

~~Cancelled~~

Application No. 583

Permit No. 272

Certificate No. _____

CANCELLED

MINUTE BOOK PAGE 156

Stream Index, Page No. _____

Application Record, Book No. _____

FEES PAID

Date	Amount	Receipt No.
_____	_____	_____
_____	_____	_____
Total	_____	_____

FEES REFUNDED

Date	Amount	Check No.
_____	_____	_____

Name Albert Tozier

By _____

Address Dec, Ore.

Date filed _____

Action suspended until _____

Returned to applicant _____

Date completed _____

Date of approval _____

ASSIGNMENTS

Date	To whom	Address	Volume	Page
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

REMARKS

CONSTRUCTION

Date for beginning _____

Date for completion _____

Extended to _____

Date for application of water _____

Extended to _____

PROSECUTION OF WORK

Form "A" filed _____

Form "B" filed _____

Form "C" filed _____

FINAL PROOF

Blank mailed _____

Proof received _____

Date certificate issued _____

Receipt for recording fee No. _____

November 12, 1919.

Mr. Albert Tozier,
Dee
Oregon.

Dear Sir:

In reply to your letter of November 11th, it would appear from Section No. 6673 L.O. L. that waste or seepage water is only subject to appropriation by the owner of the land upon which it rises. This Section has been construed by the Courts to refer to water that does not flow in a well defined channel, and become tributary to some stream. It would appear therefore that this water would not be subject to appropriation by any one except the owner of the land upon which it rises.

I note that you state the water does not become tributary to some stream but sinks into the ground on the land belonging to your neighbor. Unless you are able to secure a right of way by contract or agreement with your neighbor for the appropriation of this water, I do not believe you could condemn a right of way.

Trusting this will give you the desired information, and that you will advise at any time we can be of service, I remain,

Very respectfully,

Percy A. Copper,
State Engineer.

RS-R.

D E F, Oregon, 11-11-19

553-272

Percy Cuffer,
State Engineer.

Dear Sir: Receipt of yours of 11-5-19
acknowledged. Endeavored to make
myself plain in letter of 11-3-19.
This is not "Public Waters of the State
and never was. The flow from the
spring sinks upon the land owned
by the one who owns the land
upon which the spring originates.
When I made my application I
thought the spring upon my
property & Had it been upon mine
as I thought, it would have been
under State control and I would
have completed my project.

No use for me to make another
application as the State legally

cannot give a permit. That
is why I wrote 11-3-19 relative
to Permit 272.

The owner of the spring does not
use the water, never has used it, will
not sell any of it or permit
anyone else to use it, and it
is his to look at. Has owned
the land 25 years and his health
is good at 73 years of age.

Albert Tozier

November 5, 1919.

Mr. Albert Tozier,
Dec
Oregon.

Dear Sir:

In reply to your letter of November 3, our records show that your Permit No. 272 was cancelled a number of years ago for failure to complete the water right. All fees paid on an application are turned over to the State Treasurer upon the approval of the application, and no provision is made for a return of the fees to the applicant. Of course, you understand the State does not sell the water, but merely provides a method of recording water rights, and water becomes appurtenant to the land for irrigation or other purposes only by being applied to beneficial use in accordance with the terms of a permit.

If the water from the spring mentioned in your letter flows in a well defined channel and becomes tributary to some stream, it would appear that you can appropriate any unappropriated portion of this water by filing an application and securing a permit from this office. You will understand however that a permit from this office does not give the permittee the right to go upon the land of another for the purpose of constructing ditches or pipe lines, but the right of way for such purpose must be secured from the owner of the land.

I am enclosing application blanks and copy of instructions for your use in case you wish to make a filing. Trusting this will give you the desired information, I remain,

Very respectfully,

Percy A. Copper.

RS-R.
Enc.

State Engineer.

583-272 D E E, Oregon Nov. 3, 1919.

