therefrom; the waters used on said upper division of said Project, and returned to Umatilla River

above said point of diversion, will be from the stored and natural flow of said river used in the irrigation of the lands of said upper division and should be so considered."

We have just heard from Mr. Houghton, the Secretary-Manager of the West Extension Irrigation District, upon the subject of these proposed orders and he expressed the opinion of the officers of his Company that Permit 408, and your order in respect thereto, should be amended in substance as we have herein suggested. We shall be pleased to have your views upon the proposed amendment.

Mr. Houghton called our attention to another error in the tabulated list of lands submitted in connection with our application to Permit No. 408 on page 6 of this list "Section 31" should be changed to read "Section 25".

Very truly yours

B. E. Stouteneger
B. E. STOUTENEGGER
B.

DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE

LB-mes

OFFICE OF
DISTRICT COUNSEL

603 Postoffice Building
Portland, Oregon, May 25, 1928.

STATE ENGINEER
RECEIVED

MAY 26 1928

SALEM

CLERK

Mr. Rhea Luper,
State Engineer,
Salem, Oregon.

Dear Mr. Luper:

I am pleased to acknowledge receipt of your letter of May 24th in which you enclose draft of orders permitting amendment of Permits No. 408 and 7400 and inviting suggestions as to any proposed changes in the orders.

As these amendments directly concern the West Extension Irrigation District, I am taking the liberty of sending copy of the proposed orders to their Secretary-Manager and requesting that he make any suggestions he may deem proper, and on receipt of advice from this District, we will write you again. I trust that this delay will not inconvenience you.

I note reference in your letter to the amendment of land lists submitted in connection with our applications to amend these permits, and that some of the amendments are not proper. As these amendments were suggested by our Reservoir Superintendent Mr. C. L. Tice, I am sending him a copy of your letter for his information.

Very truly yours

O. E. Stoutenmyer
B E STOUTENMYER
District Counsel

May 25, 1928

Mr. B. E. Stouteneger,
District Counsel, U.S.R.S.,
603 Postoffice Building,
Portland, Oregon.

Dear Sir:

I find that in my consideration of the matter of amendments to Permits 408 and 7400, I had the impression that the lands described in Permit 7400 under the Western Land and Irrigation Company were the lands in the Western Extension. The order which I mailed to you yesterday was written with this in view and I stated in the order that this permit already covered some 14,000 acres. I will correct the order in this respect when you return it to me.

Yours very truly,

Rhea Luper,
State Engineer.

LAS:HB

May 21, 1928

Mr. E. E. Stoutenyer,
District Counsel, U.S.R.S.,
603 Postoffice Building,
Portland, Oregon.

Dear Mr. Stoutenyer;

On May 11th you submitted to this office two letters asking amendments to Permits Nos. 408 and 7400 and authorizing the cancellation of Permit No. R-51. With these applications to amend were enclosed tabulations of the lands affected and we received the tracings which you mailed under separate cover showing the location of these lands.

Your letter of May 17th was to supplement the two letters of May 11th and outlining certain corrections which should be made to the tabulations of lands. I have checked over these lists and made the corrections requested with exception of the first and fourth corrections mentioned under your heading "In respect to Permit 408".

I find that in this land list for permit 408 on Page 5, "Section 19", the third description of the SE $\frac{1}{4}$ already reads "SW SE" and does not require changing. The same is true on page 10 of this list under "Section 12". In both of these sections the entire SE $\frac{1}{4}$ seems to be represented and acreages check with the acreages shown on the map.

I have dictated two orders amending Permits 408 and 7400 and am enclosing copies of these orders for your opinion and suggestion. I will be glad to have you check them and return them with any corrections or suggestions you have to make. You will note that I have not used the suggested paragraph in the order amending Permit 7400 concerning the right to use return flow from the Umatilla project. If this paragraph or one similar is used in either order, it should probably be that one which amends Permit 408. It would not be proper to amend Permit 7400 to include return flow from any reservoir or other source than the water from McKay Reservoir.

Yours very truly,

Eben Luper,
State Engineer.

LAS:HB
Encl.

DEPARTMENT OF THE INTERIOR

UNITED STATES RECLAMATION SERVICE

603 Postoffice Building,
Portland, Oregon, May 17, 1928.

OFFICE OF
DISTRICT COUNSEL

Mr. Rhea Luper,
State Engineer,
Salem, Oregon.

Dear Sir:

Supplementing our letter of May 11th:

A copy of our letter of May 11th, together with copy of lists of irrigable land were sent to our Reservoir Superintendent, Mr. C. L. Tice, at McKay Dam, and he has checked the lists of land made by the West Extension Irrigation District, which accompanied our applications for amendment of Permits 7400 and 408, and he suggests the following changes in the tabulated lists of land:

In respect to Permit 408:-

On page 3, under "Section 19", change the third description of the southeast quarter to read "SWSE" instead of "NWSE";

On page 4, change township at the top of page to read "T. 5 N." instead of "T. 4 N."

On page 5, under "Section 8", change the last description to read "SENW" instead of "SENE".

On page 10, under "Section 12", change the third description of the southeast quarter to read "SWSE" instead of "NWSE".

In respect to Permit 7400:-

The following amendments should be made on the list of lands as submitted by the West Extension Irrigation District and made a part of our application for amendment:

On page 7 under "Section 8", change the last description to read "SENW" instead of "SENE". Mr. Tice reports that the $SE\frac{1}{4}$ of the $NE\frac{1}{4}$ is above the canal.

On page 8, "Section 31" should be changed to read "Section 25".

SLD-mes

STATE ENGINEER
RECEIVED

MAY 21 1928

SALEM

ORRISON

Will you kindly make these corrections on the lists submitted with our letters and also upon the records if our applications are favorably acted upon.

Very truly yours

R. E. Stoutmeyer

R. E. STOUTMEYER
District Counsel

DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE

OFFICE OF
DISTRICT COUNSEL

603 Postoffice Building,
Portland, Oregon, May 11, 1928.

Mr. Rhea Luper,
State Engineer,
Salem, Oregon.

Dear Sir:

On behalf of the U. S. Bureau of Reclamation, application is hereby made to you to allow an amendment of your Permit No. 408, so that the same may describe additional acreages as shown on tabulated form and upon linen tracing of maps (3) enclosed herewith for your files.

Application is also made to amend said permit in respect to the point of diversion of the waters the use of which are permitted thereby, from the place on Umatilla River where waters were formerly diverted by the Oregon Land and Water Company, approximately one mile below the present point of diversion which is from the said Umatilla River in the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 28, T. 5 North, Range 28 East, W.M., in Oregon.

The maps and tracings are for joint use in connection with the amendment of Permit No. 408 as well as No. 7400.

If these amendments are allowed, will you kindly have the same appear of record.

Permit No. R-51 should be cancelled.

Yours very truly

R. E. Stoutenmyer
R. E. STOUTENMYER

enc.

11 pages of land description

3 tracings (sheets 1-2-3)
mailed under separate cover.

STATE ENGINEER
RECEIVED
MAY 12 1928
SALEM
OREGON

DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE

OFFICE OF
DISTRICT COUNSEL

603 Postoffice Building
Portland, Oregon, May 11, 1928.

Mr. Rhea Luper,
State Engineer,
Salem, Oregon.

Dear Sir:

On behalf of the U. S. Bureau of Reclamation application is made to amend water Permit No. 7400 so that the same may describe additional acreages as shown on the tabulated form and upon linen tracing of map, transmitted under separate cover, for your files.

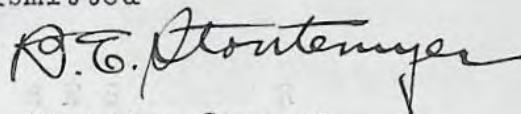
As a large portion of the additional acreages, to describe which this application for amendment of Permit No. 7400 is made, are irrigated from the return flow to the Umatilla River above the point of diversion for said lands, which return flow is from the irrigation system, including canals and drains and the Cold Springs Reservoir of the Umatilla Project, and from lands irrigated with McKay Reservoir storage, application is made to amend said permit, so that it may contain an additional clause substantially to the following effect:

"In addition to the permit to the use of the water released directly from McKay Reservoir storage, there is return flow from the use of said waters for irrigation, which seeps, wastes and returns into the canal system irrigating the lands shown on the list attached hereto, as well as return flow from the system of canals, drains and the Cold Springs Reservoir, all a part of the Umatilla Project, which return flow seeps, wastes, is drained, and returns into the canal system irrigating the lands shown on said list, and it is expressly understood that because of the construction of said reservoirs and canals said return flow water is developed, and that the applicant does not abandon nor relinquish any rights which it now has to said waters, but expressly declares its intention to retain and assert said rights and use said waters."

There is enclosed, list of additional lands in tabulated form, for use in connection with this application.

If these amendments are allowed, will you kindly cause the same to appear of record. If anything additional is required in connection with this application, will you kindly so advise.

Respectfully submitted

A handwritten signature in cursive script, appearing to read "R. E. Stoutemyer".

District Counsel

enc.

13 pages of land description .

1 tracing (mailed under separate cover)

April 26, 1928.

Mr. B. E. Stoutenmyer,
District Counsel, U.S.R.S.,
603 Postoffice Bldg.,
Portland, Oregon.

Dear Mr. Stoutenmyer:

We do not have any particular form for use in making application for an amendment to a permit. In a case of this kind we consider the matter very informally and will simply make reference on the recorded copy of these permits to the amended maps which have been filed.

In accordance with your request I am sending the blueprints to you which were furnished by Mr. Houghton showing the corrected land descriptions in connection with Permits Nos. 408 and 7400. I believe that you should have these prints traced on tracing linen, or send them to Mr. Houghton for such tracings so that we could make additional blue prints if they are found necessary at a later date. When you receive these tracings you may simply submit them to this office with a request that the permits be amended so as to describe the new acreages as shown on such maps. In your letter it will be advisable to specifically authorize the cancellation of Permit No. R-51 so that it may be eliminated from further consideration.

Yours very truly,

Rhea Luper,
State Engineer.

LAS:H

DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE

OFFICE OF
DISTRICT COUNSEL

603 Postoffice Building
Portland, Oregon, April 17, 1928.

SL -mes

STATE ENGINEER
RECEIVED

APR 26 1928
SALEM

Mr. Rhea Luper
State Engineer
Salem Oregon.

In re permits Nos. R-51, 408 and 7400
West Extension, Umatilla Project

Dear Mr. Luper:

In further reference to your letter of
January 5, 1928:

The operation and maintenance of the Umatilla Project having been assumed by local district organizations, by contract with the United States, the question of amendment of permits No. 7400 and 408 has become largely one for determination by the West Extension Irrigation District. The Board of Directors of that district has determined that an application should be made to your office for amendment of permits No. 7400 and 408 substantially as summarized in paragraph 7 of your letter referred to; that is to say: It is desired that permit No. 7400 be amended so that the lands to be irrigated thereunder shall include all of the irrigable lands of the West Extension of the Umatilla project, including those having decreed rights; also that the applicant's rights shall include that increment or return flow, through seepage or by artificial drains, of the water already filed upon in connection with any other division of the project, and the return flow from waters stored in and released from McKay Reservoir.

Mr. A. C. Houghton, the Secretary-Manager of the West Extension Irrigation District, has written us that blue prints showing all of the lands of the district have been prepared and mailed to you direct.

Application is also made to amend permit No. 408 so that it shall describe all the lands in the West Extension of the project, except such as have decreed rights, as well as to show a change in the place of diversion to approximately one mile above the point on the Umatilla River designated in the original permit.

If you have special forms for applications for amendment of permits, I shall be pleased to have enough blanks

so that the application may be submitted in proper form.
If you will let us have the maps or blue prints mailed
in by Mr. Houghton, we shall attach them to the application.

We shall appreciate any suggestions relative to the
form and execution of applications for amendment of
these permits.

Very truly yours

B. E. Stoutenmeyer

B. E. STOUTENMEYER
District Counsel

CC to Washington
to Denver
to Reservoir Supt. Tice
to A. C. Houghton

April 9, 1928

Mr. A. C. Houghton, Sec'y Manager,
West Extension Irrigation District,
Irrigon, Oregon.

Dear Sir:

This will acknowledge receipt of your letter of April 6th with which you enclosed two blue prints showing the acreage to be described in Permits Nos. 408 and 7400. I note that you have submitted a list of the lands effected, to Mr. Stoutenmyer and expect that he will submit an application to amend these permits in accordance with your tabulations. We will be glad to give the matter consideration when his application is received and we will then advise you if further information is required.

The Irrigation District Laws, including the 1927 amendments have not yet been compiled so I am unable to comply with your request that a copy be sent to you. You probably have one of our 1925 pamphlets and I am sending you under separate cover one copy each of the bills effecting irrigation districts enacted by the last legislature.

Yours very truly,

Rhea Luper,
State Engineer.

LAS:HB

WEST EXTENSION IRRIGATION DISTRICT
IRRIGON, OREGON

April 6, 1928.

Mr. Rhea Luper,
State Engineer,
Salem, Oregon.

Dear Sir:

Enclosed you will please find copy of letter to the
District Counsel.

I am mailing you two blueprints covering the area to
be included in the proposed amendments to Permits Nos. 408 and 7400.
If these are not satisfactory or additional maps are desired for
the evidence necessary for the above mentioned amendments, please
let me know.

I have not yet received a copy of the late manual of
'Irrigation District Laws of Oregon'. If you have any copies on
hand, I would appreciate your mailing me one.

Very truly yours,

A. C. Houghton
Sec'y- Manager.

April 6, 1928.

Mr. B. C. Stoutemyer,
District Counsel,
Postoffice Building,
Portland, Oregon.

Reference: Amendment of Water Permits
nos. 408 and 7400.

Dear Sir:

Inclosed under separate cover you will please find a list of lands, coming under the proposed amendments to Permits nos. 408 and 7400. I am sending today two blueprints of maps to which the lists above mentioned refer, to the State Engineer. I am sending the blueprints to the State Engineer, as it does not seem probable that you will need them in making out applications for the amendment of the Permits.

As the application for amendment of these permits is to come from the United States, the above information and data prepared by the District, are forwarded for use in the final negotiations for the said amendments. If further data is required, please advise.

