



Oregon

Kate Brown, Governor

Water Resources Department

North Mall Office Building
725 Summer St NE, Suite A
Salem, OR 97301
Phone (503) 986-0900
Fax (503) 986-0904
www.wrd.state.or.us

October 13, 2015

CS Riverside Farm Holding LLC
P.O. Box 1088
Pendleton, OR 97801

Patricia K. Hunt
240 N.E. 35th Street
Pendleton, OR 97801

Larry D. Hunt
235 N.E. 35th Street
Pendleton, OR 97801

RE: Revised Notice of Proposed Cancellation of water rights evidenced by Certificate 88083

The Water Resources Department sent a Notice of Proposed Cancellation of Water Right the CS Riverside Farm Holding LLC by certified mail and regular mail on July 24th, 2015. The notice failed to include the quarter-quarter location of the place of use. The Department is re-noticing the proposed cancellation to ensure there are no later concerns about the sufficiency of the notice. To comply with Oregon Revised Statue (ORS) 540.631, the enclosed revised notice again provides an opportunity for the water right holder to file a protest along with the fee. If a protest is filed, the parties will be referred to a hearing with an Administrative Law Judge and have an opportunity to submit evidence on the question of the non-use of the right. Please review the notice carefully and note the deadline for the filing of a protest to this notice.

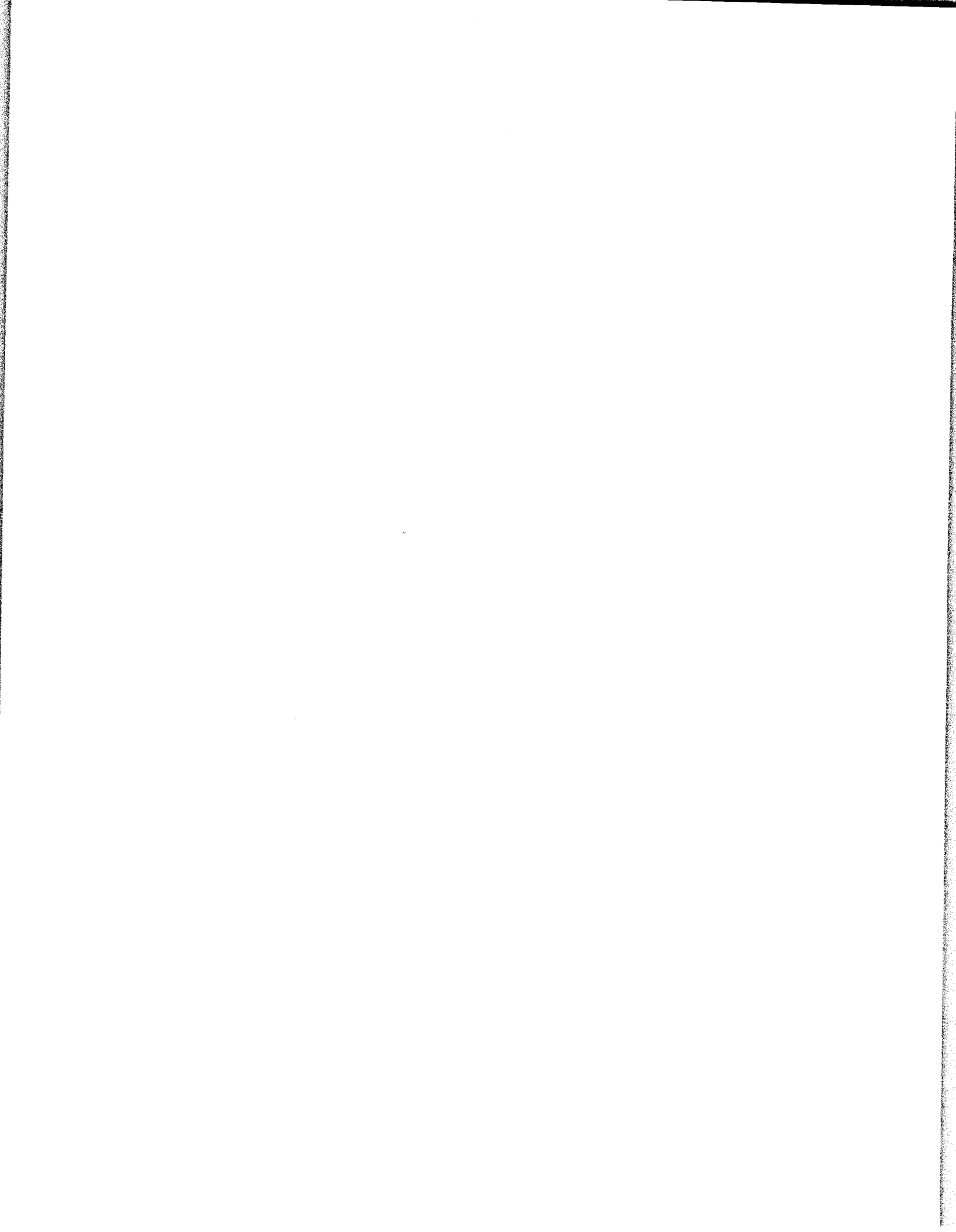
Sincerely,

Patricia McCarty, Protest Program Coordinator
Water Right Services Division
503-986-0820

cc: Watermaster Dist. 5

Enc: Notice of Proposed Partial Cancellation
Affidavits asserting non-use
ORS 540.610 – 540.670
Oregon Administrative Rules (OAR) 690-017





BEFORE THE OREGON WATER RESOURCES DEPARTMENT

IN THE MATTER OF THE PROPOSED) REVISÉD
CANCELLATION OF THE WATER RIGHT) NOTICE OF PROPOSED
EVIDENCED BY WATER RIGHT) CANCELLATION OF
CERTIFICATE 88083 FOR USE OF WATER) WATER RIGHT
FROM UMATILLA RIVER FOR IRRIGATION)
OF 4.28 ACRES, UMATILLA COUNTY,)
OREGON)

TO: Record Owner: Tax Lot 3800, SECTION 1, T2N R32E, W.M.:
CS Riverside Farm Holding LLC
P.O. Box 1088
Pendleton, OR 97801

Notice

Pursuant to the provisions of Oregon Revised Statutes (ORS) 183.415 and ORS 540.631, you are hereby notified as the owners of record of certain real property in Section 1, Township 2 North, Range 32 East, Willamette Meridian (W.M.), Umatilla County, Oregon of the proposed cancellation of an irrigation water right evidenced by Certificate 88083 in the name of Linda Shafer and Lowell Spiess.

Basis for Initiation of Proposed Cancellation Action

It is asserted in affidavits filed with the Water Resources Department (Department) by Larry D. Hunt and Patricia K. Hunt that the water right evidenced by Certificate 88083 has been forfeited due to non-use for irrigation for twenty years and five months (January of 1995 through June of 2015) on the subject lands.

Water right proposed to be canceled for non-use

The water right for which cancellation is proposed is:

Water Right Certificate 88083, in the name of Linda Shafer and Lowell Spiess, authorizing the use of 0.05 cubic foot per second (cfs) from Umatilla River, for irrigation of 4.28 acres in the SE1/4 SE1/4 of Section 1, Township 2 North, Range 32 East, Willamette Meridian (W.M.) The point of diversion is located as follows: NW1/4 NW1/4 of Section 7, Township 2 North, Range 33 East, Willamette Meridian (W.M.); South 2 degrees 22 minutes 30 seconds East, 448.2 feet East from SE corner, Section 1, T2N, R32E, W.M. The priority date is June 14, 1912. The entirety of Water Right Certificate 88083 is proposed to be canceled for non-use of water. A copy of said water right certificate, application map and tax lot map are attached. In addition, the affidavits asserting non-use are also enclosed.

Applicable law

Page 1 of 4 – REVISED NOTICE OF PROPOSED CANCELLATION OF THE WATER RIGHT EVIDENCED BY CERTIFICATE 88083

Oregon water law provides that if any portion of a water right undergoes five or more successive years of non-use, that non-use creates a rebuttable presumption of forfeiture. Use made after a period of five successive years of non-use will not make the forfeited right valid again. ORS 540.610; ORS 540.631.

A presumption of forfeiture may be rebutted by evidence that you submit in a protest and request for hearing and by evidence you may submit in a contested case hearing. ORS 540.610; Oregon Administrative Rule (OAR) 690-017-0800.

Other applicable law includes ORS 540.610 through ORS 540.650, OAR Chapter 690 Division 17 (governing water right cancellation) ORS Chapter 183 and OAR 137-003-0501 through 0700 (governing contested case hearings.)

Notice of right to request a contested case hearing if you don't agree with the proposed cancellation asserted in this Notice

The information before the Department, if not countered by other evidence, establishes at least five years of non-use of your water right. Five years of non-use creates a rebuttable presumption of forfeiture. This means that you have an opportunity to show either that water use has occurred during the subject five-year period or that one or more statutorily established reasons excusing non-use as stated in ORS 540.610 and OAR 690-017-0800 apply to you.

You have the right to a contested case hearing on the matters asserted in this Notice of Proposed Cancellation. If you do not agree with the matters asserted in this Notice you may file a protest and request for hearing setting forth the reasons why the water rights specified in this Notice should not be cancelled.

To request a contested case hearing, the legal owner or occupant must file a written request for hearing with the Oregon Water Resources Department within **60 days** from the date of the mailing of this Notice. Any protest and request for hearing must be in writing and received with a \$700.00 protest filing fee in the office of the Water Resources Department, Attention: Patricia McCarty, 725 NE Summer Street, Suite A, Salem, Oregon 97301-1266, by 5:00 p.m. on December 16th, 2015. *See* ORS 536.050(1)(j)(authority for fee).

If you request a hearing, you will be notified of the time and place of the hearing. You will also be given information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing. You have the right to be represented by an attorney and to respond and present evidence and argument on all issues properly before the Administrative Law Judge.

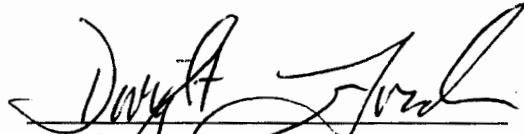
If you do not request a hearing

If you do not request a hearing within 60 days of the date of the mailing of this Notice, or if you withdraw a hearing request, notify the Department or the Administrative Law Judge that you will not appear, or fail to appear at a scheduled hearing, the Department may issue a final order by default canceling your water right. ORS 540.641(1); OAR 137-003-0670. If the Department issues a final order by default, it designates its file on this matter as the record.

Voluntary cancellation

Holders of a water right **may also voluntarily relinquish** their water right by filing a notarized authorization to cancel with the Water Resources Department, Water Rights Section. ORS 540.621. If you decide to authorize voluntary cancellation of the water right or portion thereof appurtenant to your land, you do not need to file a protest. You should contact the Department or your local watermaster for the proper Cancel Authorization form.

Dated this October 15th, 2015.