State Engineer's Department:

The writer is wondering if money paid for the appropriation of water of the State is refunded when that water is found to be privately owned and not belong to the State. Here is a case in point. On May 1910 the writer secured "Permit" ^{cancelled} No. 272, Division No. 2. The instrument was first received in the State Engineer's Office March 26, 1910. I paid \$6.00 for this, and later \$3.00 for the water to irrigate 20 acres. I believed at the time that the spring was owned by the State. I was told by the State Engineer that the spring was not on my property. When I was served with the writ I found that the spring was not on my property.

Property and that a continuation
of the work would mean lawsuits
and litigation. Not caring to battle
with a homestead and a lawsuit
at the same time, and wanting no
lawsuit, & quit operations. A sur-
vey made this year shows that the spring
is on the other's property as he con-
tended, being about 60 feet over the
line, and is on the N.W. $\frac{1}{4}$ of N.E. $\frac{1}{4}$ of
Sec. 6, T. 1 N. R. 10 East, and does not
run on that quarter section. Therefore is not
state water.

The state made no survey at the
time, it being the policy of the engineers
to economize and not put the state to
expense. The spring was in an out of the
way place in the tangled wood and difficult
of access.

Survey made in 1902, showing the spring
on the other's property as he contended,
being about 60 feet over the line.

Survey made in 1902, showing the spring
on the other's property as he contended,
being about 60 feet over the line.

Application No. 583.

November 2, 1917.

Mr. Albert Tosier,
Dee, Oregon.

Dear Sir:

In reply to your letter of the 31st ultimo in regard to your water right under application No. 583, permit No. 272, you are advised that this water right was cancelled by the Board some years ago. However, you may make a refiling if you so desire and I am enclosing application blanks and a copy of instructions for your use in case you desire to take this course.

On July 28, 1915, application No. 4407 was filed by Chas. D. Roberts and G. Belle McBride covering the use of the waters of a spring located on the NW NE Sec. 6, T. 1. N. R. 10 E., for the irrigation of 20 acres of land.

The spring was not located by the Engineers from this office when in that vicinity and we are unable to advise you as to the location of the same.

Very respectfully,

John H. Lewis,

RS.
Enc.

State Engineer.

Dec, Oregon, October 31, 1917

Hon J M Lewis

State Engineer

Salem, Oregon.

My Dear Mr Lewis:

Cancelled.

A few years ago the writer held permit No 272, Application No 583 for use of water from a spring.

The time elapsed, and am wondering if a new application is necessary should I desire to use that water.

And what extra cost will be.

Also when the surveyors were in here this summer did they locate that spring.

It did not occur to me at the time I started to ditch from the spring that a flume or pipe would answer the same as a ditch, and would save more water. A ditch is too expensive as it would have to be three or four times ^{as long} as a flume or pipe.

I claimed the spring was on the S W I-4 of the N E I-4 of Sec 6, T I N R 10 E.

Albert Tozier

Jul 28 15
Chas & Robert & Belle McIndoo
4407-2552 *Dr 200*
NWNE Sub T1NR 10E *1917*

STATE OF OREGON
BOARD OF CONTROL

Feb. 24, 1914.

Mr. Albert Tozier,

Dec, Oregon.

Dear Sir,-

I am in receipt of your letter of recent date relative to your Permit No. 272. The State Engineer, in his endorsement of this permit, set the time for beginning work at May 20, 1911, the time for completion in May, 1912, and for use of water, May 1913. It would therefore appear that if no construction work has been done under your Permit, that your rights have lapsed, and a refiling should be made if you still desire to appropriate water.

Just because the spring in question rises on your neighbor's land is no reason why he should prevent you from using the water, when he has acquired no right to use the same. If the spring flows off his land, it is public water, and subject to appropriation as in the case of streams and rivers. If necessary, you can secure a right of way across his lands by condemnation, in the courts. I am sending you under separate cover, 1913 compilation of the water laws of Oregon.

Very respectfully,

Secretary.

Dec. Ore March 1. 1914

Mr H F Mers

Secy State Water Board
Salem Ore

Dear Sir:

Your letter relative to permit 272 at hand. I do not wish to abandon my right to this water granted by said permit.