As a review of previous correspondence in regard to the above subject, it is understood that the procedure agreed upon by the District was as suggested in your letter of January 27th, 1928, referring to the following paragraph in letter of the State Engineer to you of January 6th, 1928:

"As a sort of summary, I would suggest that the following procedure be followed in order to protect the Government's interests:

1. Submit an application to amend permit No. 7400 to show all of the lands to be irrigated on the West Extension, including the lands which have a decreed right. This application should be accompanied by a map showing all of these lands.

2. Submit an application to amend Permit No. 408 so as to describe all of the lands which were previously described therein and which are now under the proposed West Extension except the lands which have a decreed right. This application should also be accompanied by a map showing the lands effected.

3. Authorize by letter the cancellation of Permit No. R-51. "

It is probable that the State Engineer will desire tabulations of lands effected, and for this reason I have made out the two lists, as mentioned above.

I am also returning along with the above, the blueprint which you sent me on February 26th and which was previously received by you from the State Engineer.

Very truly yours,

Sec'y- Manager.

WEST EXTENSION IRRIGATION DISTRICT
IRRIGON, OREGON

April 3, 1928.

Mr. Rhea Luper,
State Engineer,
Salem; Oregon.

Dear Sir:

I thank you for the courtesy extended us in sending list of irrigation districts in this State, also for the patience in answering questions in regard to the proposed amendment of Permits, now under consideration by the District in the name of the United States.

With the information now at hand we will soon be able to complete the maps and compilation of acreages involved in the amendment of Permits nos. 408 and 7400.

Very truly yours,

A. E. Houghton
Sec'y- Manager.

file with Per. # 7400

STATE ENGINEER
HOUGHTON

APR - 4 1928

SALEM

March 31, 1928.

Mr. A. C. Houghton, Sec'y-Manager,
West Extension Irrigation District,
Irrigon, Oregon.

Dear Sir:

I regret that I have neglected until now answering your communication of March 13 asking for some information concerning the amendments to be made to Permits No. 408 and 7400. I was away from the office when your letter came and this is the first opportunity I have had to give it consideration.

In your first question you ask whether permit No. 7400 can be amended so as to include all lands under your canal and to cover the right to use the return flow from the Hermiston Westland, and Stanfield Projects. The permit cannot be amended to specifically designate this return flow but it can be amended to include all of the land which you wish it to cover in your project. It is my opinion that all of this land should have a right to the use of water which is stored in the McKay Reservoir and that it makes no material difference whether the water is used directly from the reservoir, through the channels of McKay Creek and the Umatilla River, or whether it is first used on the lands of these upper projects and accumulates and returns to the river above your diversion point. The McKay Reservoir water will actually be appropriated for the lands in your division but it will be used after having been previously used on the other projects.

The amendment to Permit No. 408 so as to include all lands now in your district except those having decreed rights will overcome any possibility of the right to use this return flow under Permit No. 7400 being unsatisfactory. My point is that Permit No. 408, covering as it does the waters of Umatilla River, will properly provide for the appropriation of the return flow if there should be any shortcomings to the theory that this water is properly appropriated under Permit No. 7400.

You may amend Permit No. 408 so as to include any lands you wish as long as the total area does not exceed the

ACHoughton--2

area described in the original permit. By the exclusion of those lands with decreed rights there will be considerable room for addition of other lands if you see fit to include them.

I hope that this will give you the information you requested. If I have not made my viewpoint plain please be free to write to me again.

Yours very truly,

L. A. Stanley,
Assistant Engineer.

LAS:GB

Certificate No. 2071-Per. R-408

WEST EXTENSION IRRIGATION DISTRICT
IRRIGON, OREGON

March 13, 1928.

Mr. Rhea Luper,
State Engineer,
Salem, Oregon.

Subject: Amendment of Permits nos. 408
and 7400.

STATE ENGINEER
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Dear Mr. Luper:

I wish to ask your opinion on a few points in connection with the amendment of Permits 408 and 7400.

1. Can Permit # 7400 be amended to include all lands under our canal, to use the return flow of not only the water from the Hermiston Division, but also of the Westland and Stanfield projects? As I understand the situation, Permit # 7400 was primarily for McKay storage water, and whether the above can be accomplished by amendment of this permit or not is the question not quite clear in my mind.

2. Could any amendment of Permit # 408 include any other lands than those already described in said permit, excluding the lands with decreed rights?

It would seem that if no additional lands could be included in Permit # 408, and if Permit # 7400 could not be amended for the diversion of water from the Umatilla River other than McKay water, that some other application would be necessary to take in all the return flow water, as this division is largely dependent on return flow.

I have the data necessary to proceed with the amendment of these permits, but do not wish to submit maps or lists of lands until everything is quite clear as to the actual working out of the amended permits.

It was my first intention to include in the list of lands re. the amendment of Permit # 408 all the lands under the canal which are irrigable, except those lands receiving rights under the decree of 1916, but I am not sure now whether this can be accomplished. If it were possible, would not this take care of return flow water? If the amendment of Permit # 7400 would take care of this situation, even if the water used would not necessarily be McKay water, then all lands included under this permit, and the former prior rights under # 408 would undoubtedly be sufficient.

I will appreciate any further suggestions you may care to make in regard to the above subject.

Very truly yours,

A. C. Houghton
Sec'y- Manager.

WEST EXTENSION IRRIGATION DISTRICT
IRRIGON, OREGON

March 29, 1928.

Mr. Rhea Luper,
State Engineer,
Salem, Oregon.

Dear Mr. Luper:

In order that our District might finish the work of preparing maps and lists of lands re. the amendment of Permits Nos. 408 and 7400, I should like your opinion on the points covered in my letter to you of March 13th, 1928.

It would probably seem that from previous correspondence regarding the amendment of the above mentioned permits the proper procedure should have been fully explained, nevertheless I have not a perfect understanding of the points enumerated in my letter to you of March 13th, and I ask your explanation and version of such.

As the amendment of these permits must be made in the name of the United States, I intend, upon the completion of the maps and compilation of lands involved, to transmit same to Mr. B. E. Stoutemyer, District Counsel, who will complete the final negotiations for the amendments.

Yours very truly,

A. C. Houghton
Sec'y- Manager.

March 2, 1926

Mr. A. C. Houghton, Soc'y-Mgr.,
West Extension Irrigation District,
Irrigon, Oregon

Dear Sir:

When I prepared the blue print which you returned to me with your letter of February 29th, I noticed the apparent discrepancies with respect to the acreages in Sections 22 & 27, Township 5 N, Range 26 E.W.M. This mistake is apparently clerical and was made at the time of the determination of rights by the circuit court.

It seems reasonable to simply assume that the vested rights which I showed on the map are correct, and that all of the balance of the section which is irrigable is to secure an inchoate right.

In the tabulation of lands it is desirable to have given the number of acres to be irrigated in each forty acre tract as well as having this information shown on the accompanying map. The blue print which you returned is being again sent to you. You may find it of some value in preparing maps required.

I am glad that you are proceeding as suggested in my letter of January 5th, so that the record with respect to Permit Nos. 408 and 7400 will be cleared up. If we can be of any assistance to you in preparing your applications to amend these permits please be free to call upon us.

Yours very truly,

Rhea Laper,
State Engineer

LAS:GMB

WEST EXTENSION IRRIGATION DISTRICT
OREGON, OREGON

February 29, 1928.

Mr. Rhea Luper,
State Engineer,
Salem, Oregon.

Dear Sir:

Inclosed under separate cover, you will please find map, which was first transmitted to Mr. Stoutemyer in your letter to him of December 22nd, 1927, and later sent me in connection with the assembling of data for the purpose of amending Permits Nos. 408 and 7400 for the diversion of water from the Umatilla River for lands in the West Division of the Umatilla Project.

I have checked over the acreages on this map of the lands receiving rights under the Decree of 1916, and am somewhat in doubt as regards the acreage in Sections 22 and 27, T. 5 N., R. 26 E. W. M.

As you have indicated on the map, there are 147 acres of vested rights and 760 acres of inchoate rights in Section 22; in Section 27 there are 35 acres of vested rights and 640 acres of Inchoate rights.

Your opinion as to this is asked, as it would seem that there is too much acreage for the two sections above referred to.

The District intends to proceed along the lines suggested in the last paragraph of your letter to the District Counsel of January 5th, and your opinion is also asked as to whether the list of lands should be made by each legal sub-division of 40 acres or by Section in entirety, provided the maps show the indicated number of acres involved in each legal subdivision.

Very truly yours,

A. C. Houghton
Sec'y- Manager.

January 24, 1923.

Mr. A. C. Houghton, Secy-Manager,
West Extension Irrigation District,
Irrigon, Oregon.

Dear Sir:

This is in response to your request of January 21 that we advise you with respect to the present status of the water rights for the West Extension of the Umatilla project.

We have recently had considerable correspondence with the U.S. Reclamation Service which grew out of a desire to eliminate from the records of this office Permits Nos. R51 and 408. These permits were held by the Reclamation Service and covered the construction of a reservoir on the Umatilla River and use of the stored water and also the direct flow of the Umatilla River for irrigation of the lands which are now included in the West Extension project.

Mr. B. E. Stoutenger, District Counsel, raised the question of whether there would be any value to the Government in attempting to maintain any right under Permit No. 408. There presumably is no reason for maintaining No. R51 and the United States should authorize that this permit be cancelled.

It is our understanding of the situation that the lands of the West Extension secure their principle water supply from the return flow to the Umatilla River above the diversion of this West Extension Canal. The return flow is largely accumulated from the Hermiston Division and this water is unquestionably the property of the United States as long as it is kept within the control and is being utilized by the Government.

The only water rights under permits which appear of record for these lands in the West Extension are those described in Permit No. 408. Through what appears to have been an error in compilation of lands, permit No. 7400 in the name of the United States Reclamation Service does not describe any of the lands in the West Extension. This permit is the one granted for the use of water stored in the McKay Reservoir.

A.C. Houghton--2

My last letter to Mr. Stoutenyer suggested that an amendment to Permit No. 7400 be filed so as to include all of the lands now proposed to be irrigated through the West Extension Canal. Such an amendment would complete the State records so that they would show the right to irrigate those lands from water stored in the McKay Reservoir. I believe the permit should be so amended even though the water used is accumulated from water from this reservoir previously used on lands above.

Part of the lands in the West Extension Irrigation District have rights by virtue of the decree of 1916 determining the rights on the Umatilla River and its tributaries, and I believe it was the intention to broaden or supplement this right by use of the water from McKay Reservoir. If this was the intention the amendment to Permit No. 7400 so as to include these lands should be submitted.

I am enclosing a copy of my letter of January 5 to Mr. Stoutenyer in which suggestions were made for changing the record. I trust that this letter together with the enclosures will give you the information desired. If I have not been able to make the situation clear or if you need further information we will be very glad to have you write again.

Yours very truly,

Rhea Kuper,
State Engineer.

LAS:CH

WEST EXTENSION IRRIGATION DISTRICT
IRRIGON, OREGON

January 21, 1928.

Mr. Rhea Luper,
State Engineer,
Salem, Oregon.

Dear Sir:

I have a letter from the Chief Engineer of the Bureau of Reclamation, Mr. R. F. Walter, in which he stated that the status of the records in your office on the water rights for the West Extension of the Umatilla Project was not in as good shape as possible.

I should like to hear from you as to what the trouble is in reference to the water rights, so that steps can be taken through the United States to remedy the situation, or possibly by the Irrigation District.

Yours very truly,

A. C. Houghton
Secy-Manager.

STATE ENGINEER
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JAN 23 1928
SALEM
DISTRICT

January 5, 1928

Mr. B. E. Stoutenmyer,
District Counsel,
603 Post Office Building,
Portland, Oregon.

Dear Sir: Re Permits Nos. R-51, 408 and 7400.

The question of whether a water right should be maintained by the Government under Permit No. 408 seems to hinge on whether any of the direct flow of the Umatilla River is or will be required for any of the lands now within the West Extension of the Umatilla project other than the lands which have a decreed right. If you find that it will be of advantage and practical to use some of the direct flow, it may be well for you to maintain this permit and amend it so as to show the descriptions of lands upon which the water will be used.

There is only one intervening filing on the waters of the Umatilla River which is of material consequence. This filing was made by the Westland Irrigation District. Permit No. 7853 was issued to this District for a diversion of 140 second feet with a priority of January 21, 1925. There are many other filings on the Umatilla River and its tributaries, but they are all for small acreages or for power. In the case of the power filings, the water is returned to the stream. It probably would be to the advantage of the Government to maintain a priority earlier than the filing of the Westland Irrigation District.

Your assumption that the Government has a right to the water which accumulates from the Hermiston Division and is again diverted in the West Extension Canal is in accordance with our understanding. However, the lands to be irrigated with such waters should be described in a permit issued by this department so that the rights to irrigate these lands will become a matter of proper record. I would suggest an amendment of Permit No. 7400 so as to include these lands.

I question whether or not actual user of this water for a period of years past would give a water right unless proper filings are of record. We hold to the theory that rights by adverse user cannot be acquired without compliance with the Oregon statutes.

Mr. B. E. Steatmeyer, P. 2

If the surplus or drainage waters returned to the Umatilla River above the diversion point of the West Extension Canal are sufficient for the irrigation of these West Extension lands, it would seem that there could be no loss to the Government in abandoning Permit No. 408. You may have records to show the actual quantity of water which is available for this diversion. This record of water supply available should probably be taken into consideration in deciding what action should be taken with respect to this old permit.

In your last paragraph you asked whether a new filing would be substantially as good as the filings previously made. I do not think that it would, because priority is always valuable where any intervening rights are concerned. If you wish to maintain a right from the Umatilla River it would be better to rely upon the old permit.

As a sort of summary, I would suggest that the following procedure be followed in order to protect the Government's interests:

1. Submit an application to amend Permit No. 7400 to show all of the lands to be irrigated on the West Extension, including the lands which have a decreed right. This application should be accompanied by a map showing all of these lands.

2. Submit an application to amend Permit No. 408 so as to describe all of the lands which were previously described therein and which are now under the proposed West Extension except the lands which have a decreed right. This application should also be accompanied by a map showing the lands affected.

3. Authorize by letter the cancellation of Permit No. R-51.

I believe that this procedure will properly care for the situation. We will be glad to give you any assistance you need in the preparation of land descriptions or copies of the permits in question.

Yours very truly,

Rhea Laper,
State Engineer.

LAS:HB

DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE

OFFICE OF
DISTRICT COUNSEL

603 Postoffice Building
Portland, Oregon
December 31, 1927

Mr. Rhea Luper,
State Engineer,
Salem, Oregon.