Dwight French, Administrator
Water Right Services Division, for
Thomas M. Byler, Director, Oregon Water Resources Department

CERTIFICATE OF SERVICE

I certify that on October 15th, 2015 this Revised Notice of Proposed Cancellation of Water Right with a copy of the Affidavits asserting non-use, a copy of Oregon Revised Statutes 540.610-540.670 and Oregon Administrative Rules Division 17, served by certified mail, return receipt requested, and first class mail, postage prepaid upon the persons listed below:

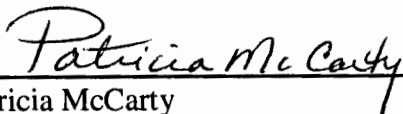
Certified mail and first class mail:

CS Riverside Farm Holding LLC
P.O. Box 1088
Pendleton, OR 97801

Copy by first class mail:

Patricia K. Hunt
240 N.E. 35th Street
Pendleton, OR 97801

Larry D. Hunt
235 N.E. 35th Street
Pendleton, OR 97801



Patricia McCarty
Water Resources Department

STATE OF OREGON
 COUNTY OF UMATILLA
 CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

LINDA SHAFER & LOWELL SPIESS
 PO BOX 430
 PENDLETON OR 97801

confirms the right to use the waters of UMATILLA RIVER, tributary to COLUMBIA RIVER for IRRIGATION of 4.28 ACRES.

This right was perfected under Permit 1234. The date of priority is JUNE 14, 1912. The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 0.05 CUBIC FOOT PER SECOND, or its equivalent in case of rotation, measured at the point of diversion.

The point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	33 E	WM	7	NW NW	SOUTH 2 DEGREES 22 MINUTES 30 SECONDS EAST, 448.2 FEET EAST FROM SE CORNER, SECTION 1, T 2 N, R 32 E, WM

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the place of use is as follows:

Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	32 E	WM	1	SE SE	4.28

The quantity of water diverted at the new point of diversion, together with that diverted at the old point of diversion, shall not exceed the quantity of water available from the original point of diversion described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	33 E	WM	6	SW SE	NORTH 75 DEGREES EAST 120 FEET FROM S $\frac{1}{4}$ CORNER, SECTION 6

The water user shall maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted.

Water shall be acquired from the same surface source as the original point of diversion.

The water user shall maintain a fish screen or fish by-pass device.

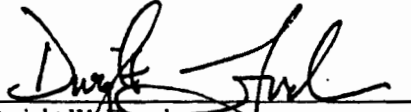
NOTICE OF RIGHT TO RECONSIDERATION OR JUDICIAL REVIEW

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482. Pursuant to ORS 183.482, ORS 536.075 and OAR 137-003-0675, you may petition for judicial review and petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

This certificate is issued to confirm a change in point of diversion approved by an order of the Water Resources Director entered August 8, 1997, at Special Order Volume 51, Page 924, approving Transfer Application 7379, and together with Certificate 74807, supercedes Certificate 68390, State record of Water Right Certificates.

The right to the use of the water for the above purpose is restricted to beneficial use on the lands or place of use described.

Issued JUN 27 2013.



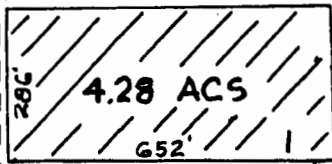
Dwight W. French
Administrator, Water Right Services, for
Phillip C. Ward, Director

R.32E
R.33E

NE RIVERSIDE AVE

16'

SE $\frac{1}{4}$, SE $\frac{1}{4}$



SW $\frac{1}{4}$, SW $\frac{1}{4}$

NW $\frac{1}{4}$, NW $\frac{1}{4}$

NE $\frac{1}{4}$, NE $\frac{1}{4}$

12

UMATILLA

NEW POINT OF DIVERSION
S 2° 22' 30" E - 448.2'
from SE cor. SEC.1

RIVER

RECEIVED

SEP 30 1999

WATER RESOURCES DEPT
SALEM, OREGON

KRUMBEIN ENGINEERING LTD.
ENGINEERS — SURVEYORS — PLANNERS
361 S.E. Second Pendleton, Oregon

Scale
1" = 400'

Drn. By
DHK

Drng. No.
9948A

Revision 1

Date
9-29-99

Ckd. By

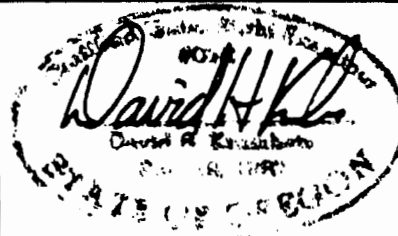
Job No.
9517

Revision 2

FINAL PROOF SURVEY &
CLAIM OF BENEFICIAL USE

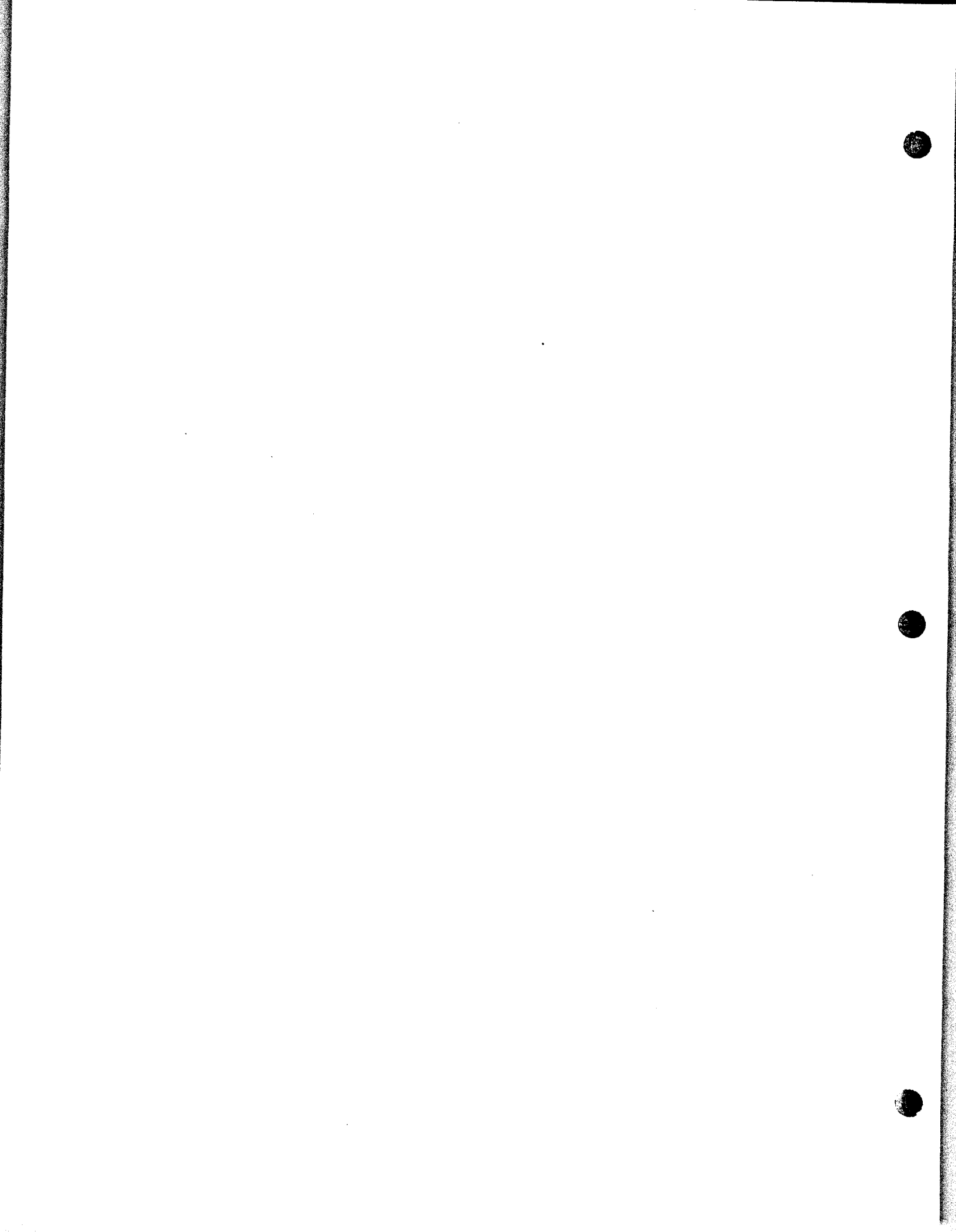
SHAFER-SPIESS

SE $\frac{1}{4}$, SE $\frac{1}{4}$, SECTION 1
T.2 N., R.32E.W.M
UMATILLA COUNTY, OR



RENEWS 6/30/01

T - 7379



STATE OF OREGON

COUNTY OF UMATILLA

ORDER APPROVING A CHANGE IN POINT OF DIVERSION

Pursuant to ORS 540.510 to 540.530, after notice was given and no objections were filed, and finding that no injury to existing water rights would result, this order approves, as conditioned or limited herein, TRANSFER 7379 submitted by

LINDA SHAFER AND LOWELL SPIESS
P.O. BOX 430
PENDLETON, OREGON 97801.

The right to be modified, as evidenced by a portion of Certificate 68390, was perfected under Permit 1234 with a date of priority of JUNE 14, 1912. The right allows the use of UMATILLA RIVER, a tributary of the COLUMBIA RIVER, for IRRIGATION OF 4.28 ACRES. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.05 cubic foot per second, if available at the authorized point of diversion: SW $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 6, T 2 N, R 33 E, WM; NORTH 75° EAST 120' FROM THE SE $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 6, or its equivalent in case of rotation, measured at the point of diversion from the source.

The use shall conform to any reasonable rotation system ordered by the proper state officer.

The authorized place of use is located as follows:

SE $\frac{1}{4}$ SE $\frac{1}{4}$ 4.28 ACRES
SECTION 1
TOWNSHIP 2 NORTH, RANGE 32 EAST, W.M.

The right to use the water for the above purpose is restricted to beneficial use on the lands or place of use described.

The applicant proposes to change the point of diversion to:

NW¼ NW¼, SECTION 7, T 2 N, R 33 E, WM; 660 FEET SOUTH AND 15 FEET EAST FROM THE NORTHWEST CORNER, SECTION 7.

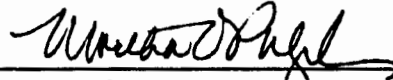
THIS CHANGE TO AN EXISTING WATER RIGHT MAY BE MADE PROVIDED THE FOLLOWING CONDITIONS ARE MET BY THE WATER USER:

1. The proposed change shall be completed on or before October 1, 1998.
2. The quantity of water diverted at the new point of diversion, together with that diverted at the old point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
3. The water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
4. Water shall be acquired from the same surface water source as the original point of diversion.
5. The water user shall install and maintain a fish screen or by-pass device. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning of construction and shall be installed under the supervision of the Oregon Department of Fish and Wildlife.

The water user may participate in the Oregon Department of Fish and Wildlife's cost sharing program for installation of screening and by-pass devices in accordance with ORS 540.525.

Certificate 68390 is canceled. A new certificate will be issued to confirm that portion of the right NOT involved in this transfer. When satisfactory proof of the completed change is received, a new certificate confirming this water right will be issued.