At the time application was made it was supposed by me and by W R Winans who located all the claims in that locality, that the spring started on the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec 6, Tp 1 N, R 10 E. I think so now, but one C G Roberts claims that the spring is 100 feet over on his ground and not on mine and forbid me to use the water or to do any work whatever in the vicinity of the spring. Not wishing to get into a clubbing match or a law uit I am simply waiting until such time that all interested will have a survey made .

I filed on this spring believing it to be on my own grounds, but the water from which sinks on that of another. Mr Roberts although living in there 25 years never has made use of the water from this spring within 1000 feet of it and that only for drinking purposes when working in the timber.

No one ever having used the water and I having complied with the law and paid for permit and use of the same I feel that the permit should not be cancelled . Especially when no one else has made application for the use of the same.

Albert Rogers

59a
May 15, 1911.

Mr. Albert Tozier,
Dee, Oregon.

Dear Sir,-

I am in receipt of your letter of the 10th inst. relative to your application No. 563.

Your letter presents a question upon which I do not care to express a definite opinion at this time. The 1909 law provides that all unappropriated waters in this State could be appropriated by complying with its provisions. It would therefore appear that if this water was not put to a beneficial use or otherwise appropriated at the time you made your application under the provisions of the 1909 Act, you could secure a right to the same. The fact that the water rises and sinks on the land of the party who is contesting your appropriation may make some difference in the case, but I believe it will not. It will, of course, be necessary for you to secure a right of way, and this could be secured through condemnation proceedings, if necessary. You will understand, of course, that if the water was appropriated prior to the time you made application for permit to appropriate water in this office, your right under such permit would be a subsequent right. If, however, no such appropriation was made, I believe you may be able to maintain your right under the permit, even though it were necessary to proceed to condemn a right of way.

Very respectfully,

PAC/MM

State Engineer.

Hon. John H. Lewis.
State Engineer.
Salem, Ore.

S.E.E., Ore. 5/10/11

OFFICE OF STATE ENGINEER
RECEIVED
MAY 15 1911
SALEM, - OREGON.

My Dear Mr. Lewis:

Early in 1910 I applied for use of water from a spring that I then believed to be and now think is located on my own land, viz on S.W. 1/4 of N.E. 1/4 of Sec 6, T. 1 N. R. 10 E. On April 10, 1910 your office granted to me permit No. 272. I have endeavored to comply with the law.

In October March 1906 I made a homestead filing on a quarter section of which the land above mentioned is a part. At that time I believed the spring to be on my filing. In all this time no person other than myself has made any attempt whatever to use any portion of the water. In order to comply with the law and to begin operations before the limit allowed by your office

I expired & commenced work upon a ditch. The last day's work performed by me I think was on April 20th 1911. On May 9, 1911 I was served with a notice of which exhibit "A" is a copy.

Now I wish to have no trouble, but I have no rights in the premises of course would not want to lose them. I filed in good faith believing the spring to be on my ground and the water coming onto those, another, I have commenced operations and been ordered to quit & suppose that if the contention of the other parties is correct I have no right to go on to their land and touch a thing. If their contention is correct the spring originates on their land and sinks on their property which would define the state of any rights in the matter, it not crossing to the lands, another except a part of the year. I am

3/ more as to the location of the spring
and the same is 150 feet off my
line I wish to say that I honestly be-
lieved I was correct when making
the application, which application
was made in good faith to protect
my rights in the future. I had no
intention to wrong a soul & I
believed when I commenced operations
that I was on my own holdings. In
the permit granted me there are 10 acres
upon which the water could not be
used owing to the elevation above
the spring, but there are 20 or 30 acres
below that it can be used on of my
own land and all of the water would
pass to the ground of the Messrs.
Roberts & Mc Bride. In no way could
I lead the water away from their
property of land I had covered my
ground.

The enclosed exhibit I will prove
that I commenced operations. I
had prepared to erect a cabin at the
spring.

#57a

April 11, 1910.

Mr. Albert Tozier,

Des, Oregon.