My dear Mr. Luper:

Referring to your letter of December 22,
with regard to Permits R51 and 408:

In order to get a clearer idea as to what,
if any, advantage there might be in trying to hold
the rights under the filings above referred to, I
would like to ask what, if any, intervening filings
there are on the Umatilla River and its tributaries,
other than those of the United States, between the
dates of the permits above referred to and the present
date, which are still alive and of sufficient size to
be of importance.

It occurs to me that if there are no inter-
vening filings of any importance, it might perhaps be
better to make another filing at the present time, more
accurately describing our West Extension Division, for
such water as may be needed over and above the amount
decreed to the Oregon Land and Water Company.

I presume that most of the water used on the
West Extension Division is return flow and drainage
water coming mainly from the Hermiston division of the
government project, and probably we could hold such
water supply, under the principle confirmed in *Ide v.*
United States, 263 U.S. 497, 68 L.ed. 407, and cases
there cited, without any additional filing, - the water
being in effect a part of the water already appropri-
ated by the government and stored in its Cold Springs
Reservoir and then recovered after having been partly
used on the Hermiston division. Possibly it is also
true that actual user for some years past would give
as good a right as could be secured by a new filing
at this time.

Of course, what I am trying to get at in
this connection is to determine whether there is any
real danger of loss to the West Extension if we do not
attempt to hold a filing under the permits above re-

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yes

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Questionable
ferred to; whether a new filing at this time would be substantially as good as the filings above referred to; *No*
and whether there is in fact any need for an additional filing under the circumstances. We will very much appreciate any information or suggestions which you *Amended Permit*
can give us that will be helpful in determining these questions.

Very truly yours,

B. E. Stoutemyer
B. E. Stoutemyer
District Counsel.

December 22, 1927

Mr. B. E. Stoutenyer,
District Counsel,
603 Post Office Building,
Portland, Oregon.

Dear Sir:

After receipt of your letter of December 20th with reference to Permits Nos. R51 and 408, I have checked over the lands described in the decree of 1916 determining the rights to the waters of the Umatilla River. I have also checked the land descriptions in Permits Nos. 408 and 7400.

The descriptions in this latter permit seem to show that an error was made in tabulating the lands to be irrigated. One of the maps submitted with the application shows a considerable area which was to be irrigated in Twp. 4 and 5 North and Ranges 25 and 26 E., W.M., but the tabulation of lands does not include anything in this locality. The question of whether or not these lands actually are a part of the project must be decided before we can tell whether there might be any value to the United States of a right under Permit No. 408.

I do not believe that the change in the point of diversion from the Umatilla River for the lands described in the decree above mentioned under the canal of the Oregon Land and Water Company will adversely effect the right to irrigate these lands. It seems that the diversion as now made is approximately one mile up the river from the old diversion and there are no intervening diversions which will be effected. It might have been advisable to have made an application to this department for a permit to change this point of diversion for these lands. You might consider the matter even now and make an application for a change in the point of diversion if you wish.

Permit No. 408 was for the diversion of water from the Umatilla River and also water to be stored in the reservoir which was to be constructed under Permit No. R51. There could be no value in claiming a right under this permit for the lands which have a decreed right because the priority of such decreed right is earlier than the priority of the permit. There might be some value in maintaining a right from the Umatilla River for the lands which I mentioned in Twp. 4 and 5 N. Ranges 25 and 26 E., W.M., if these are considered a part of the project. These lands are described in Permit No. 408.

Permit No. 408 also covers a small area at the lower end of the Western Land and Irrigation Company Canal in Sections 29,

B. E. Stoutemyer, P. 2.

32 and 33 in Twp. 5 N. R. 26 E., N.M. These lands are unquestionably within the present project and a right for them from the Umatilla River might be maintained under Permit No. 408 if desirable.

The map which I above referred to which was filed with the application under which permit No. 7400 was issued is enclosed. I have indicated with pencil the number of acres in each legal subdivision which received rights under the decree of 1916. The figures preceded by a dash are the acreages which were allowed inchoate rights and the others were allowed vested rights. The red figures show the acreages described in Permit No. 408 for the lands which lie below the line of the proposed canal as shown on this blue print.

It might be called to your attention that Permit No. 7400 is for the use of the water stored in McKay Reservoir only. If any right is to be claimed or desired from the Umatilla River for lands which do not have right by virtue of the decree of 1916. Permit No. 408 should be maintained if you think it advisable or a new application filed.

Whenever you have time to check over this matter and advise us of your conclusion we will be glad to cooperate with you in taking the action which will best preserve your interests.

Yours very truly,

Rhea Luper,
State Engineer.

LAS:HB

DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE

OFFICE OF
DISTRICT COUNSEL

603 Postoffice Building
Portland, Oregon
December 20, 1927

Mr. Rhea Luper,
State Engineer,
Salem, Oregon.

Dear Mr. Luper:

Referring to your letter of December 16:

I shall be pleased if you will furnish us with some additional information concerning Permits Nos. R51 and 408 before reply is made to your letter.

Our files upon the subject are incomplete and the project office files have been closed. We find, however, from a letter written by Mr. Schilling several years ago, that:

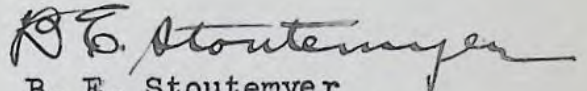
" In decree dated Sept. 9, 1916, adjudicating the waters of the Umatilla River, the Oregon Land and Water Company was given a vested right for 2,066 acres and an inchoate water right for 3,974 acres, both of which areas, according to the description given in the decree, lie largely within the present west division of this project. It has always been assumed that in taking over the system of the Oregon Land and Water Company, the United States also acquired the above mentioned water rights. However, the permits to divert water as allowed by the office of the State Engineer are based on an application describing the point of diversion and on a plat of the irrigable area showing a definite location of the point of diversion, and also the location of the canal through which such lands will be served. In the case of the Oregon Land and Water Company rights, both the point of diversion and the location of canal have been changed by the United States and your opinion as to whether these rights have been adversely affected by such action is requested."

I would like to ask if the rights decreed to the Oregon Land and Water Company under the decree dated September 9, 1916 are available to supply the

lands of the West Extension of the Umatilla project, notwithstanding the fact that the point of diversion and canal location are somewhat different from that referred to in the decree. In this connection, I would like also to ask if Permits R51 and 408 could be considered as applicable in part to the lands which are now being irrigated under the West Extension of the Umatilla project.

We will be pleased to have any suggestions which you can offer in this connection. We thank you for your favor and use this occasion to extend the Season's Greetings.

Very truly yours,


B. E. Stoutemyer
District Counsel.

September 24, 1927

Mr. D. E. Stoutemyer,
District Counsel, U.S.R.S.,
603 Postoffice Building,
Portland, Oregon.

Dear Sir:

I have received your letter of September 22nd and the Notice of Completion of Construction work under Permit No. 7400, which you enclosed.

I wonder if you intentionally omitted sending in the Notice of Completion of Construction under Permit No. R.584 which is for the construction of the McKay Reservoir. Permit No. 7400 is for the appropriation of the stored water and the construction under said permit would consist of only the construction of the distribution system.

Yours very truly,

Rhea Luper,
State Engineer.

LAS:HB

DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE

OFFICE OF
DISTRICT COUNSEL

603 Postoffice Building
Portland, Oregon
September 22, 1927

STATE ENGINEER
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OREGON

Mr. Rhea Luper,
State Engineer,
Salem, Oregon.

Dear Mr. Luper:

Please find enclosed our notice of
completion of construction on McKay Reservoir
under Permit No. 7400.

Very truly yours,

B. E. Stoutemyer
B. E. Stoutemyer
District Counsel

encl.

September 3, 1927

Mr. B. E. Stoutemyer,
608 Postoffice Building,
Portland, Oregon

Dear Sir:

This is in response to your letter of September 1, 1927, with reference to permit #7400 and asking about the advisability of submitting proof of construction work at this time.

The time limit for completion of construction work under this permit and also R584, which was for the construction of the McKay Reservoir, was set in the permits to expire on June 1, 1932 and the time limits for complete application of water under both permits expires on October 1, 1932.

If all construction work has been completed it might be advisable to submit the notices of completion of construction which are attached to the permits at any convenient time and the notice of complete application of water will not have to be considered until October 1, 1932. If all of the land described has not been benefited up to that time, it will be possible to secure an extension of this time limit for whatever period is necessary.

Yours very truly,

LAS:GHE

Rhea Luper,
State Engineer

DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE

OFFICE OF
DISTRICT COUNSEL

603 Postoffice Building
Portland, Oregon
September 1, 1927.

Mr. Rhea Luper,
State Engineer,
Salem, Oregon.

STATE ENGINEER
RECEIVED

SEP 2 - 1927

SALEM.

OREGON

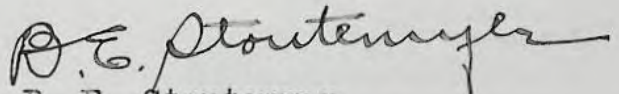
Dear Mr. Luper:

Referring to our Permit No. 7400 for
the McKay Reservoir:

We are now able to make proof of completion of works under this permit - the reservoir being complete - but the water has not as yet been entirely applied to beneficial use although a part of the stored water has been used this year.

I would like to ask if we should make proof of completion of works at this time or should wait until we are able to make proof of completion of beneficial use. Apparently we would have until October 1, 1932, to complete the application of water to beneficial use.

Very truly yours,



B. E. Stoutemyer
District Counsel

13
237

Sept. 13, 1915.

Mr. Herbert D. Howell,
Project Manager,
Hermiston, Oregon.

Dear Sir:

I have your application on behalf of the U. S. Reclamation Service for an extension of time in which to complete construction work under application No. 13, permit No. R 51, and for the complete application of water under application No. 237, permit No. 408. We have adopted the practice in this office of recommending extensions of time to June 1st for the completion of construction work, and until October 1st for the complete application of water. I have therefore recommended to the State Water Board that the time for the completion of construction work under application No. 13, permit No. R 51, be extended to June 1, 1920, and for the complete application of water under application No. 237, permit No. 408, to October 1, 1920. These extensions of time were recommended as nearly as may be in conformity with the terms of the application you have presented.

Very respectfully,

Percy A. Cupper,

Acting State Engineer.

PAC-S

Applications No. 13
237.

Sept. 13, 1915.

State Water Board,
Building,
Gentlemen:

I am transmitting herewith application of Herbert D. Nowell, Project Manager, U. S. Reclamation Service, Hermiston, Oregon, for an extension of time in which to complete construction work under application No. 13, permit No. R 51, and for the complete application of water under application No. 237, permit No. 408, and I would recommend that the State Water Board grant an extension of time until June 1, 1920, in which to complete construction work under application No. 13, permit No. R. 51, and until October 1, 1920, in which to apply the water to the proposed use under application No. 237, permit No. 408.

Very respectfully,

Percy A. Cupper,
Acting State Engineer.

RS.
Enc.

(App. No. 237.)

May 16, 1914.

Mr. Oliver P. Horton,
U. S. R. S.,
Portland, Oreg.

Dear Sir:-

In reply to your inquiry of the 9th inst., you are informed that applications Nos. 846 and 847, by A. O. Smith, for the storage and diversion of the waters of the Umatilla River, were returned to the applicant for cancellation March 14, 1912. The failure to return same to this office accompanied by the required maps and fees within 30 days would operate to cancel the applications. No other filings appear on the records of this office for the lands covered by the West Extension of the Umatilla Project, under application No. 237, Permit No. 408. I am, however, sending you under separate cover copies of the maps filed in this office by the Oregon Land & Water Co., in connection with their applications Nos. 207 and 793.

Very respectfully,

Percy A. Capper,
Acting State Engineer.

PAC:RWP

727 408
SUBJECT: Smith-Coe Filing.

SUPERVISING ENGINEER'S OFFICE
PORTLAND, OREGON.

DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE

PORTLAND, ORE., May 9, 1914.

Mr. John H. Lewis,
State Engineer,
Salem, Oregon.

OFFICE OF STATE ENGINEER
RECEIVED
MAY 11 1914
SALEM - OREGON.

Dear Sir:-

May I trouble you to let me have the date of the cancellation of the so-called Smith-Coe filing, which was subsequent in time to and covered in a general way the area included in the Government's approved applications for permit for the West Extension. In order that our files may be brought up to date, I shall appreciate it also if you will let me have a word as to whether or not there now exist any uncanceled filings covering the West Extension area, or portions thereof.

Very truly yours,


District Counsel.

SUBJECT:

STATE OF OREGON

OFFICE OF THE
STATE ENGINEER

JOHN H. LEWIS, STATE ENGINEER
PRESIDENT OF THE STATE WATER BOARD
SECRETARY OF THE DESERT LAND BOARD
PERCY A. CUPPER
ASSISTANT STATE ENGINEER

SALEM, OREGON. Dec. 5, 1913.

As a contract holder under the Twin Falls West End Project, you have doubtless recently received letters from the Idaho Carey Act Commissioner and the Irrigation Company.

My father and I have \$9,000 invested in this project and are deeply interested in the outcome, and naturally hesitate to assign our contracts to a company which by its own admission and that of the Carey Act Commissioner is bankrupt. I would suggest that you do not assign your contract as requested until some definite plan of re-organization has been worked out by the company.

We are now advised that the project cannot be constructed for the original estimate, nor have we any assurance as to what the ultimate cost will be. Before further steps are taken, it would seem advisable for the contract holders to independently determine the actual conditions of the project, including the amount of land for which there is available water, and the ultimate cost to the settler.

Mr. F. E. Weymouth, Supervising Engineer, United States Reclamation Service, has kindly offered to select an engineer to do this work and be responsible for the disbursement of the funds. If this

Or of securing funds through the
H. P. Redemption Bureau, Either
of these methods would involve the
works being turned over to the holder
at actual cost,

My father and I have \$9,000 invested in the West End Twin Falls Project. We have recently received letters requesting us to assign out fully paid up rights to a Company who admit they are bankrupt, and who propose no definite plan whereby they can assure us of financing and completing the project. Both the Company and the State admit that the water supply is deficient and the cost will be much increased. We do not know that even this second guess is correct.