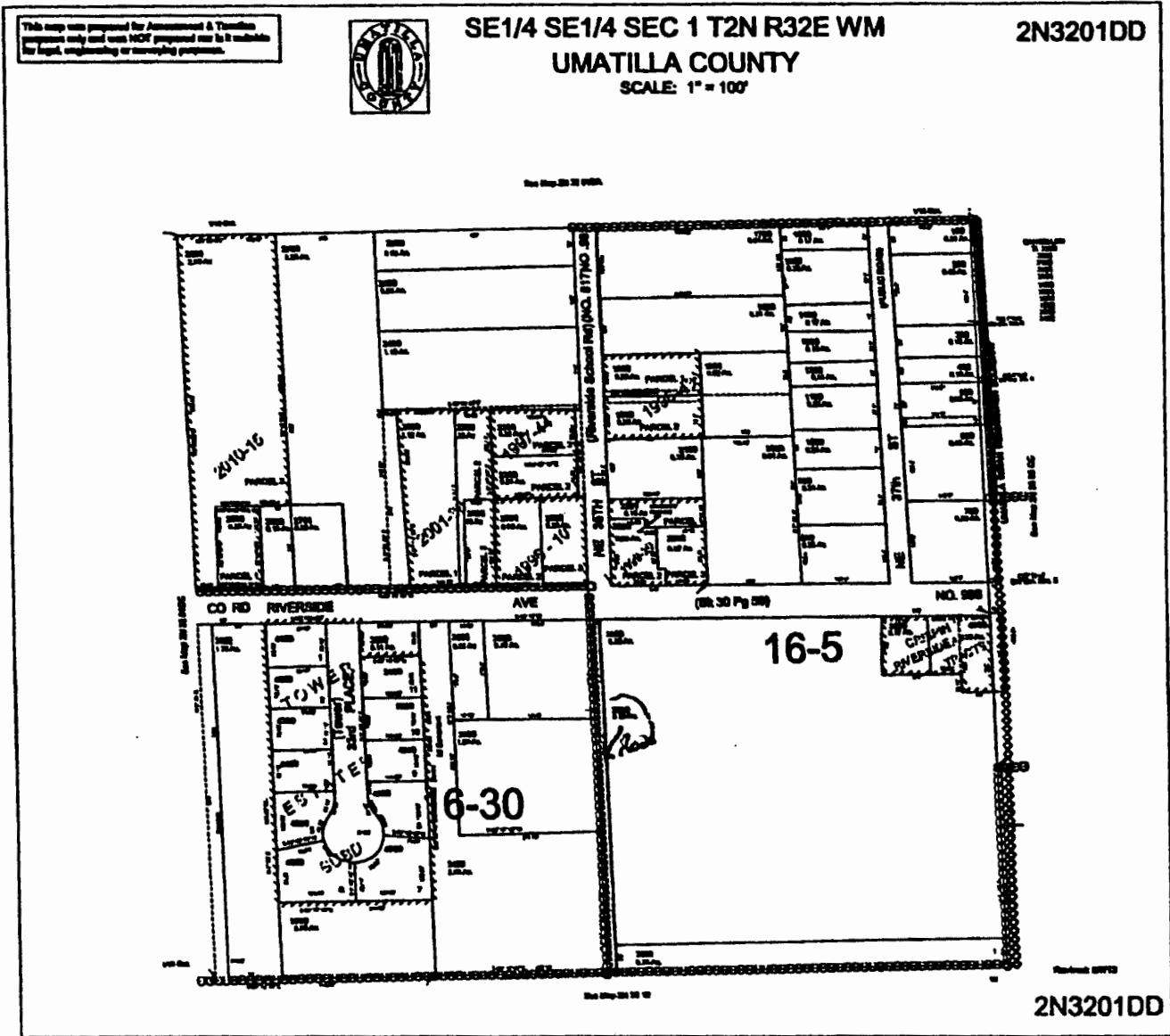
WITNESS the signature of the Water Resources Director, affixed AUG 08 1997.



Martha O. Pagel, Director



Document
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JUL 22 2015

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SALEM OR



**OREGON WATER RESOURCES DEPARTMENT
OREGON REVISED STATUTES Chapter 540
Distribution of Water; Watermasters; Change in Use;
Transfer or Forfeiture of Water Rights**

FORFEITURE OF WATER RIGHTS

- 540.610 Use as measure of water right; forfeiture for nonuse; confirmation of rights of municipalities
- 540.612 Exemption from forfeiture
- 540.621 Cancellation of abandoned water right upon request of owner
- 540.631 Cancellation of forfeited water right; notice
- 540.641 Protest of cancellation; procedure
- 540.650 Issuance of new water right certificate for water rights not canceled
- 540.660 Affidavit of watermaster that circumstances prevent use of water right in accordance with terms of certificate; procedures for cancellation of right
- 540.670 Effect of cancellation of primary water right on supplemental right; change from supplemental to primary right; priority date

FORFEITURE OF WATER RIGHTS

540.610 Use as measure of water right; forfeiture for nonuse; confirmation of rights of municipalities. (1) Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state. Whenever the owner of a perfected and developed water right ceases or fails to use all or part of the water appropriated for a period of five successive years, the failure to use shall establish a rebuttable presumption of forfeiture of all or part of the water right.

(2) Upon a showing of failure to use beneficially for five successive years, the appropriator has the burden of rebutting the presumption of forfeiture by showing one or more of the following:

(a) The water right is for use of water, or rights of use, acquired by cities and towns in this state, by appropriation or by purchase, for all reasonable and usual municipal purposes.

(b) A finding of forfeiture would impair the rights of such cities and towns to the use of water, whether acquired by appropriation or purchase, or heretofore recognized by act of the legislature, or which may hereafter be acquired.

(c) The use of water, or rights of use, are appurtenant to property obtained by the Department of Veterans' Affairs under ORS 407.135 or 407.145 for three years after the expiration of the period of redemption provided for in ORS 18.964 while the land is held by the Department of Veterans' Affairs, even if during such time the water is not used for a period of more than five successive years.

(d) The use of water, or rights of use, under a water right, if the owner of the property to which the right is appurtenant is unable to use the water due to economic hardship as defined by rule by the Water Resources Commission.

(e) The period of nonuse occurred during a period of time within which land was withdrawn from use in accordance with the Act of Congress of May 28, 1956, chapter 327 (7 U.S.C. 1801-1814; 1821-1824; 1831-1837), or the Federal Conservation Reserve Program, Act of Congress of December 23, 1985, chapter 198 (16 U.S.C. 3831-3836, 3841-3845). If necessary, in a cancellation proceeding under this section, the water right holder rebutting the presumption under this paragraph shall provide documentation that the water right holder's land was withdrawn from use under a federal reserve program.

(f) The end of the alleged period of nonuse occurred more than 15 years before the date upon which evidence of nonuse was submitted to the commission or the commission initiated cancellation proceedings under ORS 540.631, whichever occurs first.

(g) The owner of the property to which the water right was appurtenant is unable to use the water because the use of water under the right is discontinued under an order of the commission under ORS 537.775.

(h) The nonuse occurred during a period of time within which the water right holder was using reclaimed water in lieu of using water under an existing water right.

(i) The nonuse occurred during a period of time within which the water right holder was reusing water through land application as authorized by ORS 537.141 (1)(i) or 537.545 (1)(g) in lieu of using water under an existing water right.

(j) The owner or occupant of the property to which the water right is appurtenant was unable to make full beneficial use of the water because water was not available. A water right holder rebutting the presumption under this paragraph shall provide evidence that the water right holder was ready, willing and able to use the water had it been available.

(k) The holder of a water right is prohibited by law from using the water. If the prohibition is subject to remedial action that would allow the use of the water, the water right holder shall provide evidence that the water right holder is conducting the remedial action with reasonable diligence.

(L) The nonuse occurred during a period of time within which the exercise of all or part of the water right was not necessary due to climatic conditions, so long as the water right holder had

a facility capable of handling the full allowed rate and duty, and was otherwise ready, willing and able to use the entire amount of water allowed under the water right.

(m) The nonuse occurred during a period of time within which the water was included in a transfer application pending before the Water Resources Department.

(n) The nonuse of a supplemental water right occurred during a period of time when the primary water right used in conjunction with that supplemental water right was leased as an in-stream water right pursuant to ORS 537.348.

(3) Notwithstanding subsection (1) of this section, if the owner of a perfected and developed water right uses less water to accomplish the beneficial use allowed by the right, the right is not subject to forfeiture so long as:

(a) The user has a facility capable of handling the entire rate and duty authorized under the right; and

(b) The user is otherwise ready, willing and able to make full use of the right.

(4) The right of all cities and towns in this state to acquire rights to the use of the water of natural streams and lakes, not otherwise appropriated, and subject to existing rights, for all reasonable and usual municipal purposes, and for such future reasonable and usual municipal purposes as may reasonably be anticipated by reason of growth of population, or to secure sufficient water supply in cases of emergency, is expressly confirmed.

(5) After a water right is forfeited under subsection (1) of this section, the water that was the subject of use shall revert to the public and become again the subject of appropriation in the manner provided by law, subject to existing priorities. [Amended by 1985 c.689 §5; 1987 c.339 §4; 1989 c.699 §1; 1989 c.833 §61a; 1991 c.370 §6; 1995 c.356 §2; 1995 c.366 §1; 1997 c.42 §5; 1997 c.244 §5; 1997 c.283 §1; 1999 c.335 §3; 1999 c.804 §§3,4; 2005 c.222 §1; 2005 c.542 §70; 2005 c.625 §70]

540.612 Exemption from forfeiture. If a district, as defined in ORS 540.505, petitions for a transfer as provided in ORS 540.574 no later than the end of the calendar year of the fifth year of nonuse under ORS 540.610 (1), the forfeiture provisions of ORS 540.610 shall not apply to the lands from which the water right is sought to be transferred pending approval of the district's petition. The time required for the processing of the petition, including any time required for hearings, appeals and completion of an authorized change, shall not be included when computing a five-year period of nonuse under the provisions of ORS 540.610 (1). [1991 c.957 §11]

540.615 [1961 c.140 §1; 1987 c.339 §5; repealed by 1989 c.699 §4]

540.620 [Repealed by 1955 c.671 §1]

540.621 Cancellation of abandoned water right upon request of owner. Whenever the owner of a perfected and developed water right certifies under oath to the Water Resources Commission that the water right has been abandoned by the owner and that the owner desires cancellation thereof, the commission shall enter an order canceling the water right. Effective upon the date of the entering of such order, the water which was the subject of use under the water right shall revert to the public and become again the subject of appropriation in the manner provided by law, subject to existing priorities. [1955 c.670 §1; 1979 c.67 §5; 1985 c.673 §96]

540.630 [Repealed by 1955 c.671 §1]

540.631 Cancellation of forfeited water right; notice. Whenever it appears to the satisfaction of the Water Resources Commission upon the commission's own determination or upon evidence submitted to the commission by any person that a perfected and developed water right has been forfeited as provided in ORS 540.610 (1), and would not be rebutted under ORS 540.610 (2), the commission shall initiate proceedings for the cancellation of such water right by causing written notice of such initiation of proceedings to be given by registered or certified mail, return receipt requested, to the legal owner of the lands to which the water right is appurtenant and to the occupant of such lands. The notice to the legal owner shall be addressed to the legal owner at the owner's last address of record in the office of the county assessor of the county in which the lands are located. The notice shall contain a complete description of the water right and of the lands to which the water right is appurtenant. The notice shall state that the legal owner or the occupant has a period of 60 days from the date of the mailing of the notice within which to protest the proposed cancellation of the water right. [1955 c.670 §2; 1985 c.673 §97; 1989 c.699 §2; 1991 c.249 §53]

540.640 [Repealed by 1955 c.671 §1]

540.641 Protest of cancellation; procedure. (1) If the legal owner or the occupant receiving notice as provided in ORS 540.631 fails to protest the proposed cancellation of the water right within the 60-day period prescribed in the notice, the Water Resources Commission may enter an order canceling the water right.