Dear Sir:

I beg to acknowledge receipt of \$3.00, fees to be applied on your application, No. 583. This application will be taken up for approval as soon as the same can be reached.

Very respectfully,

State Engineer.

4) I dislike being considered an intruder
and a trespasser x

A filing should be made for
water from a spring located on
N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Sec 6, T. 1 N. R.

10 E you will know that it is
the disputed spring and that no
other known spring exists in all
that locality x

There are orchards below this spring.
that could use the water, the nearest
being about $\frac{1}{3}$ mile x

Albert Tozier

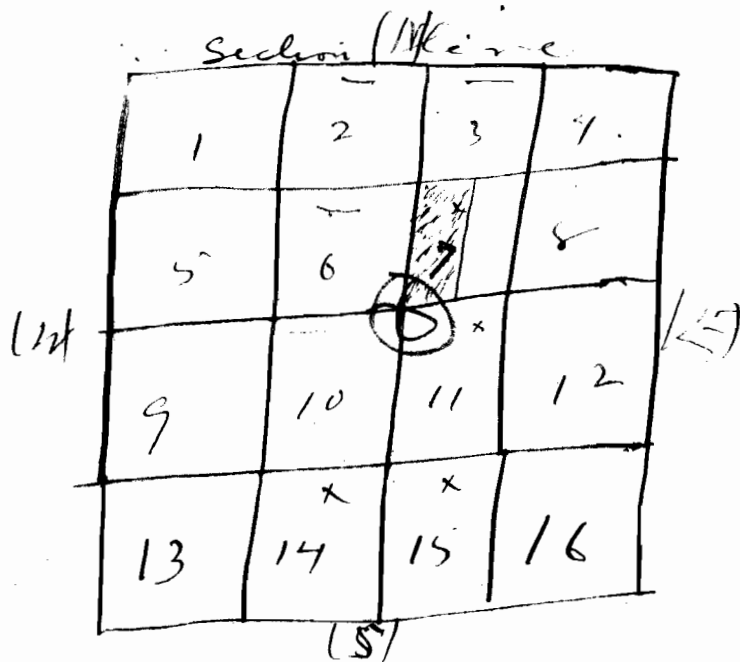
SEE
CORE.

3/ money as to the location of the spring
and the same is 150 feet off my
line I wish to say that I honestly be-
lieved I was correct when making
the application, which application
was made in good faith to protect
my rights in the future. I had no
intention to wrong a soul & I
believed when I commenced operations
that I was on my own holdings. In
the permit granted me there are 10 acres
upon which the water could not be
used owing to the elevation above
the spring, but there are 20 or 30 acres
below that it can be used on of my
own land and all of the water would
pass to the ground of the Messrs.
Roberts & Mc Bride. In no way could
I lead the water away from their
property of which I had covered my
ground.

The enclosed exhibit I will prove
that I commenced operations. I
had prepared to erect a cabin at the
spring &

Sheet 13

Sec 6; T. 1 N. R. 10 E.



7-11-15-4 = Tozier

10-6-2-3 = C. G. Roberts & B. H. McBride

7 = the 40 on which Tozier claim is spring

3 = " " " Roberts & McBride claim is spring

1/2 of 7 = portion on which is patent No 272
 Roberts & McBride claim spring is 150 feet over the
 line and on No 3. of the patent

No clearing on Nos 3, 7, 11, 15.

Hill slopes to the west. spring on side hill.
 water can be taken north, south and west.
 No other spring or water known within 1/4 mile of
 one in question.

A

(copy) "Tangled web"
Hood River county, May 9, 1911

Mr. Albert Logier.
Miners

Dear Sir:-

We request all further work on the spring on
our hold-n. be stopped. If continued we will be
compelled to pass the case on to our attorneys.

Yours truly,
C. G. Roberts

B. H. M. M. M.
C. G. Roberts

Sec. 6, T. 4, R. 10 E.