I have therefore to suggest that the 268 settlers who have \$244,391 invested in this project, get a first hand and disinterested report with recommendations so that we can act intelligently. I would therefore recommend that you do not assign your contract as requested by the Company until such report is received, or until some more definite plan of reorganization is presented.

I would suggest that you sign the enclosed blank agreeing to pay for such report. Mr. F. E. Weymouth, Supervising Engineer of the U. S. Reclamation Service, Boise, Idaho, has agreed to select a man for this work and be responsible for disbursement of the money. Pending such report, which would be based largely on a review of existing data, the contract holders should organize an association, or corporation, based upon their respective interests so that definite action can be taken for their mutual benefit when some more definite plan is outlined.

As a preliminary step in this organization I would suggest that you sign a power of attorney in blank and forward the same to Mr. F. E. Weymouth with instructions to fill in the name of the man appointed by him to make the investigation.

It appears to me that the best
results could be secured by cooperation
between the contract holders and a
possible organization, or the latter
seems difficult of accomplishment
the pressing & the pressing need of
concerted action. I suggest that
instead of assigning to the bankrupt
company all interests be assigned to
the Governor of Idaho with instructions
to act as the deems ~~best~~ ^{best} interest best
promote the interest of the contract
holders. Such action will I ~~believe~~
I am true secure to this is the interest
holders the best efforts of the Governor
in finding a solution of the present
difficulty and the ultimate completion
of the project.

24a

September 13, 1910.

Mr. E. C. Hopson,

U. S. Reclamation Service,

Beck Bldg., Portland, Oregon.

Dear Sir:-

Your letter of September 12th concerning applications Nos. 13 and 237 has been received. The discussion relative to the form of endorsement appears to have resulted in a very good form as suggested by you which has been adopted.

I have approved these two applications this day. They have been duly recorded, and are returned herewith together with one set of blue print maps relating to this application, which are sent under separate cover.

Very respectfully,

(encs.)

State Engineer.

JHL/DB

SUBJECT: Water right applications - Oregon - Nos.
13 and 237.

DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE

PORTLAND, ORE., September 12, 1910.

Mr. John H. Lewis,
State Engineer,
Salem, Oregon.

#24a

Dear Sir:

Referring to our recent correspondence on the suggested form of approval by you of applications Nos. 13 and 237, I have gone over this matter with Mr. Morton and the Project Engineer, and beg to suggest that the following wording seems to fully harmonize with the points you brought to my attention in our recent discussion and the requirements of the proposed extension of the project. You will note that I have suggested a few minor alterations of wording. For instance, the term "regular flow of the river" could I believe be advantageously substituted by "natural and unregulated flow." One or two other minor changes of wording are also inserted.

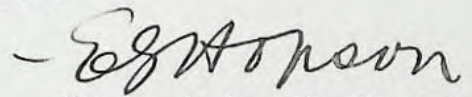
Suggested approval application 237 - (Limited to 600 cubic feet per second of the natural and unregulated flow of the Umatilla River, together with the water stored under ^{No 13 Reservoir} ~~Reservoir~~ Application ⁵¹ and Permit No. ~~15~~; the total use of such natural and unregulated flow and of water drawn from the storage aforesaid not to exceed one-eightieth of one cubic foot per second for each acre irrigated.)

Suggested approval for application No. 13 - Approved subject to existing rights, as an appropriation of and permit to store the entire flow of the Umatilla River to the extent of 175,000 acre feet.

I have your letter of September 10, and note that you have corrected both copies of the map so that it agrees with the application. Many thanks for having done this.

I note that the matter is now in shape for final endorsement. The sooner this goes into effect the better for the interests of the project.

Respectfully,


Supervising Engineer.

CC to the Director
H. D. Newell

#24a

September 10, 1910

Mr. E. G. Hanson,

U. S. Reclamation Service,

Beck Bldg., Portland, Oregon.

Dear Sir:-

Your letter of September 6th, concerning the corrections to your applications Nos. 13 and 237, has been received. Taking the points up in order as mentioned in your letter:

In Township 4 North, Range 25 East, the seven acres in Section 7 has been added as suggested. We find, however, that your maps apparently do not agree with ours, as even this does not make the total as required in the application. From your adding machine record, which accompanied your letter, it appears that your map shows forty-five acres in the Southwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 2. The map here shows thirty-five acres. Your map must necessarily be in error. We have corrected both copies of our map to show forty acres in this forty acre tract, and added five acres in the South east $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 2, making fifteen acres instead of ten acres in this subdivision.

The correction in Township 5 North, Range 26 East has been made.

We have discovered that Township 4 North, Range 26 East is correct on our tracing, but incorrect on the blue print map on which the checking was done. This blue print has been corrected to agree with the tracing.

This appears to put these applications in shape for approval as soon as we hear from you as to the form of endorsement.

Very respectfully,

JHL/DB

State Engineer.

SUBJECT:

STATE OF OREGON

OFFICE OF THE
STATE ENGINEER

JOHN H. LEWIS, STATE ENGINEER
PRESIDENT OF THE BOARD OF CONTROL
SECRETARY OF THE DESERT LAND BOARD

SALEM, OREGON, Sept. 9th 1910

Mr. E. J. Hopson,
Reclamation Service
Superior Engineer,
Beck Building
Portland, Ore.

I have your letter of September the 8th showing the corrections to be made in areas of irrigable land on the plans.

In Township 5 North, Range 26 East and Township 4 North, Range 26 East have been corrected, ^{in accordance with each plan} In Township 4 North, Range 25 East it is evident the map in your office and the one in this office do not agree ^{as to areas} in regard to Section 2 in the Southwest quarter of the Northeast quarter ^{of sec. 2.} The map here shows 35 acres where you have 45 acres. ^{Your map must} ~~therefore be in error.~~ ^{Kindly re-examine} ~~We have corrected our maps~~ ^{it and advise me according to the correction.} to show 40 acres, and added 5 acres to

I am send the blue prints under separate cover. 4N-26E - which you ^{will} correct, we find is correct. Yours respectfully,
This print has been corrected to correct two,

In southeast quarter of Northwest quarter ^{of sec. 2} made 15 instead of 10 which makes correct total on application.

SUBJECT: Applications Nos. 13 and 237 -Umatilla Project

DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE

PORTLAND, ORE., Sept. 8, 1910.

#24a
Mr. John H. Lewis,
State Engineer,
Salem, Oregon.

OFFICE OF STATE ENGINEER
RECEIVED

SEP 10 1910

Dear Sir:-

I have your letter of September 7th calling attention to errors in areas of irrigable lands shown on plans accompanying application for water right. Referring to your comments in the order in which they appear in your letter, I find as follows:

In Township 4 North, Range 25 East, 7 (not 17) acres should be added. This error appears to have occurred in Section 7, where in the Northwest quarter the area should be 11 acres instead of 4.

In Township 5 North, Range 26 East, there is an error in Section 30, where the Northwest quarter of Northeast quarter should have an area of 18 instead of ^{the} 12 acres shown on plan.

In Township 4 North, Range 26 East there appears to be no error. I have carefully gone over the figures on the plan and on the water right application and totaled the areas of all quarter sections. The total area of irrigable land in the township is 11,680, not 11,688 as mentioned in your letter.

For your convenience I am enclosing herewith slips showing the township totals and the totals of the quarter section areas in Townships 4 North Range 26 East and 4 North Range 25 East.

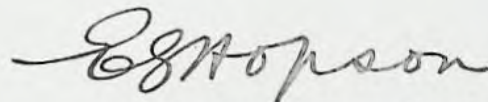
State Engineer -2- Sept. 8, 1910

It thus appears from my reckoning that the only errors to be corrected are the two above mentioned.

If after re-examination you find that the above are the only errors requiring correction I shall be obliged if you will follow the suggestion made in your letter and make the necessary corrections on the blue prints and tracing on file on your office, advising me of the action taken.

With apologies for the trouble that has already been caused in the matter, I am,

Yours respectfully,

A handwritten signature in cursive script, reading "E. H. Hopson".

Supervising Engineer.

Enclosures.

24a

September 7, 1910.

Mr. E. G. Hopson,

U. S. Reclamation Service,

Beck Bldg., Portland, Oregon.

Dear Sir:-

In checking over your maps we find that they are correct with the exception of one sheet on which we find a number of mistakes. Township 4 North, Range 25 East, 17 acres must be added to the black figures as shown in each 40 acre tract to make out your total acreage. This error appears to have occurred in section 2, in which section you have doubtless omitted to add 10 acres in the Northwest quarter. 7 acres should be added in section 7.

In township 5 North, Range 26 East, 6 acres should be added to the black figures in each 40 acre legal subdivision to bring it up to the total as requested in the application, and as listed in your summary on the map. The error seems to have occurred in section 30, 282 acres which should be 288 acres. Township 4 North, Range 26 East seems to be considerably overestimated by you. It will be necessary for you to add 294 acres to the area as computed by us to bring it up to a total of 11,688 acres as included in your application. It appears that 1 acre should be added to the 40 acre areas in section 14.

10 acres in section 16, and 3 acres should be subtracted from some one of the 40 acre areas in section 21 in order that the total as given on your map for that section may agree with the ^{sum of} 40 acre subdivisions. In addition to these corrections, the balance of acreage to make up the difference of 294 should be added in any 40 acre tracts you think desirable, or the total cut down so as to make the map and application agree.

If you find this statement is correct, you may find it more convenient to authorize us to make such corrections to the blue print map and the tracing, and send you a blue print copy of the tracing after the same has been corrected by us.

Very respectfully.

JHE/DB

State Engineer.

24a

September 7, 1910.

Mr. E. C. Hopson,

U. S. Reclamation Service,

Portland, Oregon.

Dear Sir:-

In reply to your letter of September 2d concerning the wording of the endorsement of my approval of these applications, permit me to say that the form suggested by you is **excessive**. The form of the approval is immaterial to me just so it is definite, either in second feet or acre feet, or a combination of the two, altho heretofore all approvals except for reservoir permits have been in this form:-

"The appropriation for irrigation purposes shall be limited to one-eightieth of one cubic foot per second for each acre irrigated."

Followed by the total amount of diversion in cubic feet per second filled in at the space provided on our blank.

My former suggestion was based upon your statement that six hundred second feet was the maximum capacity of your canal. If there is any doubt as to this point, I would suggest the following endorsement for your consideration which also conforms with our practice:-

"Limited to six hundred cubic feet per second of the regular flow of the Umatilla River to be supplemented by water stored under reservoir permit No. _____. The total of such regular flow and stored water

not to exceed one-eightieth of one cubic foot per second for each acre irrigated."

This to be inserted on our form where the three blank lines are located followed by 748.13 filled in two lines below as the total limit for your diversion at any time.

Upon receipt of suggestions from you concerning the form of my endorsement, your applications will be approved.

Very respectfully,

Copy to

State Engineer.

H. D. Jewell,

U. S. Reclamation Service,

Hemlock, Oregon.

JHL/DB

SUBJECT: Applications Nos. 13 and 237.

DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE

24a

PORTLAND, ORE., September 3, 1910.

Mr. John H. Lewis,
State Engineer,
Salem, Oregon.

OFFICE OF STATE ENGINEER
RECEIVED
SEP 1910
SALEM OREGON

Dear Sir:

I have your letter of September 2, for which I thank you. I am not prepared to definitely answer the question raised in your letter until I have had full opportunity for conference with both Messrs. Newell and Morton. You fully understand the points which we are desiring to cover for the benefit of the west extension, viz., a right to use the natural flow of the river to the extent of 600 second feet as long as said flow or any part thereof is available during the spring and early summer, and thereafter to supplement the deficiency by drafts on the 175,000 acre feet of water stored in the reservoir. It would seem to me, however, undesirable to limit the rate at which the draft on the stored supply should be made.

I would suggest for your consideration permit No. 237 to read as follows:

"The amount of water appropriated shall be limited to the amount that can be applied to beneficial use and not to exceed 600 cubic feet per second of the natural and unregulated flow of the Umatilla River, and in addition, a supply drawn from water stored under application No. 13 to

be used as required to the full extent of such storage."

I am trying to follow out the drift of the idea expressed by you during our recent conference, that the storage water can be used when and as required by the applicant providing, of course, it is beneficially used and not wasted. In a general way it would be better to avoid any restriction as to the rate of its utilization.

I have been considering the practical difficulties you referred to in operation under the water master. It would seem to me that the flow in the river could be measured just above the reservoir so that the water master could see at any time by reference to the gage height how much water was flowing in the river, and by reference to the records of reservoir elevations which would be on file at the gate tender's house he could ascertain whether or not water was being drawn from storage from day to day. There will be no difficulty in the water master assuming complete control of the situation.

I am merely discussing these matters, however, in a preliminary way, as I want to take them up carefully with Messrs. Newell and Morton before giving a definite reply.

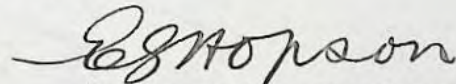
There is one matter which has seemed to me to be all-important, viz., that our priority to store the 175,000 acre feet of water should be incontestible. It would seem to me that there is some little doubt about this. You realize that the flood waters of the Umatilla River although usually much in excess of what can ever be utilized for ir-

rigation occasionally fall so low that every drop will be utilized. Such a season occurred during 1905, when there would have been an actual shortage under the west extension if constructed on the lines now proposed. We are proposing to carry over storage from year to year in order to provide against seasons of unusual shortage such as this. It is, therefore, imperative that our priority to store should be as incontestible as priority to divert water. It would be fatal, of course, if ~~such~~^{subsequent} appropriators were permitted to build storage works further up the stream and retain water which should go to fill our reservoir.

I would be obliged for your comments on this point, as I want to be perfectly clear that the reservoir rights will be as safe as the diversion rights.

Respectfully,

CC to H. D. Newell.


Supervising Engineer.

24a -

September 2, 1910.

Mr. E. G. Hopson,
U. S. Reclamation Service,
Beck Bldg., Portland, Oregon.

Dear Sir:-

I am in receipt this morning of a telegram from Morton & Raley consenting to the approval of both applications and withdrawing the former protest of the Oregon Land and Water Company against granting of the U. S. Reclamation Service applications.

This removes all obstacles to the approval of the Government applications for the appropriation of water from the Umatilla River, except as to the discrepancies between the areas as given on your maps and as summarized in your applications. Upon the return of the various maps which I have loaned you for correction, both your applications Nos. 13 and 237 will be approved by me.