(2) If the legal owner or the occupant receiving notice as provided in ORS 540.631 files a protest against the proposed cancellation of the water right with the commission within the 60-day period prescribed in the notice, the commission shall fix a time and place for a hearing on the protest. The commission shall cause written notice of the hearing to be given at least 10 days prior to the hearing to the person protesting the cancellation of the water right and to any other person who in the opinion of the commission is an interested party to the proceeding. The hearing shall be held by the commission and shall be conducted under the provisions of ORS chapter 183 pertaining to contested cases. After the hearing the commission shall enter an order canceling the water right, canceling in part or modifying the water right, or declaring that the water right shall not be canceled or modified. [1955 c.670 §3; 1975 c.581 §26c; 1983 c.807 §3; 1985 c.673 §98]

540.650 Issuance of new water right certificate for water rights not canceled. If the order of the Water Resources Commission or the final decree on the appeal therefrom under

ORS 540.641 cancels in part or modifies the water right, that portion of the water right not canceled or continued as modified shall be reaffirmed by a new water right certificate issued by the commission. Such certificate shall be of the same character as that described in ORS 539.140. The certificate shall be recorded and transmitted to the owner of the water right as provided in ORS 539.140. [1955 c.670 §4; 1979 c.67 §6; 1985 c.673 §99]

540.660 Affidavit of watermaster that circumstances prevent use of water right in accordance with terms of certificate; procedures for cancellation of right. (1) If a watermaster has reason to believe that circumstances exist that prevent a water right from being exercised according to the terms and conditions of the water right certificate issued under ORS 537.250 or 539.140, such as the land to which the water right is appurtenant is covered by an impermeable surface, or the diversion mechanism used to appropriate water under a water right is no longer operable, the watermaster shall file an affidavit with the Water Resources Director. The affidavit shall state that to the best of the watermaster's knowledge, there is no physical way the water may be applied to a beneficial use in accordance with the terms and conditions of the water right certificate.

(2) If the watermaster files an affidavit under subsection (1) of this section each year for five consecutive years, the affidavits shall constitute prima facie evidence that the water has not been applied to a beneficial use for five years and the Water Resources Commission shall initiate proceedings under ORS 540.631 to cancel the water right.

(3) The Water Resources Department shall provide notice of the affidavit filed with the Water Resources Director under subsection (1) of this section. The department shall provide such notice in the following manner:

(a) If there are 25 or fewer record owners of the land, the department shall mail a copy of the affidavit to each record owner.

(b) If there are more than 25 record owners, the department shall provide general notice by publication according to the procedures established in ORS 193.010 to 193.100.

(c) If the land is within the boundaries of an irrigation district, the department shall mail a copy of the affidavit to the irrigation district.

(4) As used in this section, "record owner" means the person shown as the owner of the land in the county deed records established under ORS chapter 93. [1987 c.339 §1]

540.670 Effect of cancellation of primary water right on supplemental right; change from supplemental to primary right; priority date. (1) The cancellation of a primary water right for nonuse under ORS 540.641 shall not also cancel a supplemental water right unless the supplemental water right also has not been used beneficially for five or more years.

(2) If the Water Resources Commission cancels a primary water right under ORS 540.641 the commission may issue a new water right certificate changing the supplemental water right to

a primary right if the commission finds that the change would not result in injury to existing water rights.

(3) A supplemental right changed to a primary right under subsection (2) of this section shall retain the priority date of the supplemental right. [1987 c.339 §2]

OREGON WATER RESOURCES DEPARTMENT
DIVISION 17
CANCELLATION OF PERFECTED WATER RIGHTS

690-017-0005

Introduction

These rules define the process the Water Resources Department will follow when cancelling a perfected water right. The action to cancel the perfected water right can be initiated as the result of a request by the record owner of the land to which the water right is appurtenant, or as the result of a request to determine the validity of a water right which may be forfeited due to five successive years of non-use.

Stat. Auth.: ORS 183, ORS 339, ORS 536, ORS 537 & ORS 540

Stats. Implemented:

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90

690-017-0010

Definitions

- (1) "Affidavit" means a declaration upon oath, in writing, signed by the party and sworn to before a notary public.
- (2) "Affiant" means the individual completing, swearing to and signing an affidavit.
- (3) "Bankruptcy" means proceedings under federal bankruptcy statutes to relieve a debtor (the bankrupt) from insurmountable debt. The commencement of a bankruptcy action occurs with the date a petition for relief is filed by a debtor or creditor to the bankruptcy court.
- (4) "Cancellation" means the action taken by the Director, the Commission, or the courts to abolish all or part of a permit or certificate of water right.
- (5) "Deed-in-Lieu" means a deed tendered by the record owner to prevent the creditor from asserting a legal right to recover payment of a debt through a foreclosure action.
- (6) "District" has the meaning of the term as defined in ORS 540.505
- (7) "Foreclosure" means a proceeding in or out of court to extinguish all right, title and interest of the record owner(s) of property in order to sell or repossess the property to satisfy a lien

against it. A foreclosure action begins on the date presentation of the official demand for payment is made to the debtor by the creditor by certified mail.

(8) "Forfeiture" means the loss of a water right caused by the failure of the appropriator or record owner of the right to use the water for five successive years.

(9) "Judicial Action" means a suit, injunction, or litigation filed with or allowed by the courts.

(10) "Natural Disaster" means an act of God, such as flooding or erosion, which occurred with such magnitude that it either prohibited or severely limited the ability to use the water.

(11) "Perfected Water Right" means a water right which has been confirmed by the issuance of a certificate of water right or by a court decree.

(12) "Presumption of Forfeiture" means a conclusion established by statute that a water right, in whole or in part, is forfeited by nonuse of the right for five successive years.

(13) "Principal Farm Operator" means the record owner, including a lessee to whom the right of possession of agricultural property has been granted by the lessor for a specified period of time in return for a consideration.

(14) "Rebuttable Presumption" means a presumption which, by statute, may be overcome by evidence sufficient to explain or disprove the presumption.

(15) "Record Owner" means the person shown as the owner of the land in the county deed records established under ORS Chapter 93.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.610-540.670

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90; WRD 7-2004, f. & cert. ef. 11-5-04

690-017-0100

Cancellation Authorized by Record Owner

(1) Perfected water rights shall be cancelled by order of the Director in accordance with the provisions of ORS 540.621 when so requested by notarized affidavit of the record owner of the land to which the water right in question is appurtenant.

(2) The affidavit shall contain, at a minimum, the following:

(a) A statement that the affiant is the record owner of the lands associated with the water right in question;

(b) The certificate number of the water right;

(c) A statement that the affiant has abandoned any and all interest in and to all or a specified portion of the water right;

(d) Where only part of the right has been abandoned, a description of the specific place of use by quarter-quarter section and acres on which the right has been abandoned, with information sufficient to determine the lands on which the right is not to be cancelled; and

(e) A request that all or part of the certificate be cancelled.

(f) A statement of whether, to the best of the affiant's knowledge, the subject water right is within the boundaries of a district or federal reclamation project.

(3) Based on the best information available to the Department, if the subject water right is within the boundaries of a district or federal reclamation project, the Department shall, as applicable, provide the district and the United States Bureau of Reclamation notice of the water right cancellation request.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.610-540.670

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90; WRD 7-2004, f. & cert. ef. 11-5-04

690-017-0200

Watermaster Affidavit of Inability to Appropriately or Beneficially Use Water

(1) If a watermaster has reason to believe that circumstances exist that prevent a water right from being exercised, including but not limited to, the lands being covered by an impermeable surface or the diversion mechanism used to appropriate the water is no longer operable, the watermaster shall file an affidavit with the Water Resources Director.

(2) The affidavit shall state:

(a) The date and time the land or diversion mechanism or other evidence was inspected by the watermaster;

(b) The names of all record owners of the land where the water right is appurtenant and the owners' address as it appears in the county assessors' records; and

(c) The watermaster's findings during the inspection that indicate the water right cannot be exercised.

Stat. Auth.: ORS 183, ORS 339, ORS 536, ORS 537 & ORS 540

Stats. Implemented:

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90

690-017-0300

Notice of Watermaster Affidavit to Record Owner

(1) The Water Resources Department shall notify each record owner of the land described by an affidavit submitted by a watermaster under ORS 540.660 in the following manner:

(a) If there are 25 or fewer record owners of the land, the department shall mail a copy of the affidavit to each record owner;

(b) If there are more than 25 record owners, the department shall provide general notice by publication according to the procedures established in ORS 193.010 to 193.100; and

(c) If the land is within the boundaries of an irrigation district, the Department shall mail a copy of the affidavit to the irrigation district.

(2) The record owner named in an affidavit shall be given the option of voluntarily relinquishing the water right or portion thereof, continuing to be the subject of the filing of such affidavits each year for a period of five successive years, or of applying the water to the use authorized by the certificate.

(3) If the watermaster files an affidavit each year for five successive years, the Water Resources Department shall initiate proceedings under ORS 540.631 to cancel the water right.

Stat. Auth.: ORS 183, ORS 339, ORS 536, ORS 537 & ORS 540

Stats. Implemented:

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90

690-017-0400

Cancellation Initiated by Department

(1) The Department shall initiate proceedings to cancel a perfected water right, as provided in ORS 540.631 and these rules, whenever it appears that a right has been forfeited as provided in 540.610. The decision to initiate cancellation proceedings shall be based on evidence submitted to the Department, by any person, that alleges five or more years of nonuse so as to create a

presumption of forfeiture, and from which evidence it further appears the presumption of forfeiture would not likely be rebutted under OAR 690-017-0800(2)(a), (d) or (e).

(2) Where the evidence submitted to the Department is in the form of affidavits, notarized affidavits from two individuals shall be required. An affidavit shall contain the following:

(a) Name, address and telephone number of affiant;

(b) Page number of the certificate in question as recorded in the State Record of Water Right Certificates, name of the person to whom the certificate was issued, and priority date of the certificate;

(c) Township, range, quarter-quarter section and number of acres to which the certificate in question is appurtenant;

(d) The use for which the water right was issued;

(e) The source of water to be used as provided in the certificate;

(f) A statement of the affiant's knowledge of the lands described in the certificate in question, and an explanation of how the affiant gained this knowledge;

(g) A statement that the affiant knows with certainty that no water from the allowed source has been used for the authorized use on the lands, or a portion of the lands, the portion being accurately described, under the provisions of the water right within a period of five or more successive years, and the beginning and ending years of the period of nonuse. Where possible, beginning and ending months should also be given;

(h) A statement that the affiant believes the allegation of nonuse will not be rebutted under any of the grounds for rebuttal set out in ORS 540.610;

(i) A copy of the county tax plat map illustrating the lands to which the subject water right is appurtenant, and if applicable, the location of the portion of the water right asserted to have been forfeited;

(j) The affiant's agreement to testify in a hearing before the Water Resources Department if necessary;

(k) To the best of the affiant's knowledge, a statement of whether the subject water right is within the boundaries of a district or federal reclamation project; and

(l) Proof that the affidavit(s) have been served upon the legal owner of the lands to which the water right is appurtenant and to the occupant of such lands.