#57a

My dear Mr. Lewis:

Enclose you check for \$3.⁰⁰ for payment
of use of water originating on the S. W. $\frac{1}{4}$ of
the N. E. $\frac{1}{4}$ of Sec. 6, T. 4, R. 10 E., said land
having originally been homesteaded by the
writer, but relinquished then taken by the
use of "scrip." It is desired to use the water
on the West $\frac{1}{2}$ of said S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Sec. 6, T. 4,
R. 10 E., or 20 acres,

Albert Ogier

3/



March 26, 1910.

Mr. Albert Tozier,

Des. Oregon.

My dear Tozier:

I am in receipt of your letter of the 21st inst., transmitting your application No. 583 for permit to appropriate the waters of a certain spring, together with \$3.00 to cover the examination fee on the same, and I beg to acknowledge receipt of this amount. If I find that the application is insufficient in any respect, or that the maps do not comply with the requirements of the law on account of deficiency as to the color of the ink or the scale of two inches to the mile, or in any other respect, which you seem from your letter to have had considerable difficulty in understanding, I will return the same to you, and also furnish you with a township plat on a scale of two inches to the mile, which will probably facilitate the completion of your application. You perhaps notice that the instructions were not made to apply strictly to small appropriations which the farmer could make without the services of an engineer. Any map which will show what is intended will be sufficient for a small appropriation, while something more definite is necessary for a larger appropriation. There is a tendency among the farmers, in making their own maps, to pattern the same after chicken tracks, and these are rather difficult to decipher.

If you will forward \$6.00, as provided by law for filing and recording the right to irrigate forty acres, or 15 cents per acre for as many acres as you desire to irrigate, we will endeavor to fix up the necessary maps in this office, provided yours do not comply with the requirements, and thus "to him that hath not shall be given."

Very respectfully,

State Engineer.

#57a

Dec, Cr., 3-21-10.

My Dear Mr Lewis:-

This letter is partly personal and partly official. Am in here attempting to make a home on some mountain land that I homesteaded, then foolishly relinquished, the relinquishment coming after the State had entered into a contract with me to perform certain work until March, 1911, said work requiring my stay away from the land for lengths of time that would jeopardize my homestead rights, & then took out an indemnity filing, becoming in-

olved to the State & then ⁽²⁾ in March 1, 1909, a change of administration was made, and the new head in order to accommodate a man who is clearing \$1000 a month out of a State job saw fit to break the contract with me & the State therefore has caused me to lose my homestead rights and to become indebted to it.

Now comes another proposition. I am endeavoring to clear a portion of that land. One of the $\frac{1}{4}$ sections of the quarter section is a

3/ Spring. Said spring ⁽³⁾ flows a stream in the
summer time about one inch deep and say
4 inches wide at a $\frac{1}{2}$ pitch on the mountain
side & Judge & mine's ^{step}. The water runs over on to another
man's property and loses itself in the
rock. The probable summer length is 800
feet. The spring is very close to the dividing
line, Is this spring considered "waters of
the State"? It flows into no stream, but prob-

4 Itly is a good $\frac{1}{2}$ mile due east of your
State water measure near the confluence of
the east and the west forks of Hood River
at Vivans &
I want to use this water for garden and
irrigation purposes & Having been to so much
trouble over the homestead, I want no more
and as little expense as possible & I shall put out
some little garden in the vicinity of the spring
this next month; at least will set out some

5/ more grapes, those having⁵ died that I add put out, and also put out some blackberry plants there.

Am enclosing a permit blank application in case you deem this spring public waters. I wish to protect my rights.

Now, friend Lewis, if this law comes up for amendment next session, which it will, for reasons sake have those instructions and suggestions, so worded as to help the man in the mountains, the man who is not a farmer or a draftsman.

6/ That "tracing lines" barriers, "blue print copy," neatly drawn in "India ink," "40 chains to an inch," plans of ditches, cuts or embankments must be drawn on a longitudinal scale, et cetera, and so forth. What is the man, homesteader and acreage man who has no better sense than to give up his life developing a country know about these things? and why should he? Then the poor devil who can use only 40 acres must pay 15c per acre, while the one able to use 2000 acres pays 1c per acre. God bless the rich, the poor can beg "To him that hath shall be given" Albert Ozier