My approval of application No. 237 presents some difficulty, as it involves both the regular flow and stored water, and the law requires that I shall not approve any application "for more water than can be applied to beneficial use." This application calls for the appropriation of 175,000 acre ft. of stored water, or 2.92 acre ft. per acre, in addition to 600 cu. ft. per sec. of the regular flow, or one cu. ft. per sec. for 100 acres. Some limitation is therefore necessary. This can, of course, be expressed in different ways. As it is a matter of considerable importance, I would like to get your approval or suggestions as to form before signing.

I have heretofore expressed all limitations in second feet for convenience of administration, for the acre feet limitation involves both the measurement of quantity and time. Rotation or any variation from the regular allowance can be adjusted by agreement with the water master. The simplest limitation for this application No. 237, and one which conforms to our practice heretofore, is as shown on the accompanying sheets. What suggestions have you to offer? I had some talk with Mr. Morton relative to this matter, and would be pleased to get his criticism if it is possible prior to approval.

Application No. 13 is a permit to store 175,000 acre ft. of water. This will be granted without comment. If all this water is not required to supplement the regular flow of the river which you have appropriated, it can, at any time before the expiration of the time in which it must be applied to beneficial use, be appropriated and used by making a secondary application referring to such reservoir for a supply of water. Its priority will be as good as that for any other lands supplied from this reservoir.

Very respectfully,

JHL/DB

State Engineer.

237

STATE OF OREGON, }
County of Marion. } ss.

This is to certify that I have examined the foregoing application and do hereby grant the same, subject to the following limitations and conditions: -----

*the regular flow of the Imnatilla River
is to be supplemented when less than such
amount by water stored under application No 13
Permit No ---, and to the extent of such shortage*

The amount of water appropriated shall be limited to the amount which can be applied to beneficial use and not to exceed 600 ----- cubic feet per second of -----

Actual construction work shall begin on or before -----
and shall thereafter be prosecuted with reasonable diligence and be completed on or before -----

Complete application of the water to the proposed use shall be made on or before -----

WITNESS my hand this ----- day of -----, 19-----

State Engineer.

STATE OF OREGON, }
County of Marion. } ss.

This is to certify that I have examined the foregoing application, together with the accompanying maps and data, and return the same for correction or completion, as follows:

In order to retain its priority, this application must be returned to the State Engineer, with corrections, on or before, 19.....

WITNESS my hand this day of, 19.....

.....
State Engineer.

SUBJECT: Water rights - Umatilla River.

DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE

#24a

PORTLAND, ORE., June 17, 1910.

Mr. John H. Lewis,
State Engineer,
Salem, Oregon.

Dear Sir:

I have your letter of June 15, which I have read with much interest.

I note your comment that you hold very different views from those expressed in my letter on the points mentioned; nevertheless I am inclined to think that, after all, it will be found that our views do not differ so widely as might be imagined at first glance.

I appreciate that the working of the new code is to some extent in an experimental stage and that all of us, particularly yourself, are feeling our way trying to discover the line of least resistance.

In your last paragraph I note your comment that in the event the Reclamation Service's application were approved over lands of the Oregon Land and Water Company, the latter lands would be tied up for at least five years. It seems to me that such would not be the case, being an example where the principle which I have advocated comes in to advantage. The party owning the land can at all times build ditches on his own land without reference to any au-

thority whatever. The securing of a permit from the State Engineer is, of course, a step that must be taken in order to legally establish his water right and secure a priority over subsequent appropriators. Nothing, however, in the water code or in any state or federal law can prevent a party from developing an irrigation system on his own land. If, therefore, the Oregon Land and Water Company should obtain from your office a permit secondary, of course, to the permit of the U. S. Reclamation Service, but which should be based on a certain amount of overlapping of land areas, I can see no reason why they cannot proceed in their work of development without further reference or without any fear as to the ultimate outcome. If their ditch system covers their own land it will be impossible for the Reclamation Service to utilize that portion of the water for which a water-right would have been perfected by the Reclamation Service had the latter itself constructed these ditches, and therefore ~~the~~ automatically the water-right pertaining to that portion of the permit will lapse so far as the Reclamation Service is concerned and revert to the permit held by the owner of the lands in question. Moreover, it seems to me this reversion must take place, no matter how many intervening permits have been granted.

In plain language, nothing in the code, as I construe it, permits the tying up of water from use of the

actual owners of the land unless the latter are indifferent or neglect opportunities which the code presents.

I have little doubt you will fully understand my motives in arguing these points with you. I have not attempted to apologize for making a presentation of my views or to explain that the presentation is not made with any idea of interference or meddling. I fully understand that you have given these matters deep consideration and that we all of us owe you a great debt for the work you have already accomplished and are still carrying out.

My general views have been that your office should exercise a pretty wide discretion in the granting of permits and, if you will recall, I have on more than one occasion advocated that you use a wider discretion than possibly you have felt was justifiable. I believe the successful working of a code must, after all, rest upon the discretionary power of an earnest and honest official and that no law that can be devised will automatically and justly solve the various complicated problems which will arise.

I am a firm believer in the right of your office to make decisions more or less arbitrarily in the matter of granting permits, as I believe it necessary for precedents to be established whereby you will reject an application involving an inferior utilization in favor of one involving higher utilization. It seems to me absolutely essential

that your office should exercise pretty broad power in matters of this kind, but in making decisions on such matters as land ownership and the partial overlapping of permits I am inclined to think that it would be advantageous from the point of view of the working of the new code for your office to ^{avoid} ~~waive~~ the responsibility of a decision which, as indicated in your letter of June 15, will not be based on any independent investigation.

Respectfully,

E. H. Hopson

Supervising Engineer.

#24a

June 15, 1910.

Mr. E. G. Hopson,
U. S. Reclamation Service,
Beck Building,
Portland, Oregon.

Dear Sir:

I have yours of the 14th inst., in regard to application No. 237, for permit to appropriate the water of the Umatilla River by the United States. I hold very different views from those expressed in your letter on some of the points mentioned and believe that to adopt the system, generally, of granting overlapping permits would be a serious handicap to development along these lines, as well as cumber the records with many filings for the same water to irrigate the same land, which was one of the worst features of the old law, and one sought to be remedied by the enactment of the water code.

I realize that instances may arise when it will become necessary to grant overlapping permits, but do not believe the one under consideration to be such a case.

Under your theory, the application of Mr. J. G. Camp should have been granted, and he could then have secured contracts for the irrigation of the patented lands, and in this way might have succeeded in developing your project. Of course, the same would apply to any subsequent applications which might be filed. The ownership of the lands to be irrigated comes indirectly into the consideration of our applications in this way. Whenever a formal protest is filed against an application, on the alleged ground that he is the owner of the land to be irrigated, I consider that he is entitled to be heard in the matter. No independent investigation is made by this office in regard to the ownership of the land to be irrigated.

In this instance, I fail to see how the matter would be settled within a year from the granting of your application. The Reclamation Service will probably begin construction work within the year, whether or not a contract is secured from the Oregon Land and Water Company for the irrigation of these lands, in which event the lands would be tied up for at least five years, with a probability of an extension of this time.

Mr. H. G. H. #2.

6/15/10

I have gone into this matter to this extent in order to indicate briefly wherein my ideas on this subject differ from yours, and why I have so strongly urged that this matter be adjusted. Upon receipt of your letter I realize that an adjustment is impossible, and will, therefore, set July 14th as the date when both parties may be heard and the protest of the Oregon Land and Water Company disposed of, and also any other matters pertaining to these applications. You will understand that no action will be taken until this protest has been disposed of.

Very respectfully,

State Engineer.

SUBJECT: Application for water-right - Umatilla River.

SUPERVISING ENGINEER'S OFFICE
PORTLAND, OREGON.

DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE

194a

App. - 237

PORTLAND, ORE., June 14, 1910.

Mr. John H. Lewis,
State Engineer,
Salem, Oregon.

Dear Sir:

I have your letter of June 13 referring to application by the United States for water-right on the Umatilla River, #237, and note your statement that a formal protest was filed by Raley and Raley against the permit being granted.

I have desired for some time to have a conference with you to discuss the general principles involved in the granting of permits and learn your views. Mr. Morton is also very desirous of holding such a conference. I trust in the near future we can arrange to meet and thrash out some of the points involved by the new water code.

There is one principle which it seems to me after careful study of the new code we will find fundamental, viz., that the ownership of lands referred to in an application, is at the time the application is filed and considered by your office for approval, entirely immaterial. Any other assumption it seems to me will lead to interminable difficulties and make the working of the new water code so complicated and cumbersome as to render it useless for practical pur-

poses. It would seem to me that so far as your office is concerned the ownership or control of the lands by the applicant cannot or should not have any bearing. It cannot be expected that your office can decide the complicated and intricate phases of land ownership involved in all cases where applications are made. Were it necessary for every applicant to show that he owned or controlled the lands for which he was applying for a water-right, it would be a practical prohibition ^{to} ~~on~~ the development of any large enterprise. During the early stages of organization and development you will realize the impracticability of any organizing company being able to divulge its plans to the extent of securing control of every tract involved in its application, in advance.

We must, therefore, accept the principle that the application and granting of permits for water-right for lands over which the applicant cannot show control or is not the owner is ~~fundamental~~ ^{permissible}. Any other assumption, for reasons before stated, must inevitably lead to absolute blocking of development and endless confusion and responsibility in your office.

This question of responsibility in itself seems to me to be one which your office must necessarily decline to face, as a decision by you involving questions of ownership must necessarily involve costly and intricate investigations in matters of disputed title, complicated agreements and op-

tions to sell and other matters which I do not doubt you would find it impossible to do full justice to.

If, on the other hand, we regard the question of ownership or control by the applicant as immaterial, so far as your office is concerned, the working of the new water code at once becomes clear and simple. A party, for instance may apply for a water-right for lands owned by me which I have no intention of selling nor of permitting him to irrigate. Assuming that the application submitted by him is in order and is duly approved by you, the applicant secures a priority for the construction of canals and utilization of the water. Nothing, however, prevents me from filing another application and securing a priority second to the permit you have granted to the other party. What is the result? The party who has secured the permit being unable to control my land cannot construct. His permit without control of land is practically useless to him. After the expiration of a year, through failure to construct his permit lapses and the permit which in the meantime I have secured and which is secondary to his then comes into full force and effect. In plain language, the matter clearly adjusts itself and permits of a logical and reasonable solution in every case.

I can therefore see no reason why permits should not overlap, if necessary. Take, for instance, the application by the United States above referred to. I understand there is an overlapping of a few hundred acres between

the application filed by the United States and that filed by the Oregon Land and Water Company. Why should not permits be granted to both parties if they are in conformity with the law and otherwise satisfactory? If the application by the United States covers land which the Oregon Land and Water Company own and intend to water themselves, the permit granted to the United States will be wholly ineffective in its application to these particular lands. The United States cannot, of course, build an irrigation system over lands owned by other parties and against their will. If, therefore, the Oregon Land and Water Company desire to water these lands themselves under the permit granted by you they will have full power to do so, as there is nothing in the code to prevent their going ahead with their ditch work at any time. The mere fact that they will have built ditches to water this particular tract will show conclusively that the permit of the United States is ineffective so far as that tract is concerned, and necessarily the corresponding portion of the water-right applied for by the United States under permit #237 will automatically become attached to the permit granted the Oregon Land and Water Company.

It thus appears from my point of view that the granting of this permit cannot under any circumstances work a hardship to other parties, and the principle involved and above discussed appears to be the only one admissible.

I might mention in passing that the application

by the United States provides for the watering of some 60,000 acres of land. Some of this land is public, other portions are railroad land and patented land. Unquestionably a great diversity of ownership exists in this 60,000 acres. It is not to be considered for a moment that the Government or any other party organizing for the irrigation of these lands would be able to secure in advance the assent of the numerous parties in interest. The Government in making its application has done so on the reasonable assumption that the great bulk of these lands will gladly enter the irrigation scheme proposed. Such an assumption you well know to be reasonable and proper. If the question once arose, however, in the minds of the numerous individual owners in this tract that their individual assent was necessary to an application of this character we might as well at once abandon any hope of going ahead with this work. Our office would be filled with parties protesting against and objecting to this and that feature of the application, and it would be insisted that consent would be withheld unless certain impossible conditions were complied with.

I have gone into this matter at length merely to illustrate the impossibility of your office acting on the principle that an applicant must show control or ownership to the land for which application is made and to illustrate the interminable complications that would otherwise result.

Respectfully,

E. H. Thompson
Supervising Engineer.

#24a

June 13, 1910.

Mr. L. G. Hopson,
U. S. Reclamation Service,
Beck Building,
Portland, Oregon.

Dear Sir:

In regard to application by the United States for the waters of the Umatilla River, No. 237, to which my attention has been called by your letter of the 11th inst., will say that I have endeavored several times to secure an adjustment of the conflict between this filing and the filing by the Oregon Land and Water Company for the land which they claim to own and have been assured several times that an adjustment would be forthcoming very shortly, but have recently been notified that as far as you were concerned this conflict could not be eliminated. Just prior to taking up your application for approval a formal protest was filed in this office by Raley & Raley against this being granted, which will necessitate a hearing or adjustment before further action can be taken.

I much prefer to have this matter adjusted before approving the applications, in order to avoid a contest or the necessity of granting overlapping permits. The application by the United States may be changed in any manner you see fit, such as including other lands to the extent of the overlap, or including additional lands in forties which are already designated.

If it is impossible to secure an adjustment of this matter, I will endeavor to have a hearing some time in July, when both parties can present their case and decide what is best to be done. However, I trust this will not be necessary.

Very respectfully,

John H. Lewis

State Engineer.

#24a

April 15, 1910.

Mr. Oliver P. Morton,
U. S. Reclamation Service,
Beck Building,
Portland, Oregon.

Dear Sir:

I have taken up for approval application No. 237 by E. G. Hopson, for the U. S. Reclamation Service, but before approving the same I desire to submit the endorsement to be placed thereon to you for your consideration. I am, therefore, enclosing herewith a blank application bearing the proposed endorsement. The reference to the figures in each smallest legal subdivision is necessary on account of discrepancies between these figures and the total acreage for each section as shown on the map, which makes it necessary to indicate which of these two sets of figures shall govern.

Trusting I may hear from you at your earliest convenience, I remain

Very respectfully,

State Engineer.

(1 enclosure.)

DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

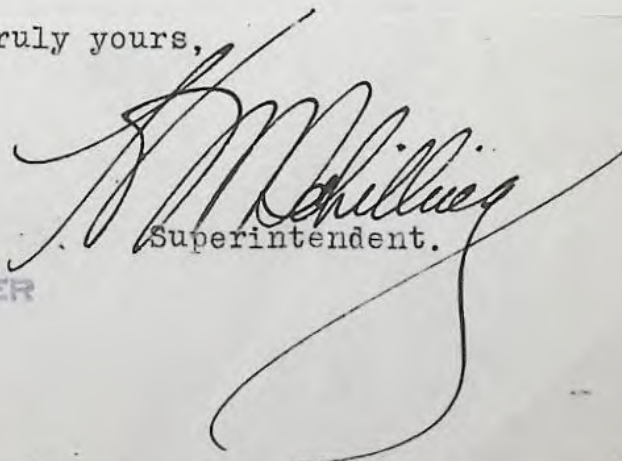
Hermiston, Oregon, July 21, 1924

Mr. Rhea Luper,
State Engineer
Salem, Oregon

Dear Sir:

Watermaster A. E. Perry advises me that the records show that permit No. 408 for 103.2 second-feet of water for 4,128 acres on the West Extension Division, Umatilla Project, Oregon, was filed in 1909. The records of this office do not show the correspondence, and I would appreciate if you would advise me what the status of this application and permit is.

Very truly yours,


Superintendent.

STATE ENGINEER
RECEIVED

JUL 22 1924

SALEM, OREGON

APPLICATION FOR EXTENSION OF TIME.

TO THE STATE WATER BOARD OF THE STATE OF OREGON
THROUGH THE STATE ENGINEER.

The United States of America, holder of Application No. 13, being Reservoir Permit No. 51, issued by the State Engineer of the State of Oregon, for the construction of a reservoir and the storage for beneficial use of 175,000 acre feet of water, and holder of Application No. 237, being Permit No. 408, issued by said State Engineer for the application to beneficial use of the water stored in said reservoir and for the appropriation of 600 cubic feet per second of the natural and unregulated flow of the Umatilla River, hereby and in pursuance of Section 50 of Chapter 216 of the General Laws of Oregon for 1909 (Lord's Oregon Laws, Section 6650), makes application for an extension of time of five (5) years from and after the 13th day of September, 1915, within which the works in course of construction and to be constructed under and in pursuance of said permits and each of them, and of such amendments or modifications thereof and applications therefor as may be lawfully made and allowed, shall be completed; and for an extension of time of five (5) years from and after the 13th day of September, 1915, within which application of water to beneficial use shall be completed and the rights perfected under and in pursuance of said permits and each of them, and of amendments or modifications thereof as aforesaid; and for grounds and cause of said application for extension of time shows:

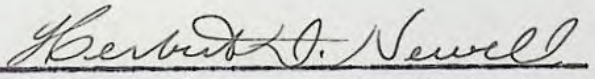
That works of the magnitude in course of construction and to be constructed under and in pursuance of said permits and each of them, involving as they do the expenditure of some millions of dollars, necessitate that the earlier operations consist of those of the character described in the Notice of Beginning of Construction heretofore filed, and in the Notice of Prosecution of Work with Diligence of even date and submitted herewith, which said Notice is also referred to with respect to that certain change in the diversion point of the Main Canal therein described; that these operations have been carried on in a systematic and comprehensive way commensurate with the magnitude of the work proposed, and have been and are now being so conducted as to enable subsequent operations to be continued with effectiveness;

That the magnitude of the project and the most logical and practical development and settlement thereof require that works shall be constructed - with a view always, however, to the reclamation of the larger area proposed - and water be made available to successive units thereof; that these reasons, coupled with existing conditions in the business world and as to the settlement of arid lands, have required that the operations now being carried on contemplate the first full development and reclamation of a unit of some ten to twelve thousand acres of land, which said

operations are now being conducted; that the works now in course of construction are not only nearing completion for said unit, but are so organized and built as to admit of the progressive development and reclamation of succeeding units under and in pursuance of said permits and each of them; that the five years' extension of time herein applied for and named is the result of a careful estimate of the least period within which the proposed works can be constructed and the rights perfected.

WHEREFORE, good cause being shown, it is submitted that the extension herein applied for should be granted.

IN WITNESS WHEREOF the United States has caused this application to be signed in its behalf this 1st day of September, 1915.


Project Manager, U. S. Reclamation Service, for and on behalf of the United States of America.

Subject: Notice of Prosecution of Work with Diligence -
West Extension Umatilla Project.

DEPARTMENT OF THE INTERIOR

UNITED STATES RECLAMATION SERVICE

NOV 10 1914
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RECEIVED
OFFICE OF STATE WATER BOARD
SALEM, OREGON

PORTLAND, ORE., JUN 11 1914

Secretary State Water Board,

Salem, Oregon.

Dear Sir:-

In accord with the law and the rules and regulations established thereunder by the State Water Board, and in pursuance of recent correspondence between us, I am enclosing Notice of Prosecution of Work with Diligence under permits numbered 51 and 408, respectively, approved and issued to the United States on September 13, 1910. For convenience the notice has been made to cover the two years between September 13, 1911, and September 13, 1913, coupled with brief description of the operations and expenditures up to May 1st of the year 1914. I believe you will find the document in order, and would appreciate a brief word indicating that the same has been accepted and filed.

Very truly yours,

Oliver H. Morton
District Counsel.

Enclosure.

NOTICE OF PROSECUTION OF WORK WITH DILIGENCE.

The United States of America, holder of application No. 13, being reservoir permit No. 51, issued by the State Engineer of the State of Oregon for the construction of a reservoir and the storage for beneficial use of 175,000 acre-feet of water, and also holder of application No. 237, being permit No. 408, issued by said State Engineer for the application to beneficial use of the water stored in said reservoir and for the appropriation of 600 cubic feet per second of the natural and unregulated flow of the Umatilla River, hereby presents and shows:

1. That Notice and Proof has been heretofore filed showing that, in accordance with the tenor of said permits and the limitations endorsed thereon by the State Engineer, actual construction of the works described therein was begun within one year from September 13, 1910, the date of approval thereof, to-wit, on the 16th day of January, 1911, the character of such construction and the aggregate expenditures therefor up to the 13th day of September, 1911, being described in said Notice and Proof;

2. That the works described in said permits, and the work of construction thereunder, since the beginning of said construction and up to the present date, and for the purposes of this Notice, particularly during the year commencing September 13, 1911, and the year commencing September 13, 1912, have been prosecuted with due diligence;

3. That there was expended by the United States during the year beginning September 13, 1911, and ending September 12, 1912, the sum of \$8,200 in and in connection with the construction of works for the utilization of water under the aforesaid permits, and during the year beginning September 13, 1912, and ending September 13, 1913, the sum of \$5,500; that the work performed during these years included the carrying forward of the operations listed on page 2 of the Notice and Proof aforesaid not completed prior to September 13, 1911, the carrying forward and completion of the mapping of the reservoir site on a scale of 1 inch equals 400 feet with general contour interval of 2 feet, the carrying forward of the topographic survey of the irrigable area on the general scale of 1 inch equals 400 feet, with contour interval of 5 feet (2 foot intervals being occasionally used), the digging of 49 test pits with total depth of approximately 1700 feet and average of 35 feet; the making of 93 wash borings with total depth of 5,174 feet and average of 55.6 feet, diamond drill work upon 14 holes to a total depth of 234 feet; the making of studies and designs of plans of irrigation and types of dams, including the working up of special design for diversion dam, securing necessary rights of way, subscription of private lands within the project, etc.

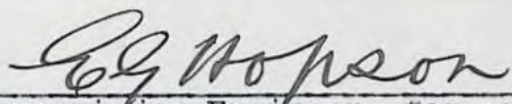
4. That in a work of this magnitude, involving as it does the expenditure of some millions of dollars, it is necessary that its early operations consist exclusively of those

of the character described in the Notice and Proof heretofore filed and above referred to, and of the character in this Notice stated; that these operations have been carried on in a systematic and comprehensive way commensurate with the magnitude of the work proposed, and have been and are now being so conducted, with the further work of construction hereinafter described, as to enable subsequent operations to be continued with effectiveness.

5. That the necessary agreements, trust conveyances and court orders relating to and providing for the proper control of the requisite amount of the irrigable acreage, including the larger areas of Northern Pacific Railway Company and Oregon Land and Water Company lands, are now in force and effect; that the expenditures since September 13, 1913, and up to May 1, 1914, amounted to \$41,400, the work done being the further mapping of irrigable area, canal location, establishment of camps and the excavation of five miles of main canal, involving 118,000 cubic yards; that on March 20th of this year the specific sums of \$175,000 for the excavation of an additional 5 miles of main canal and for the concrete lining of 10 miles thereof, and of \$48,000 for the building of a diversion dam, were made immediately available from the Departmental allotment for the project, for which said construction operations, the letting of contracts, and other necessary preliminaries are now being carried forward.

It may also be noted that the Main Canal will be concrete lined throughout, and that the distributaries will also have concrete lining or consist of concrete pipe.

IN WITNESS WHEREOF the UNITED STATES OF AMERICA
has caused these presents to be signed by E. G. Hopson, Supervising Engineer, United States Reclamation Service.



Supervising Engineer, for and
on behalf of the United States
of America.

June 1, 1914.

Sept. 13, 1915.

Oliver P. Horton
U. S. Reclamation Service,
Portland, Oregon.

Dear Sir:-

I am in receipt of yours of the 10th., inclosing
notice of prosecution of work with diligence in connection
with permit No. 408 and reservoir permit No. 51 and the same
have been filed in this office.

Application for extension of time under these permits
has been handed to the State Engineer, who will give the matter
his attention.

Very respectfully.

Assistant Secretary.

DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE

Office of
District Counsel
417 Fenton Bldg.

Portland, Oregon, Sept. 10, 1918.

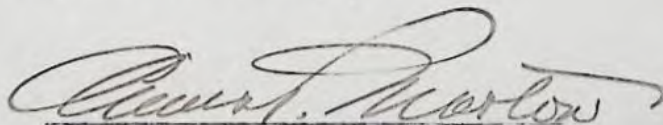
Miss H. F. Mers,
Secretary, State Water Board,
Salem, Oregon.

Dear Madam:-

There are herewith transmitted and offered for filing and presentation in accordance with the law and regulations 'Notice of Prosecution of Work with Diligence' and 'Application for Extension of Time', both in relation to Reservoir Permit No. 51 (Application No. 13) and Permit No. 408 (Application No. 237 - beneficial use of water stored in said reservoir and appropriation of 600 cubic feet per second of the natural and unregulated flow of the Umatilla River). These documents relate to the West Extension of the Umatilla Project, in course of construction by the United States.

Please advise me at your early convenience of their receipt and of the disposition made thereof.

Yours very respectfully,


District Counsel.

NOTICE OF PROSECUTION OF WORK WITH DILIGENCE.

The United States of America, holder of Application No. 13, being Reservoir Permit No. 51, issued by the State Engineer of the State of Oregon for the construction of a reservoir and the storage for beneficial use of 175,000 acre-feet of water, and holder of Application No. 237, being Permit No. 408, issued by said State Engineer for the application to beneficial use of the water stored in said reservoir and for the appropriation of 600 cubic feet per second of the natural and unregulated flow of the Umatilla River, in accordance with the tenor of said permits and the limitations endorsed thereon by the State Engineer, began the actual construction of the works described therein on the 16th day of January, 1911, as shown by Notice of Beginning of Construction heretofore filed, and has since said last named date and up to the present time expended \$536,500 in the construction of works for the utilization of water under the aforesaid permits; such construction work and the annual expenditures therefor being more particularly described as follows:

For the year ending September 13, 1911, \$45,200
for the construction work described in Notice of Beginning of Construction heretofore filed.

For the year beginning September 14, 1911, and ending September 13, 1912, \$7,400 for construction work as follows:

Further investigations in relation to the reservoir site on Umatilla Meadows and the storage dam site, also of the proposed diversion site for the Main Canal. Plans and estimates were prepared and a complete report made of various proposed developments. Work was also done in the matter of pledging the irrigable area to repay the cost of construction.

For the year beginning September 14, 1912, and ending September 13, 1913, \$5,500 for construction work as follows:

Further work was done in the matter of pledging the irrigable area. By agreement dated January 21, 1913, the terms were put into final written form under which the holdings of the Northern Pacific Railroad Company were pledged to the project.

About six miles of main canal were surveyed and staked for excavation and the diversion point and dam located upon the ground. Purchases were made of the land needed in connection with the diversion dam.

For the year beginning September 14, 1913, and ending September 13, 1914, \$208,400 for construction work as follows:

The decree of the Federal Court, consummating the pledging of the holdings of the Oregon Land and Water Company was made in this period. By September 14th 235,000 cubic yards of material had been excavated for the Main Canal. Four miles of canal

had been lined with concrete 3 inches thick, involving the placing of 6800 cubic yards.

On May 28th proposals were received for the construction of the Three Mile Falls Diversion Dam. Morrison-Knudsen Company of Boise, Idaho, was the low bidder and was awarded the contract. Work began early in July. By September 13th \$37,500 had been spent for construction of this feature.

For the period from September 14, 1914, to the date hereof \$270,000 for construction work as follows:

The construction of the Three Mile Falls Diversion Dam was vigorously prosecuted to completion on November 28, 1914, water passing over the crest on December 1st. During the period between September 14th and the date of completion there was spent on this feature for construction substantially \$36,000. The entire cost of the dam in round numbers is \$74,000. Its construction involved the excavation of 5100 cubic yards of rock, 1600 cubic yards of earth, and the placing of 4200 cubic yards of concrete. The dam is a type known as Multiple Concrete Arch. Forty arches supported on piers 20 feet center to center raise the water to a maximum of 24 feet.

During the period under consideration there was spent on the construction of the main canal \$230,000. Fourteen miles of main canal were excavated and lined with concrete

3 inches thick, involving the excavation of 365,000 cubic yards of material and the placing of 22,000 cubic yards of concrete.

For this construction work and the continuation thereof, and in addition to the allotment of \$200,000 named in Notice of Beginning of Construction aforesaid, the Secretary of the Interior has authorized the expenditure of \$800,000. The balance of the funds required for the completion of the works will be provided in such allotments as may be necessary. In this relation reference is made to Application for Extension of Time within which to complete Construction and Application of Water to the proposed Use of even date and submitted herewith.