(3) Based on the best information available to the Department, if the subject water right is within the boundaries of a district or federal reclamation project, the Department shall provide notice of

receipt of affidavits submitted under this rule, as applicable, to the district and the United States Bureau of Reclamation at least 90 days prior to initiating a cancellation proceeding.

(4) Where the evidence submitted is solely from Department personnel, such evidence shall be submitted in the form of an affidavit and contain all information described in section (2) of this rule. In addition, the affidavit shall be supported by stream or canal gaging records, water or electric meter readings, static level measurements, system capacity calculations, a summary of field investigations, photos, maps, or other relevant data covering each year of the period of alleged nonuse.

(5) The Department shall initiate proceedings to cancel a water right under ORS 540.631 within 180 days of receiving the evidence required under sections (1) and (2) of this rule.

(6) The Department shall notify the record owner of the land to which a perfected water right is appurtenant that it intends to cancel all or a portion of the water right. The occupant of affected lands, if other than the owner, shall also be notified. If the subject water right is within the boundaries of a district or federal reclamation project, the Department shall, as applicable, mail a copy of the cancellation notice to the district and the United States Bureau of Reclamation. Notice shall be sent to the record owner of the land or occupant by certified mail, return receipt requested. The notice to the record owner shall be addressed to the owner at the owner's last address or record in the office of the county assessor of the county in which the lands are located. The notice shall contain the following:

(a) A description of the water right and the land to which the water right is appurtenant;

(b) A statement that the information before the Director creates a rebuttal presumption of forfeiture;

(c) A statement that the record owner or the occupant has a period of 60 days from the date of the mailing of the notice within which to protest the proposed cancellation either by asserting that the water right has been used, or by making rebuttal in the manner and on the grounds provided in OAR 690-017-0600 and 690-017-0800;

(d) Notice that if the record owner intends to rebut the presumption of forfeiture, the protest shall include a statement of the grounds for rebuttal relied upon, and shall be accompanied by appropriate supporting documentation; and

(e) A statement that, following receipt of a protest against the proposed cancellation and determination that the presumption of forfeiture has not been rebutted, a contested case hearing will be scheduled.

Stat. Auth.: ORS 536.025 & 536.027

Stats. Implemented: ORS 540.610-540.670

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90; WRD 7-2004, f. & cert. ef. 11-5-04

690-017-0500

Cancellation Not Protested

If the record owner or occupant receiving notice as provided in ORS 540.631 fails to protest the proposed cancellation of the water within the 60-day period prescribed in the notice, the Water Resources Department shall enter an order cancelling the water right as provided in ORS 540.641.

Stat. Auth.: ORS 183, ORS 339, ORS 536, ORS 537 & ORS 540

Stats. Implemented:

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90

690-017-0600

Protest of Cancellation/Statement of Intent to Rebut Presumption of Forfeiture

(1) A protest submitted to the Water Resources Department by the record owner or occupant of the land on which a cancellation of a perfected water right is proposed shall include the following:

(a) A written statement citing the reasons the record owner or occupant believes the water right has not been forfeited by nonuse; and

(b) The statutory fee for filing the protest.

(2)(a) Where the record owner or occupant intends to rebut the presumption of forfeiture by claiming one or more of the grounds for rebuttal established in ORS 540.610(2) and as further defined in OAR 690-017-0800, grounds claimed for rebuttal shall be stated in the protest;

(b) Where applicable, documentary evidence in support of the rebuttal as described in OAR 690-017-0800(3) shall be submitted with the protest.

(3)(a) On receipt of a protest claiming rebuttal and supporting documentary evidence, a determination shall be made whether the presumption of forfeiture has been rebutted;

(b) Where rebuttal is found to have been made, the matter shall be closed and no further action taken to cancel the water right;

(c) Where it is determined that the presumption of forfeiture has not been rebutted, the Department shall initiate proceedings to cancel the right as provided in OAR 690-017-0700.

Stat. Auth.: ORS 183, ORS 339, ORS 536, ORS 537 & ORS 540

Stats. Implemented:

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90

690-017-0700

Cancellation Hearing

- (1) If the Department receives a protest to the proposed cancellation of a water right within the prescribed 60-day period, a hearing on the protest shall be scheduled. The protestant shall be given not less than ten days notice of the hearing time and place.
- (2) The hearing shall be held by the Department's Hearings Referee, and shall be conducted under the provisions of ORS 183.310 to 183.550 pertaining to contested cases.
- (3) In contested case hearings where the initial determination was made that the presumption of forfeiture had not been rebutted, the owner may offer additional evidence in support of rebuttal.
- (4) After the hearing the Hearings Referee shall enter a proposed order:
 - (a) Cancelling the water right;
 - (b) Cancelling in part or modifying the water right; or
 - (c) Declaring that the water right shall not be cancelled or modified.
- (5) If no exceptions or objections to the proposed order are filed within the time allowed, the Hearings Referee shall issue a final order.

Stat. Auth.: ORS 183, ORS 339, ORS 536, ORS 537 & ORS 540

Stats. Implemented:

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90

690-017-0800

Grounds for and Manner of Rebutting a Presumption of Forfeiture

- (1) Any record owner or occupant rebutting a presumption of forfeiture for nonuse of water under ORS 540.610(2), as provided in these rules, shall provide evidence that rebuts the presumption of forfeiture.
- (2) A presumption of forfeiture may be rebutted by showing one or more of the following:

- (a) The water right is for reasonable and usual municipal use of water;
- (b) A finding of forfeiture would impair the rights of cities and towns to the use of water, whether acquired by appropriation or purchase, or previously recognized by legislative act, or which may be acquired in the future;
- (c) The owner of the property was unable to use the water due to economic hardship as defined in section (3) of this rule;
- (d) The period of nonuse occurred during a period of time within which land was withdrawn from use under the Federal Soil Bank Program or the Federal Conservation Reserve Program;
- (e) The end of the alleged period of nonuse occurred more than 15 years before the date upon which evidence of nonuse was submitted or cancellation proceedings were initiated under ORS 540.631, whichever occurs first; and
- (f) The owner of the property to which the water right is appurtenant is unable to use the water because the use of water under the right is discontinued by an order of the Commission under ORS 537.775 (wasteful or defective wells).

(3) An economic hardship exists only during the following periods of time:

- (a) During a bankruptcy action initiated by or for the record owner or principal farm operator;
- (b) During a foreclosure of real or personal property of the record owner or principal farm operator. The foreclosure of personal property must directly affect the ability to use the water in question;
- (c) During the redemption periods as provided in ORS 23.530 to 23.600;
- (d) Three calendar years following the expiration of redemptions as provided in ORS 23.530 to 23.600; or, three years from the date of recording of a deed in lieu of foreclosure tendered by the record owner or principal farm operator in payment of debt owed; and
- (e) The time during which judicial actions limit or prohibit the record owner's or principal farm operator's use of the water in question;
- (f) The time during which a natural disaster would limit or prohibit the record owner's or principal farm operator's use of the water in question.

(4) Documentation supporting rebuttal based on enrollment in a federal program, bankruptcy, foreclosure or foreclosure redemption, natural disaster, or the 15-year statute of limitations on cancellation as provided for in ORS 540.610(2) may include, but is not limited to, the following items:

- (a) The enrollment contract or agreement between the record owner, occupant, or principal farm operator and the appropriate federal jurisdiction;
- (b) Affidavits by knowledgeable parties such as employees administering the federal programs;
- (c) Court pleadings, filings or other legal documentation of bankruptcy or foreclosure;
- (d) Documents from financial, mortgage, lending or title institutions; and
- (e) Sworn statements by a watermaster, soil scientist, or in-surance claim adjuster.

Stat. Auth.: ORS 183, ORS 339, ORS 536, ORS 537, & ORS 540

Stats. Implemented:

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90

690-017-0900

Time Period of Non-Use

Where the rebutted nonuse occurs as an intervening period within an unrebutted period of nonuse totally five or more years, the remaining unrebutted years of nonuse will be treated as consecutive and cancellation will be initiated.

Stat. Auth.: ORS 183, ORS 339, ORS 536, ORS 537 & ORS 540

Stats. Implemented:

Hist.: WRD 12-1988, f. & cert. ef. 8-10-88; WRD 17-1990, f. & cert. ef. 9-27-90

BEFORE THE WATER RESOURCES DEPARTMENT



State of Oregon)
) ss
County of UMATILLA)

AFFIDAVIT ASSERTING
NON-USE OF WATER RIGHT

1. I, LARRY D. HUNT
(Legal Name)
of 235 N.E. 35th
(Address)
Pendleton, Oregon, 97801
(City) (State) (Zip Code)

Phone (541) 215-3226, say that:

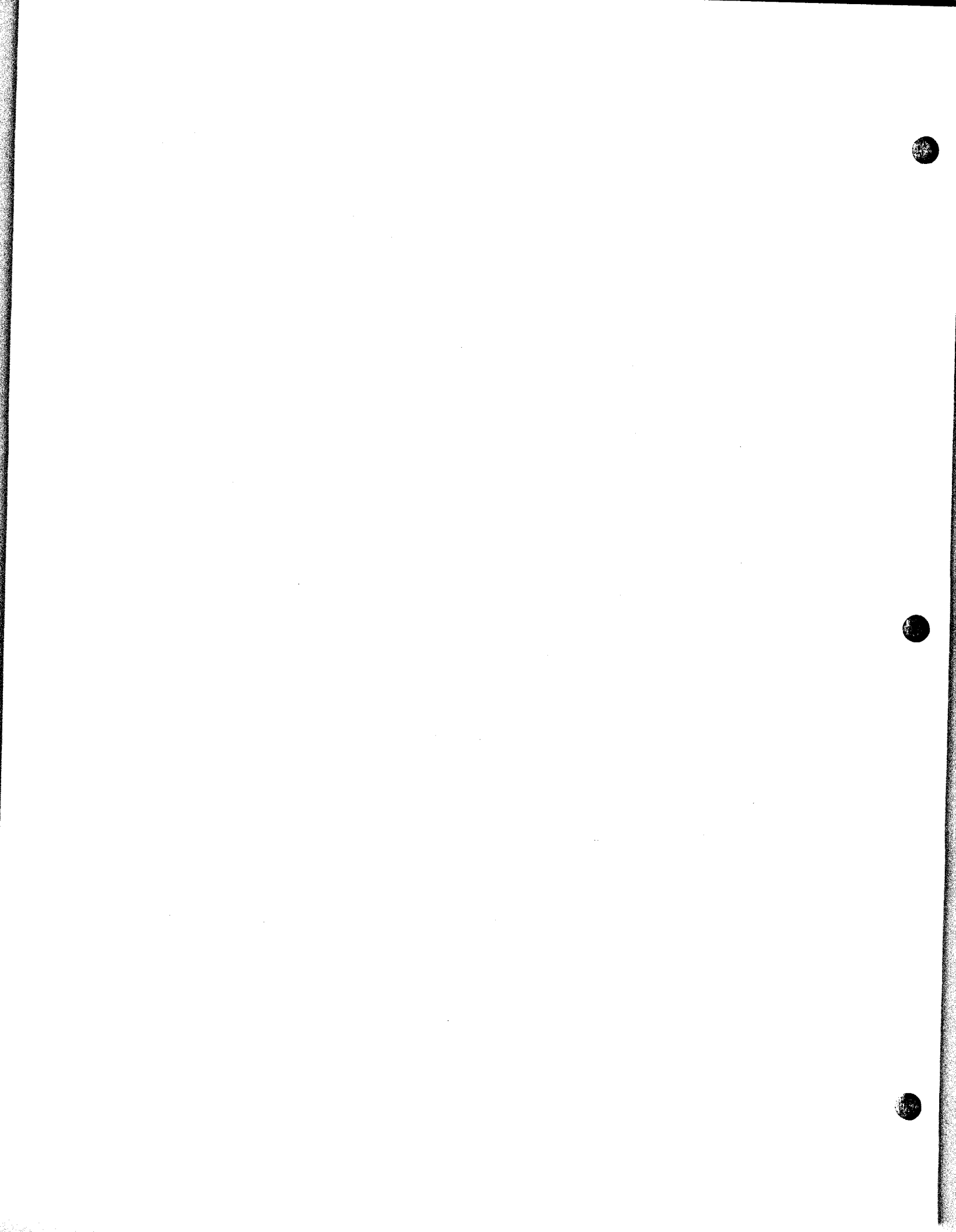
2. Water Right Certificate number 88083,
issued to Riverside farm^{CS}, authorizes use of water from (source) umatilla River
for (use) Pasture,
under a priority date of 14 June 1912.