It is further shown that the construction work above named has involved an expedient and proper change in the place of diversion of the Main Canal described in Application No. 237 and Permit No. 408 down stream to a location in the $W\frac{1}{2}$ $SW\frac{1}{4}$ Sec. 28, T. 5 N., R. 28 E., W. M., which said change has in no manner injuriously affected the rights of others; and that appropriate amendment of said application to cover said change and such necessary alterations in said canal and headworks therefor as correspond therewith will be offered in due course, with request that said permit be modified in these respects accordingly.

IN WITNESS WHEREOF the United States of America has caused this Notice to be signed in its behalf this 1st day of September, 1915.

Herbert O. Newell.
Project Manager, United States Reclamation
Service, for and on behalf of the United
States of America.

Maxine Canal
Division (West
Eastern) 1975 Sept.

Capacity of ditch 350 cu. ft.

Total average 4,879

Per acre 0.0717 cu. ft.

Per cu. ft. 13.79

Or $\frac{1}{14}$ cu. ft. per acre

Maximum allowance
Shuttile device - 6
cu. ft. per acre under
a head of $\frac{1}{14}$ cu. ft.
per acre.

Permit
408

30.00 ✓
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Page 9

4,879.00*

SUBJECT:

STATE OF OREGON

Applications No. 13
237.

OFFICE OF THE
STATE ENGINEER

JOHN H. LEWIS, STATE ENGINEER
PRESIDENT OF THE STATE WATER BOARD
SECRETARY OF THE DESERT LAND BOARD

PERCY A. CUPPER
ASSISTANT STATE ENGINEER

SALEM, OREGON, Sept. 13, 1915.

RECEIVED

SEP 14 1915

SALEM, - OREGON.

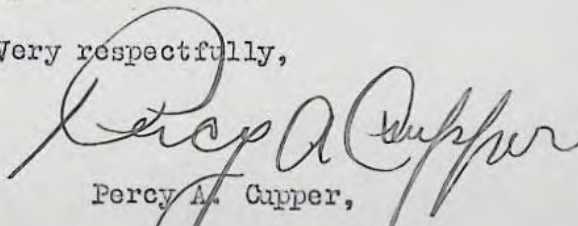
State Water Board,

Building,

Gentlemen:

I am transmitting herewith application of Herbert D. Newell, Project Manager, U. S. Reclamation Service, Hermiston, Oregon, for an extension of time in which to complete construction work under application No. 13, permit No. R 51, and for the complete application of water under application No. 237, permit No. 408, and I would recommend that the State Water Board grant an extension of time until June 1, 1920, in which to complete construction work under application No. 13, permit No. R. 51, and until October 1, 1920, in which to apply the water to the proposed use under application No. 237, permit No. 408.

Very respectfully,



Percy A. Cupper,
Acting State Engineer.

RS.

Enc.

Sept. 14, 1915.

Oliver P. Morton
U. S. Reclamation Service,
Portland, Oregon.

Dear Sir:-

I am directed by the State Water Board to inform you that an extension of time until June 1, 1920 has been granted within which to complete construction work under R. permit No. 51 and until October 1, 1920 within which to apply water to the proposed use under permit No. 408.

Very respectfully,

meeting of
Ad. Bd. 17-1915
Pg 203

January 6th, 1921.

Mr. E. M. Schilling,
Project Manager,
Hemiston, Oregon.

Dear Sir:

Permits R 51 and 408.

I am in receipt of your letter of January 3rd in which you state that the United States has abandoned the water rights under permits Nos. 408 and R 51.

We would be glad to cancel the same from our records, but it has occurred to me that perhaps some of these rights are in good standing and may be required for the Government's operation.

I would be glad if you would consider the matter carefully and advise me further before we take any action in regard to the cancellation of the same.

Very respectfully.

Percy L. Copper,
State Engineer.

AC:11

REMARKS:

Lands in Tps. 26-27-28 East could have been covered by Decretes 1906 Right by Transfer. Limit of 1906 Right has ever been used. Ch. Sec. 23-5N 26E. Two $\frac{1}{4}$ Sec. are covered by 1893 Right but have been found to be larger and additional acres claimed under 1909.

Limitation of $\frac{1}{80}$ sec ft per acre should be stricken out if other Water duty is to be accepted.

J. M. Spencer.
Watermaster.

STATE OF OREGON
COUNTY OF UMATILLA

CERTIFICATE OF WATER RIGHT

THIS IS TO CERTIFY, That the UNITED STATES RECLAMATION SERVICE of Portland, 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 Umatilla River for the purpose of irrigation under Permit No. 408 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 March 28, 1909; that the amount of water to which such right is entitled and hereby confirmed for the purposes aforesaid, is limited to an amount beneficially used for said purposes, and shall not exceed 350 cubic feet per second and shall be further limited to not to exceed 2 acre feet per acre in any one 30 day period and not to exceed 10 acre feet per acre throughout the irrigation season. The point of diversion is located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 28, Township 5 North, Range 28 East, W. 1.

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 not exceed the quantity specified above for each acre irrigated, 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:

30 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$,
30 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$,
30 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$,
30 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$,
20 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$,
20 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$,
Section 12,

34 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$,
33 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$,
15 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$,
35 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$,
40 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$,
35 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$,
35 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$,
34 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$,
40 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$,
35 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$,
30 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$,
40 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$,
Section 13,

30 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$,
20 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$,
20 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$,
Section 14,

40 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$,
37 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$,
38 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$,
40 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$,
40 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$,
15 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$,
37 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$,
Section 23,

34 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$,
40 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$,
38 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$,
37 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$,
38 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$,
40 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$,
40 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$,
40 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$,
2 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$,
5 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$,
5 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$,
5 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$,
Section 24,

Township 4 North, Range 24 East, W. M.

18 acres in Lot 2,
18 acres in Lot 3,
12 acres in Lot 4,
25 acres in Lot 5,
26 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$,
12 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$,
40 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$,
22 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$,
Section 7,

20 acres in Lot 3,
20 acres in Lot 4,
30 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$,
39 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$,
40 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$,
39 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$,
31 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$,
25 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$,
20 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$,
Section 8,

40 acres in the SE¹NE¹,
Section 10,

40 acres in the SW¹NW¹,
40 acres in the NE¹SW¹,
25 acres in the NW¹SW¹,
22 acres in the SE¹SW¹,
40 acres in the SW¹SE¹,
Section 11,

35 acres in the NW¹NW¹,
40 acres in the SW¹NW¹,
7 acres in the SE¹NW¹,
15 acres in the NE¹SW¹,
40 acres in the NW¹SW¹,
13 acres in the SW¹SW¹,
Section 13,

28 acres in the NE¹NW¹,
39 acres in the SW¹NW¹,
40 acres in the SE¹NW¹,
40 acres in the NE¹SW¹,
31 acres in the NW¹SW¹,
16 acres in the SE¹SW¹,
35 acres in the NE¹SE¹,
25 acres om the NW¹SE¹,
5 acres in the SE¹SE¹,
Section 14,

31 acres in the SW¹NE¹,
40 acres in the SE¹NE¹,
30 acres in the SW¹NW¹,
35 acres in the SE¹NW¹,
37 acres in the NE¹SW¹,
38 acres in the NW¹SW¹,
39 acres in the SW¹SW¹,
39 acres in the SE¹SW¹,
40 acres in the NE¹SE¹,
40 acres in the NW¹SE¹,
37 acres in the SW¹SE¹,
24 acres in the SE¹SE¹,
Section 15,

32 acres in the SE¹NE¹,
20 acres in the SE¹SE¹,
Section 16,

25 acres in the NE¹NW¹,
25 acres in the NW¹NW¹,
25 acres in the SW¹NW¹,
25 acres in the SE¹NW¹,
15 acres in the NE¹SW¹,
30 acres in the NW¹SW¹,
31 acres in the SW¹SW¹,
Section 17,

33 acres in the NE¹NE¹,
22 acres in the NW¹NE¹,
40 acres in the SW¹NE¹,
33 acres in the SE¹NE¹,
47 acres in Lot 2,
35 acres in the SE¹NW¹,
52 acres in Lot 3,
40 acres in the NE¹SW¹,
Section 18,

55 acres in Lot 4,
40 acres in the SE¹SW¹,
20 acres in the NE¹SE¹,
35 acres in the NW¹SE¹,
25 acres in the SW¹SE¹,
39 acres in the SE¹SE¹,
Section 13,

40 acres in the NE¹NE¹,
30 acres in the NW¹NE¹,
40 acres in the SW¹NE¹,
40 acres in the SE¹NE¹,
40 acres in the NE¹NW¹,
55 acres in Lot 1,
55 acres in Lot 2,
40 acres in the SE¹NW¹,
Section 19,

29 acres in the NE¹NE¹,
22 acres in the NW¹NE¹,
32 acres in the NE¹NW¹,
35 acres in the NW¹NW¹,
36 acres in the SW¹NW¹,
12 acres in the SE¹NW¹,
Section 20,

15 acres in the NW¹NW¹,
Section 21,

7 acres in the NW¹NE¹,
19 acres in the NE¹NW¹,
19 acres in the NW¹NW¹,
Section 22,

Township 4 North, Range 25 East, W. M.

10 acres in the NE¹NW¹,
20 acres in the NW¹NW¹,
Section 1,

40 acres in Lot 10,
54 acres in Lot 9,
Section 2,

5 acres in the SW¹NE¹,
25 acres in the SE¹NE¹,
15 acres in the SW¹SW¹,
15 acres in the SE¹SW¹,
20 acres in the NW¹SE¹,
Section 3,

Township 4 North, Range 26 East, W. M.

35 acres in Lot 3,
5 acres in Lot 4,
Section 15,

1 acre in Lot 6,
6 acres in Lot 7,
2 acres in the NE¹SW¹,
3 acres in the NW¹SW¹,
2 acres in the NE¹SE¹,
2 acres in the NW¹SE¹,
Section 23,

25 acres in the NE¹SE¹,
Section 26,

35 acres in the SE¹SE¹,
Section 35,

30 acres in the SW¹SW¹,
20 acres in the SE¹SW¹,
38 acres in the NE¹SE¹,
20 acres in the NW¹SE¹,
27 acres in the SW¹SE¹,
Section 36,

Township 5 North, Range 26 East, W.M.

20 acres in Lot 1,
4 acres in Lot 2,
12 acres in the SW¹SW¹,
14 acres in the SE¹SW¹,
12 acres in the SW¹SE¹,
Section 13,

8 acres in the SE¹SW¹,
Section 20,

6 acres in the SE¹NE¹,
14 acres in the NE¹SW¹,
11 acres in the NW¹SW¹,
5 acres in the SW¹SW¹,
6 acres in the NE¹SE¹,
7 acres in the NW¹SE¹,
Section 21,

23 acres in the NE¹NE¹,
14 acres in the NW¹NE¹,
21 acres in the SW¹NE¹,
7 acres in the SW¹NW¹,
24 acres in the SE¹NW¹,
Section 22,

7 acres in the NE¹NE¹,
8 acres in the NW¹NE¹,
18 acres in the NE¹NW¹,
18 acres in the NW¹NW¹,
Section 23,

Township 5 North, Range 27 East, W. M.

21 acres in the NE¹SW¹,
6 acres in the SW¹SW¹,
24 acres in the SE¹SW¹,
30 acres in the SW¹SE¹,
Section 17,

5 acres in Lot 2,
20 acres in Lot 3,
5 acres in Lot 4,
7 acres in the NE¹SW¹,
8 acres in the NW¹SW¹,
9 acres in the SW¹SW¹,
6 acres in the SE¹SW¹,
5 acres in the NW¹SE¹,
4 acres in the SW¹SE¹,
Section 18,

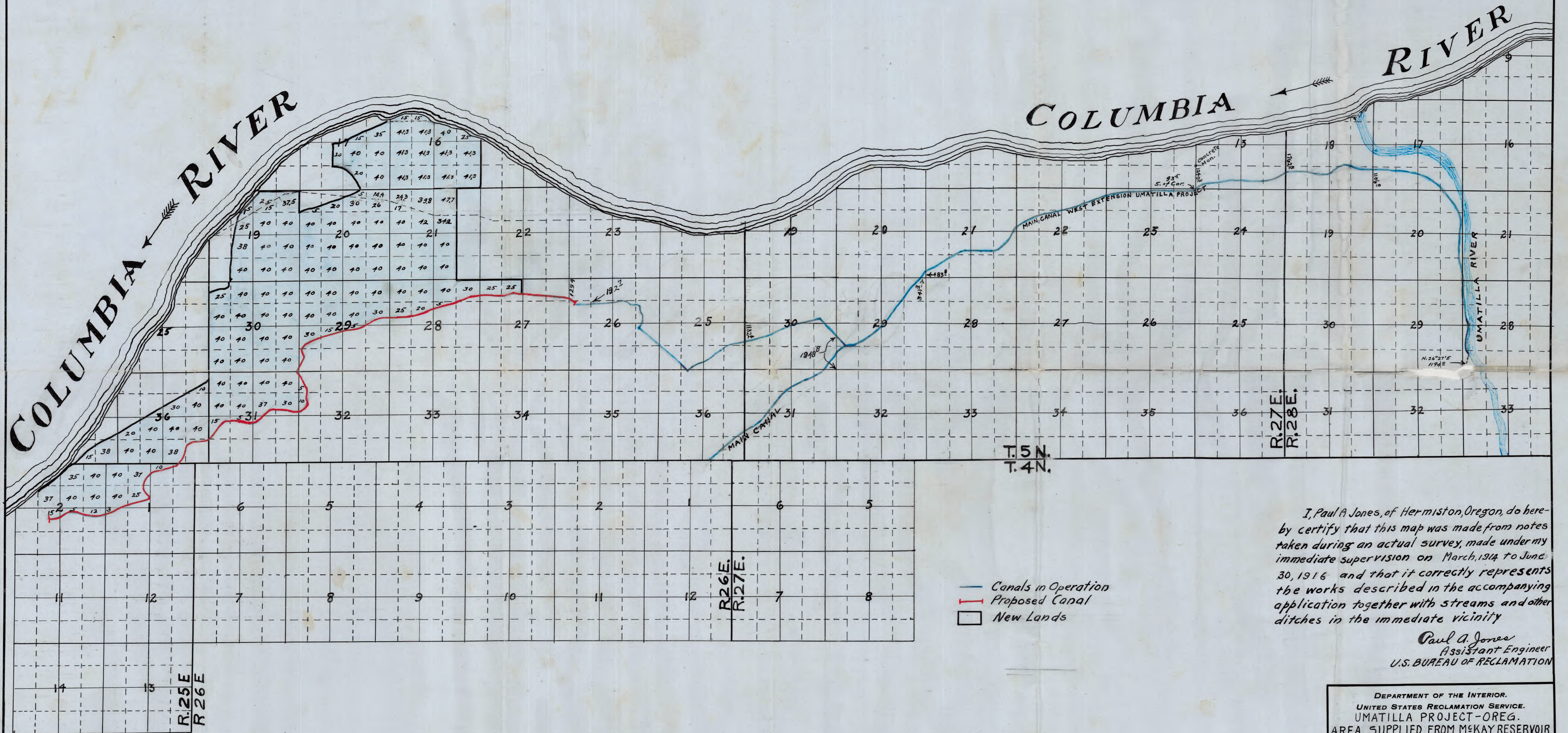
10 acres in the NW¹NE¹,
Section 20,
Township 5 North, Range 28 East, W. M.