3. The total number of acres described in the certificate is 4.28.

4. The subject water right is located within Tax Lot(s) 3800, in Township 2N
N/S, Range 32 E/W, in the SE 1/4 SE 1/4, of
Section(s) 1, umatilla, County Oregon.

5. I am familiar with these lands and I am aware of the non-use of this water right because:
see attach Page 2 of 5

Page 2 of 5 RECEIVED BY OWRD
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JUL 06 2015
JUL 22 2015
SALEM, OR
SALEM, OR





6. I know from personal observation and state with certainty that the entire water right has not been used for:

Pasture From 1995 Through June 2015
(Use) (Month and year) (Month and year)

7. I have illustrated on the attached tax lot map the lands to which the water right in question is appurtenant.

8. I know from personal observation and state with certainty that a portion of this water right has not been used for:

Pasture From 1995 Through June 2015
(Use) (Month and year) (Month and year)

9. I have illustrated on the attached tax lot map, the location of the portion of the water right which has not been exercised, totaling 4.28 Acres.

10. Is the subject water right within the boundaries of an irrigation district or federal reclamation project? _____ Yes NO No. If Yes: (Name of Irrigation District or Federal Reclamation Project)

11. I have read the provision of Oregon Revised Statutes 540.610(2) and Oregon Administrative Rules Chapter 690, Division 17 and believe the presumption of forfeiture for five or more consecutive years of non-use may not be rebutted by the holder(s) of this water right. DOH (Initial to indicate you have read these laws)

12. I am willing to testify in a Contested Case Hearing to all allegations contained in this affidavit. I understand that as the proponent, I have the burden of proof on the alleged non-use issue. DOH (Initial to indicate you have read this statement and understand your responsibilities).

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Page 3 of 5 RECEIVED BY OWRD

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10/10/10

Dear Sir,

I am writing to you regarding the matter of the...

I have been informed that you are interested in...

I am sure that you will find this information...

I am sure that you will find this information...

I am sure that you will find this information...

I am sure that you will find this information...

I am sure that you will find this information...

I am sure that you will find this information...

I am sure that you will find this information...

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I am sure that you will find this information...

I am sure that you will find this information...

I am sure that you will find this information...

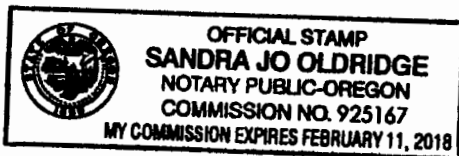
I am sure that you will find this information...



Under penalty of perjury, I do solemnly swear or affirm that the foregoing is a true statement of the facts as I know them to be from my personal knowledge.

Roger D. Hunt
(Signature of Affiant)

Sworn to and subscribed before me this 30 Day of June, 2015.



Sandra Jo Oldridge
(Notary Public of Oregon)

My Commission Expires 02-11-2018

(SEAL)

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JUL 06 2015

SALEM, OR

SALEM, OR



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Attach

Page two of five, line five

I am familiar with these lands and I am aware of its non-use of this water right because:

I've been a long term resident of the area and I'm aware of the water rights of this area I have witness that no water has been placed on tax lot 3800 in the S.E. 1/4 S.E. 1/4 SEC 1 T2N R32E WM sense 1994.

Included is a map of the area in question (document 1) I've used krumbein engineering map because it take in two ranges and three sections the county tax maps do not. The county tax maps are included, document 1A showing S.E. 1/4 S.E.1/4 SEC 1 T2N R33E WM with tax lot 3800 highlighted. Document 1B showing section 12 T2N R32E WM with tax lot 100 highlighted. Document 1C showing section 7 T2N R33E WM with tax lot 308 highlighted. Document 1 showing tax lot 3800 is lined out and tax lot 3700 in yellow is an access road to tax lot 3801 and tax lot 100 in yellow, where I reside so I have a clear view of the pasture of tax lot 3800 at all times. Tax lot 100, 3700, and 3801 are owned by clyde and pat hunt since the early 1960's these are my parents and have live there for over fifty years.

In 1994 lowell spiess purchased tax lot 3800 at this time it was irrigated by flood thru the crispin ditch, witch was shared with other land owners in the area including my father Clyde Hunt who used it to irrigate tax lot 308 (mapped on doc. 1) at the end of 1994 crispin ditch was discontinued forcing everyone to seek other means to irrigate there lands. This is show in document 2 signed by Lowell spiess. In 1995 Lowell spiess asked Clyde hunt if he could use his point of diversion, pump and pipes located on tax lot 308, 3801 to irrigate his 4.28 Acres, this request was denied.

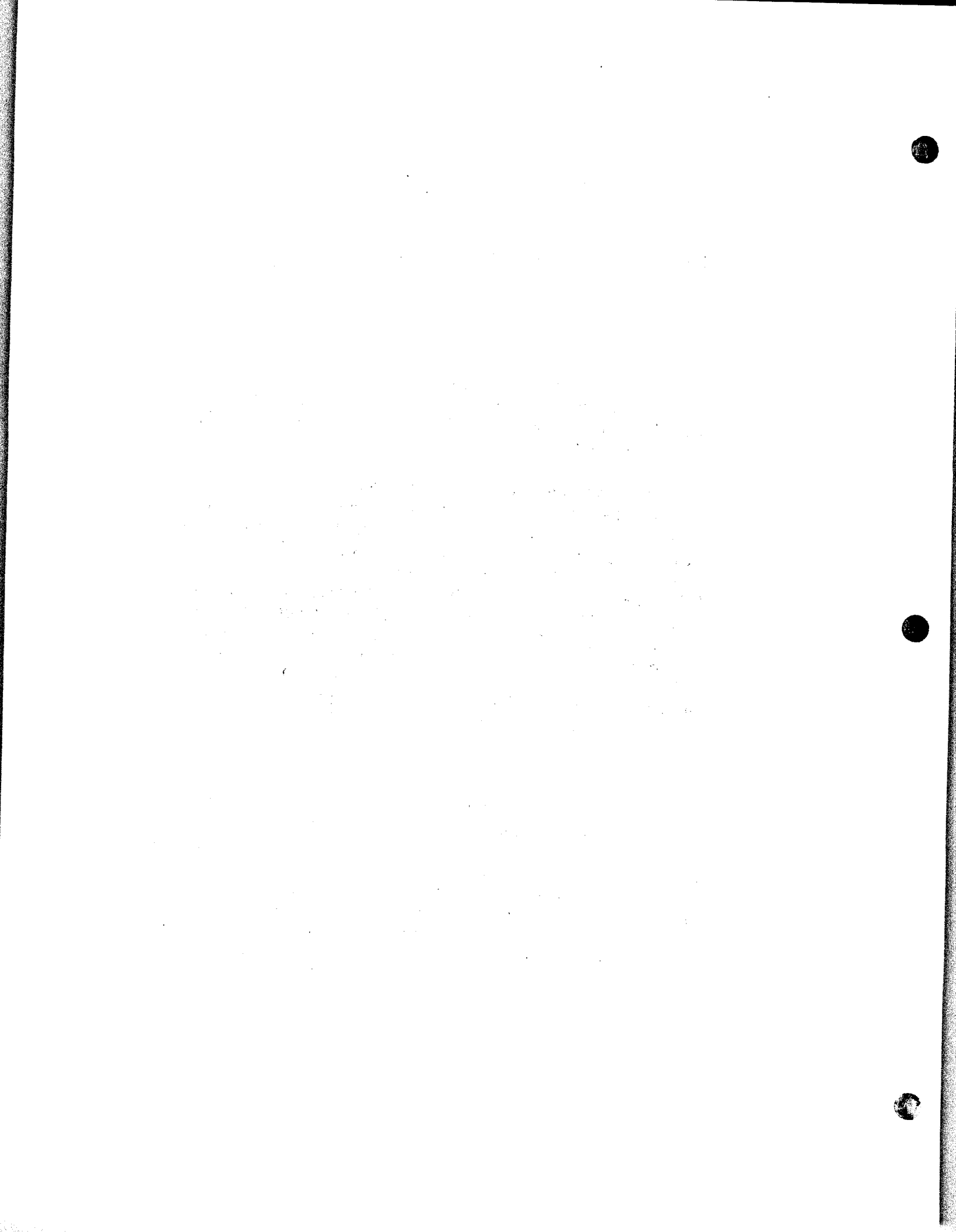
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SALEM, OR



After being denied Lowell Spiess on June 5th 1995 applied for a change in point of diversion shown in document 3 and 3A he did this without the knowledge of the landowner and without the landowners permission on land he did not own, then on August 8th 1997 Lowell Spiess was granted his point of diversion as shown in document 4, 4A and 4B, this allowed him to start irrigation but he could not for permission to cross tax lot 3801, 308, and 100 was denied this now being 3 years of no water on tax lot 3800. To finish his point of diversion transfer Lowell had to hire a C.W.R.E. (certified water right examiner) this was done in September of 1999 by David Krumbein (CWRE 076) as shown in document 5, in this report Mr. Krumbein stated that pump was shared with Clyde Hunt this is not true. Mr Krumbein failed to contact Clyde hunt to verify if Lowell had even permission to use pump and pipe legal actions are being take against Mr. Krumbein at this time for this report. He also states in his report that no sprinklers were running at the time of his inspection. This is true what he fails to report is at this time in September it was clear that no water had been put on Lowell Spiess land. This report was done in September of 1999 making this five years of no irrigation to tax lot 3800 this brings us to the present, June 2015 the only legal way for Lowell Spiess & Linda Shafer to get irrigation water to there land was thru Clyde Hunts pump this has never been done to date now making it 20 years of no water irrigated to tax lot 3800

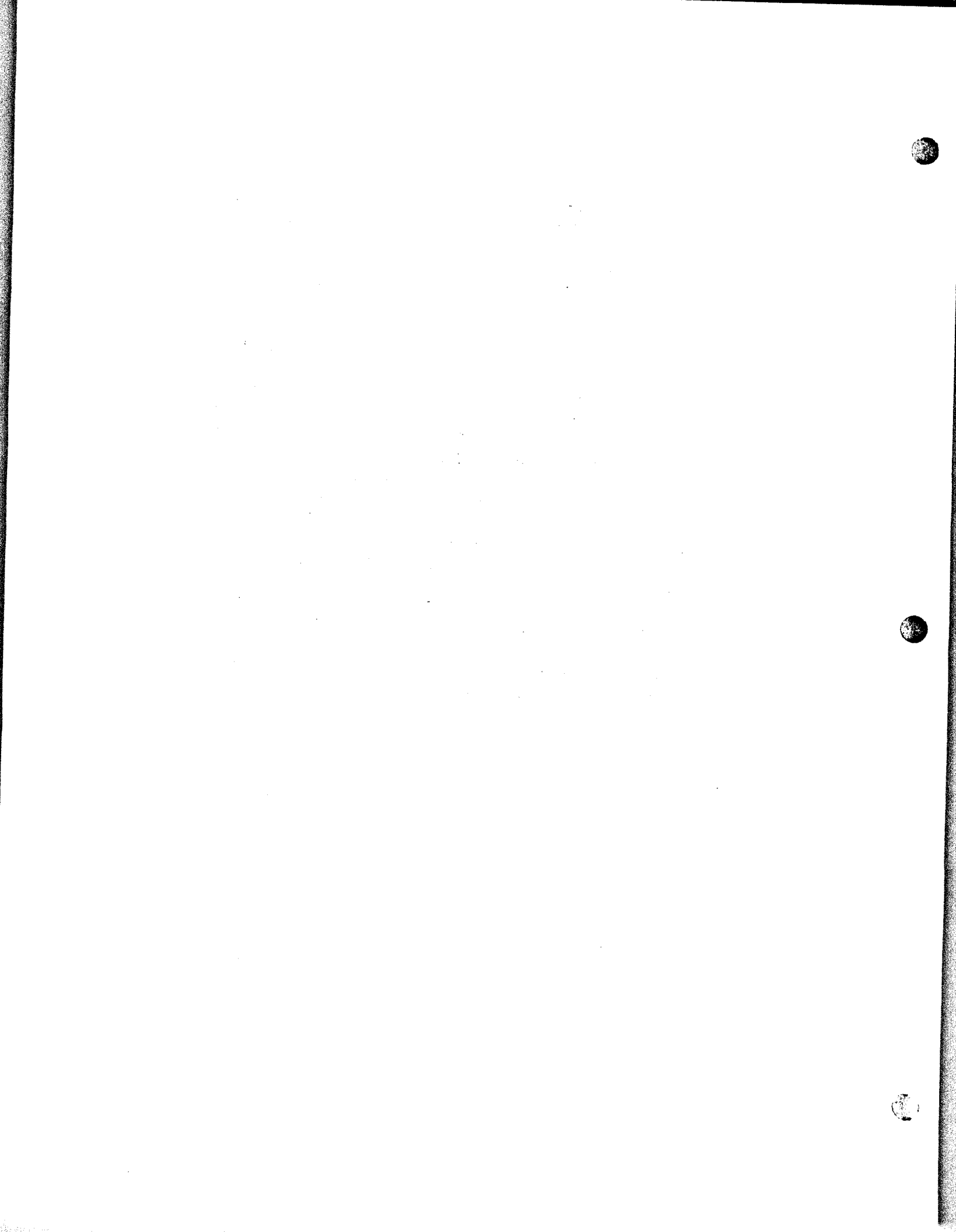
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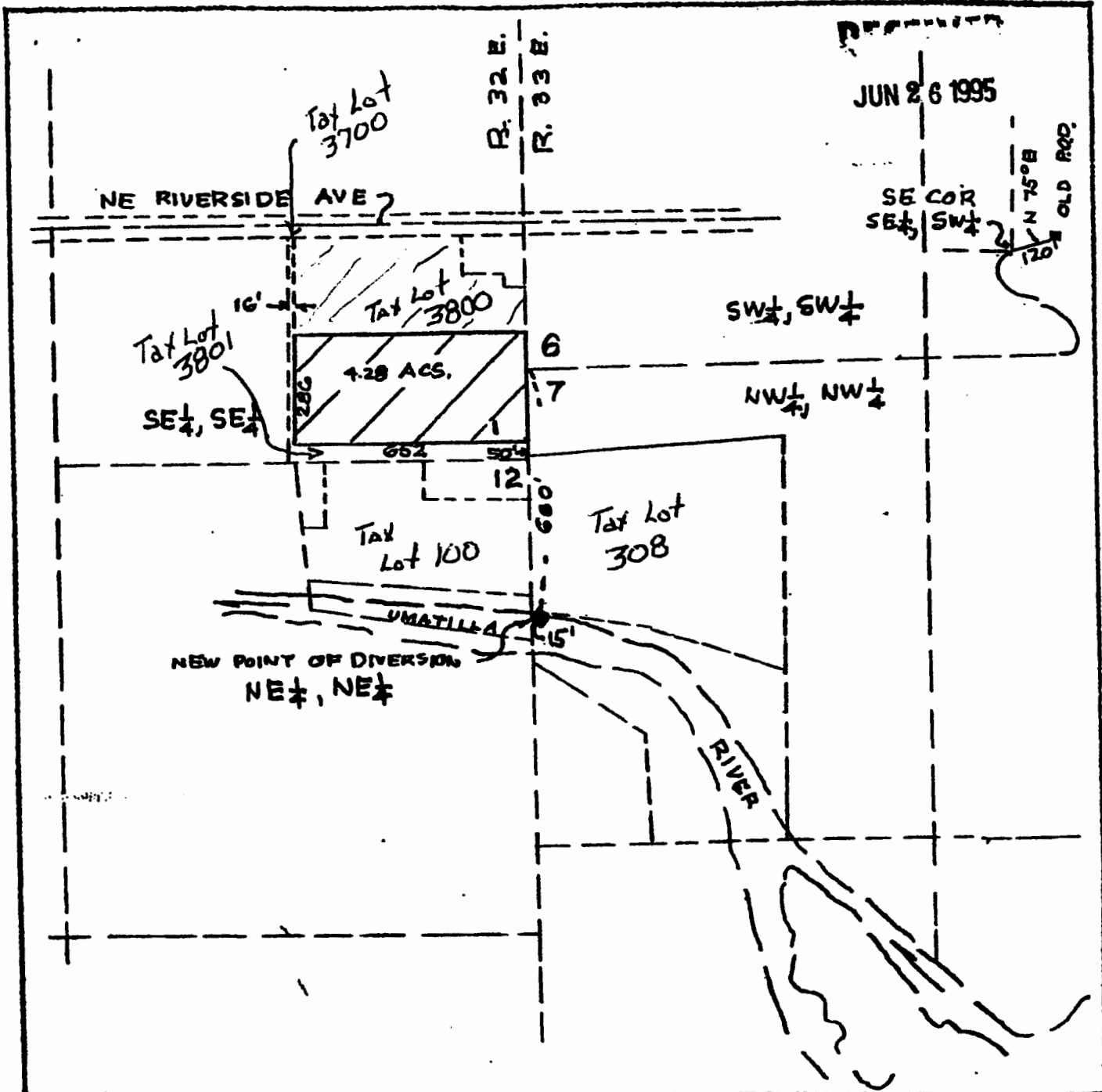
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KRUMBEIN ENGINEERING LTD. ENGINEERS - SURVEYORS - PLANNERS 381 S.E. Second Pendleton, Oregon	Scale 1" = 400'	Des. By DHK	Dwg. No. 9505A	Revision 1
	Date 5-3-95	Chd. By	Job No. 9517	Revision 2

CHANGE IN
POINT OF DIVERSION

SHAFER - SPIESS

 SE 1/4, SE 1/4, SEC. 1
 T. 2 N., R. 32 E. W.M.



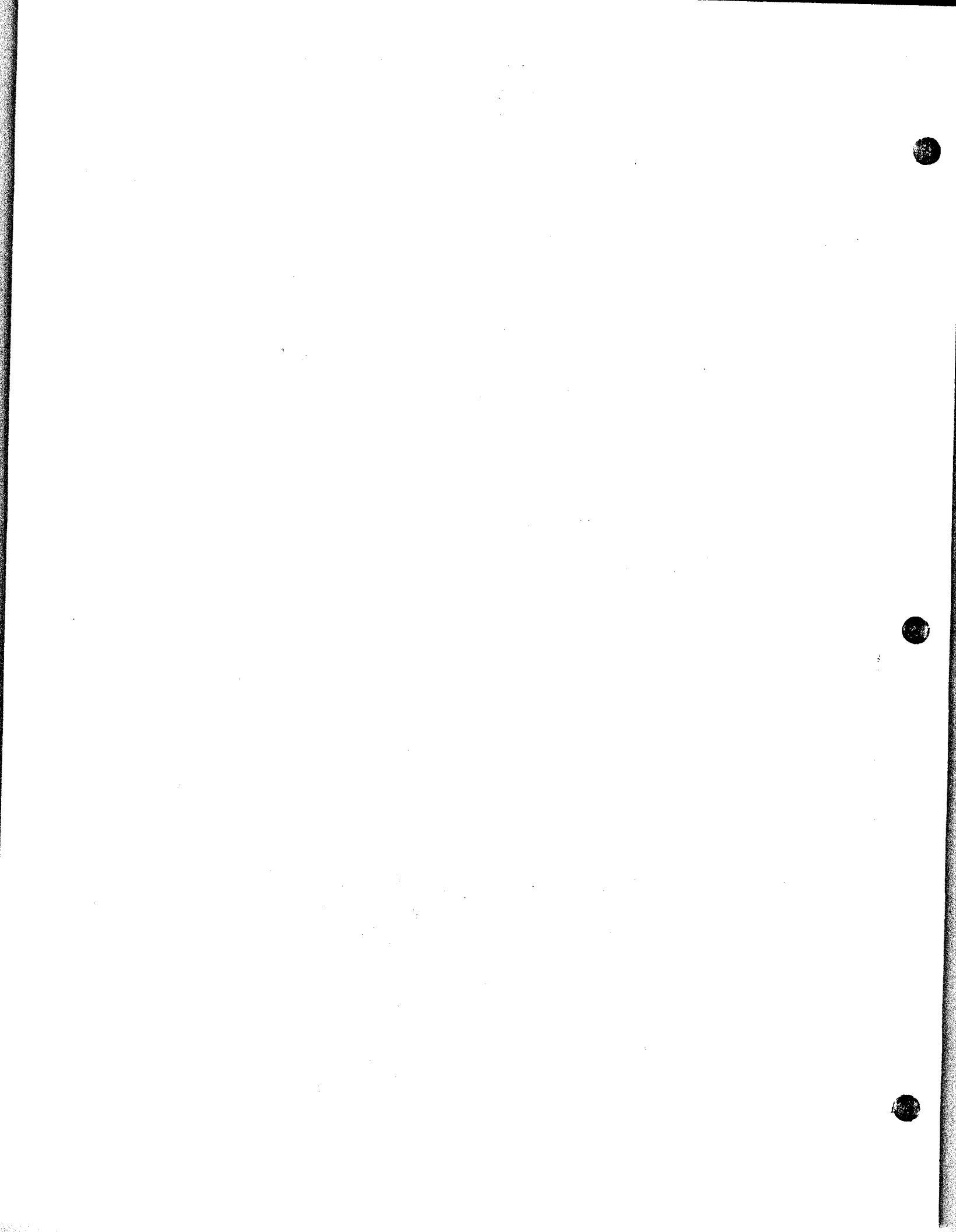
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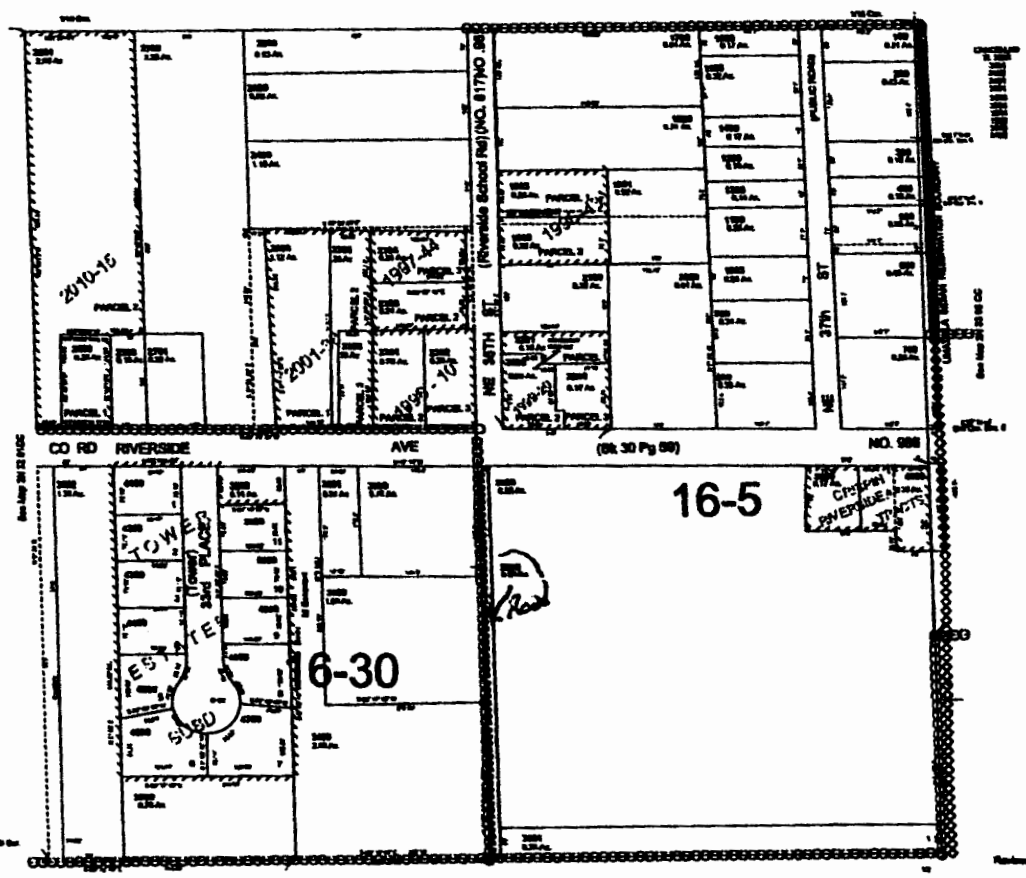
This map was prepared for Assessment & Taxation purposes only and does NOT represent any liability for legal, engineering or surveying purposes.