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 47-508, Oregon Code 1930.

WITNESS the signature of the State Engineer,
affixed this 28th day of July, 1933.

Chas. E. Stricklin
State Engineer.

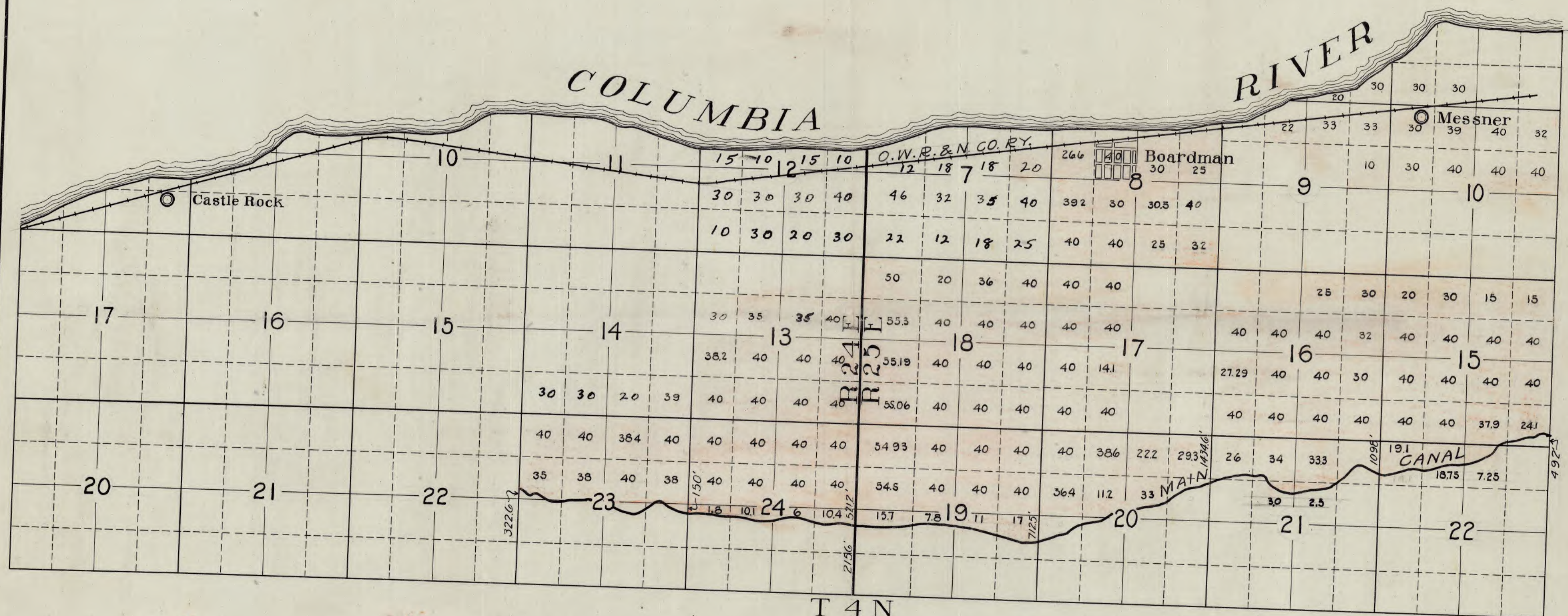


I, Paul A. Jones, of Hermiston, Oregon, do hereby certify that this map was made from notes taken during an actual survey, made under my immediate supervision on March, 1914 to June 30, 1916 and that it correctly represents the works described in the accompanying application together with streams and other ditches in the immediate vicinity

Paul A. Jones
Assistant Engineer
U.S. BUREAU OF RECLAMATION

DEPARTMENT OF THE INTERIOR.	
UNITED STATES RECLAMATION SERVICE.	
UMATILLA PROJECT-OREG.	
AREA SUPPLIED FROM MCKAY RESERVOIR	
FILED WITH STATE ENGINEER	
SHEET 2 OF TWO SHEETS	
DRAWN: P.A. Jones	RECOMMENDED:
CHECKED:	APPROVED:
HERMISTON, ORE. 9/13/24	

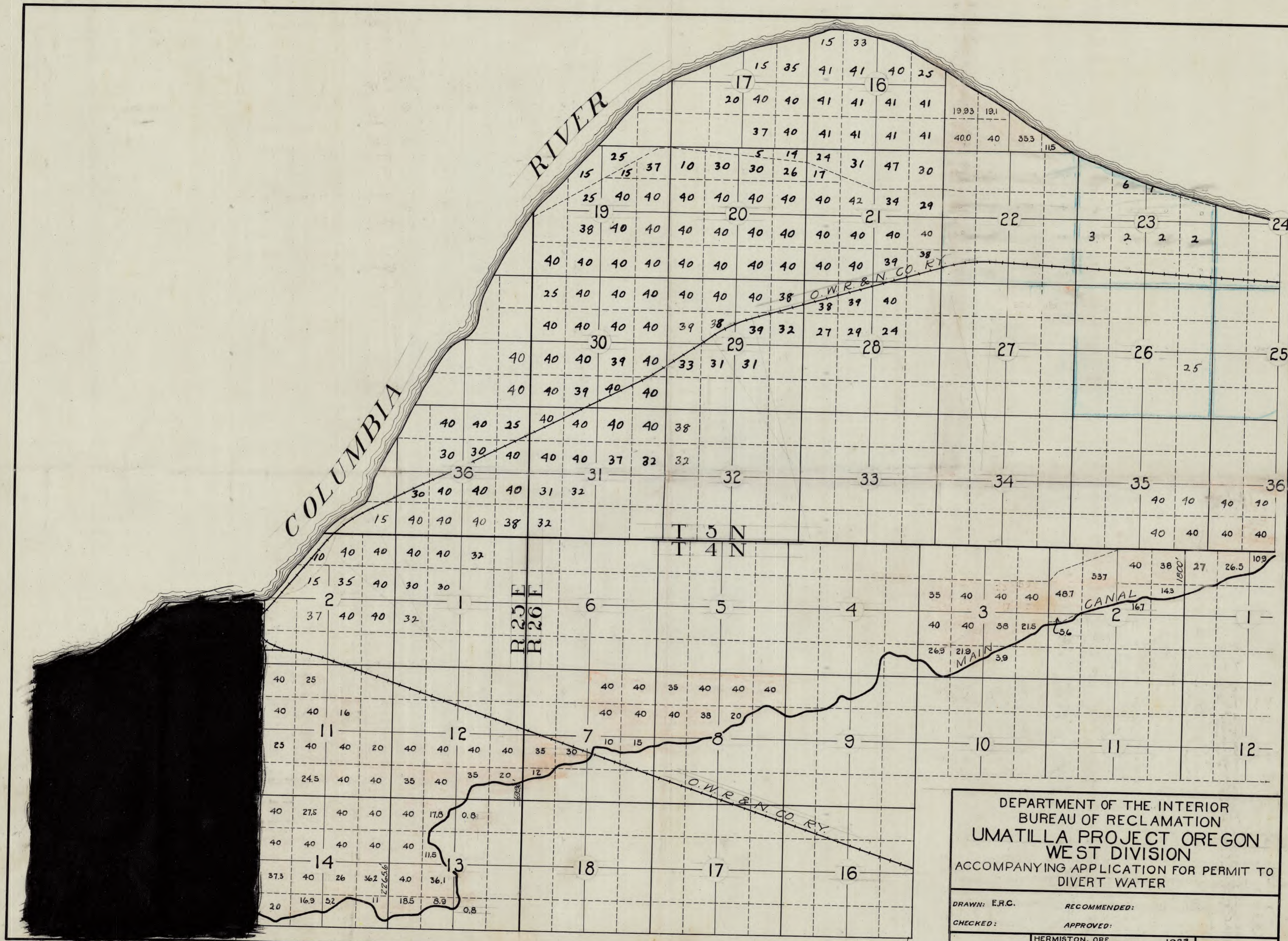
PERMIT-408



DEPARTMENT OF THE INTERIOR BUREAU OF RECLAMATION UMATILLA PROJECT OREGON WEST DIVISION	
ACCOMPANYING APPLICATION FOR PERMIT TO DIVERT WATER	
DRAWN: E.R.C.	RECOMMENDED:
CHECKED:	APPROVED:
HERMISTON, ORE 1923	
SHEET 3 OF 3.	

Amended Map- filed 1928

PERMIT-408



DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
UMATILLA PROJECT OREGON
WEST DIVISION
ACCOMPANYING APPLICATION FOR PERMIT TO
DIVERT WATER

DRAWN: E.R.C.

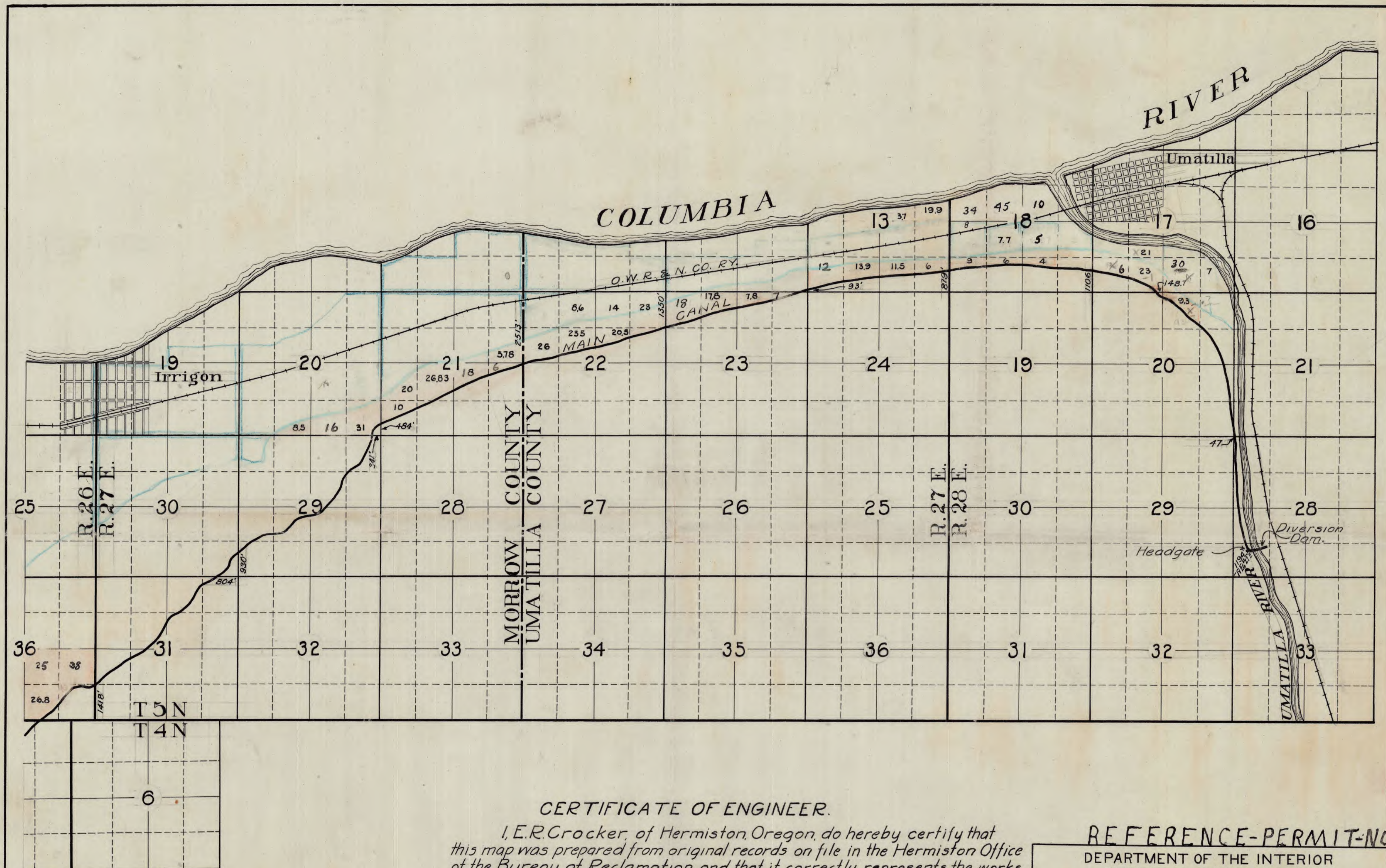
RECOMMENDED:

CHECKED:

APPROVED:

HERMISTON, ORE 1923
SHEET 2 OF 3.

Amended Map, filed 1928



CERTIFICATE OF ENGINEER.

I, E.R. Crocker, of Hermiston, Oregon, do hereby certify that this map was prepared from original records on file in the Hermiston Office of the Bureau of Reclamation, and that it correctly represents the works described in the accompanying application together with the location of streams and other ditches in the immediate vicinity.

E. B. Crocker.
Associate Engineer.
Bureau of Reclamation.

REFERENCE-PERMIT-NQ408

DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
UMATILLA PROJECT-OREGON
WEST DIVISION
ACCOMPANYING APPLICATION FOR PERMIT TO
DIVERT WATER

DRAWN: ERC. RECOMMENDED:
CHECKED: APPROVED:

HERMISTON, ORE 1923
SHEET 1 OF 3.

Amended Map- Filed 1928