SE1/4 SE1/4 SEC 1 T2N R32E WM
UMATILLA COUNTY
SCALE: 1" = 100'

2N3201DD

See Map 2N 32 005A



See Map 2N 32 012C

(See 30 Pg 58)

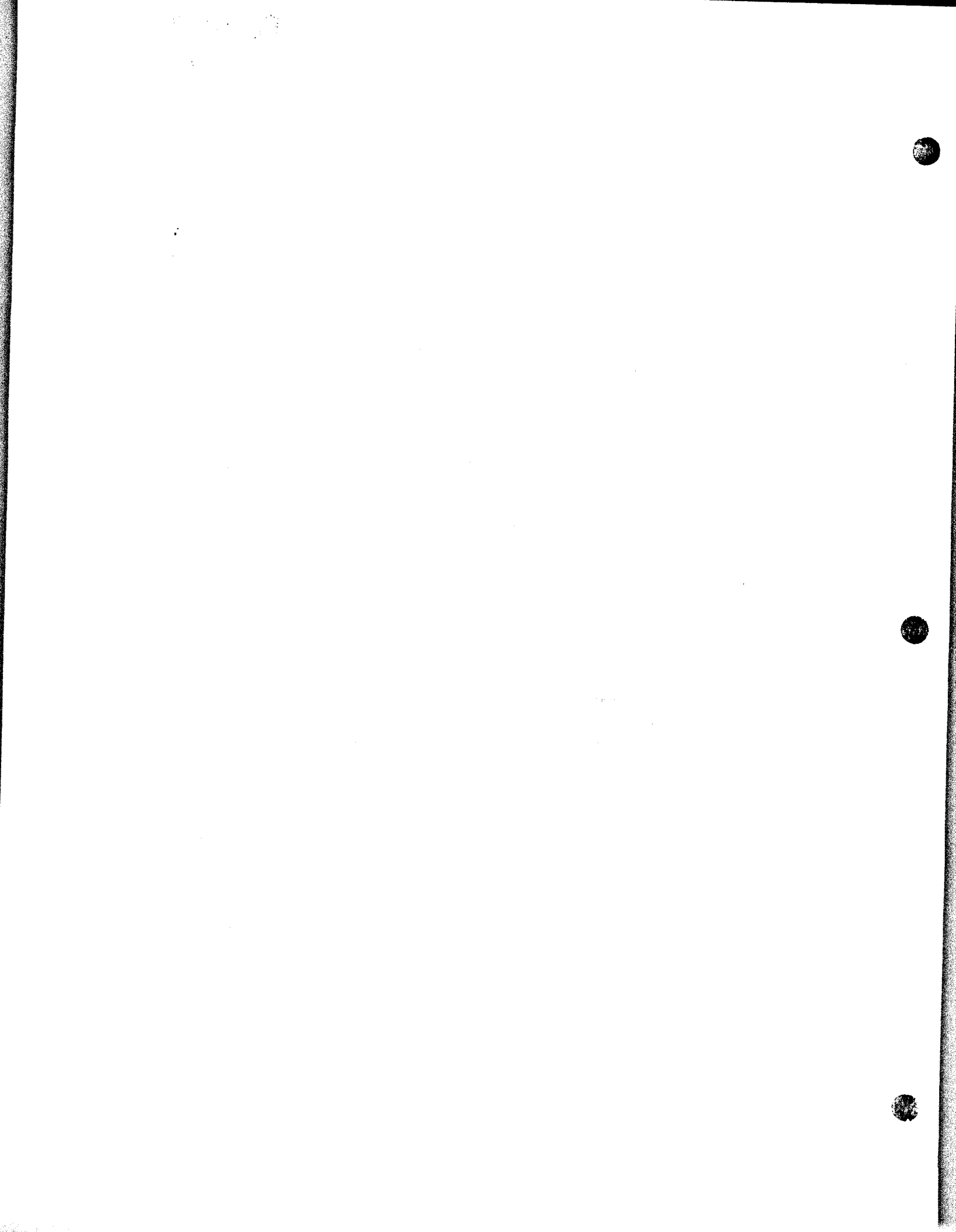
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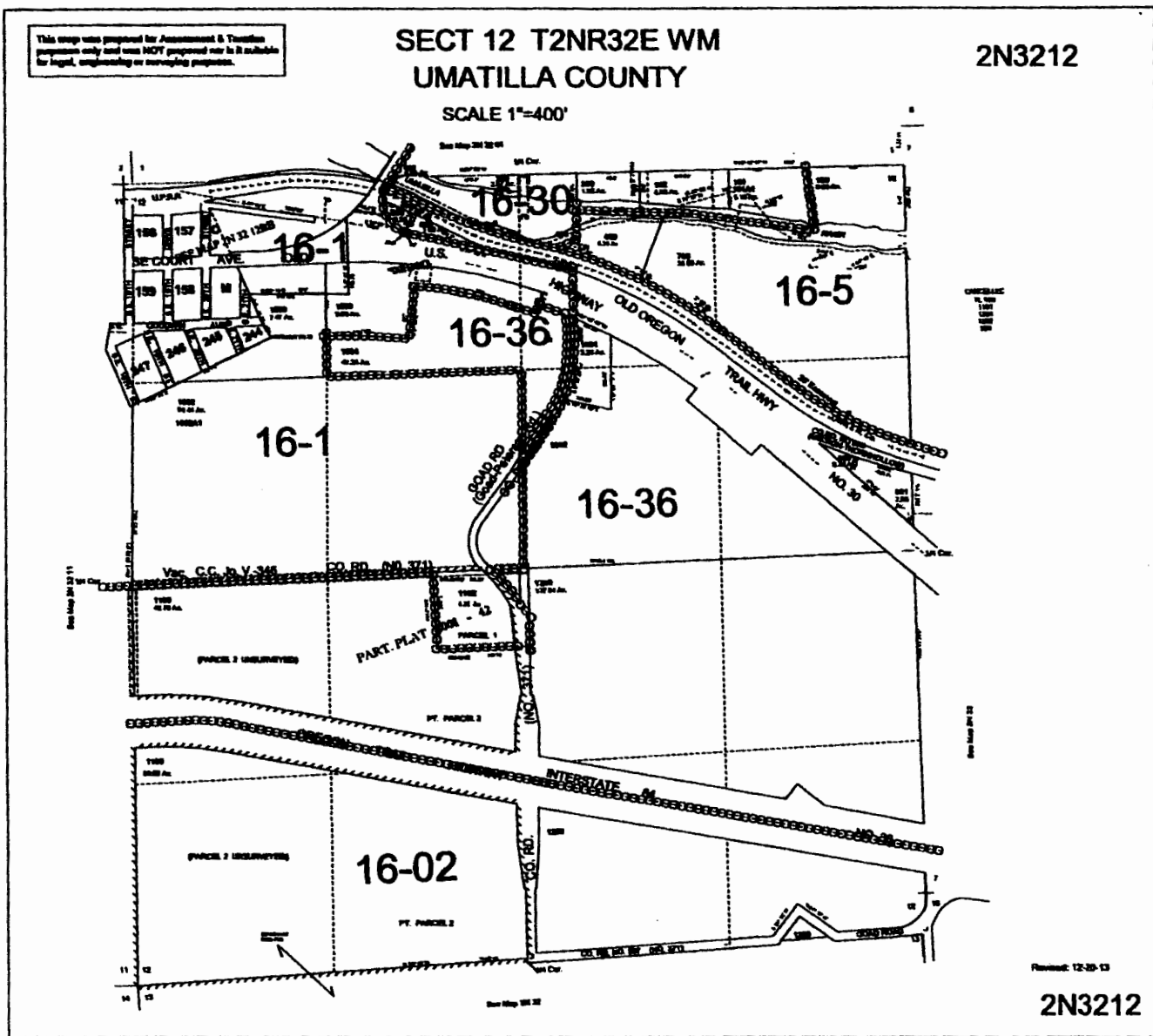
Revised: 8/17/13

See Map 2N 32 012

2N3201DD

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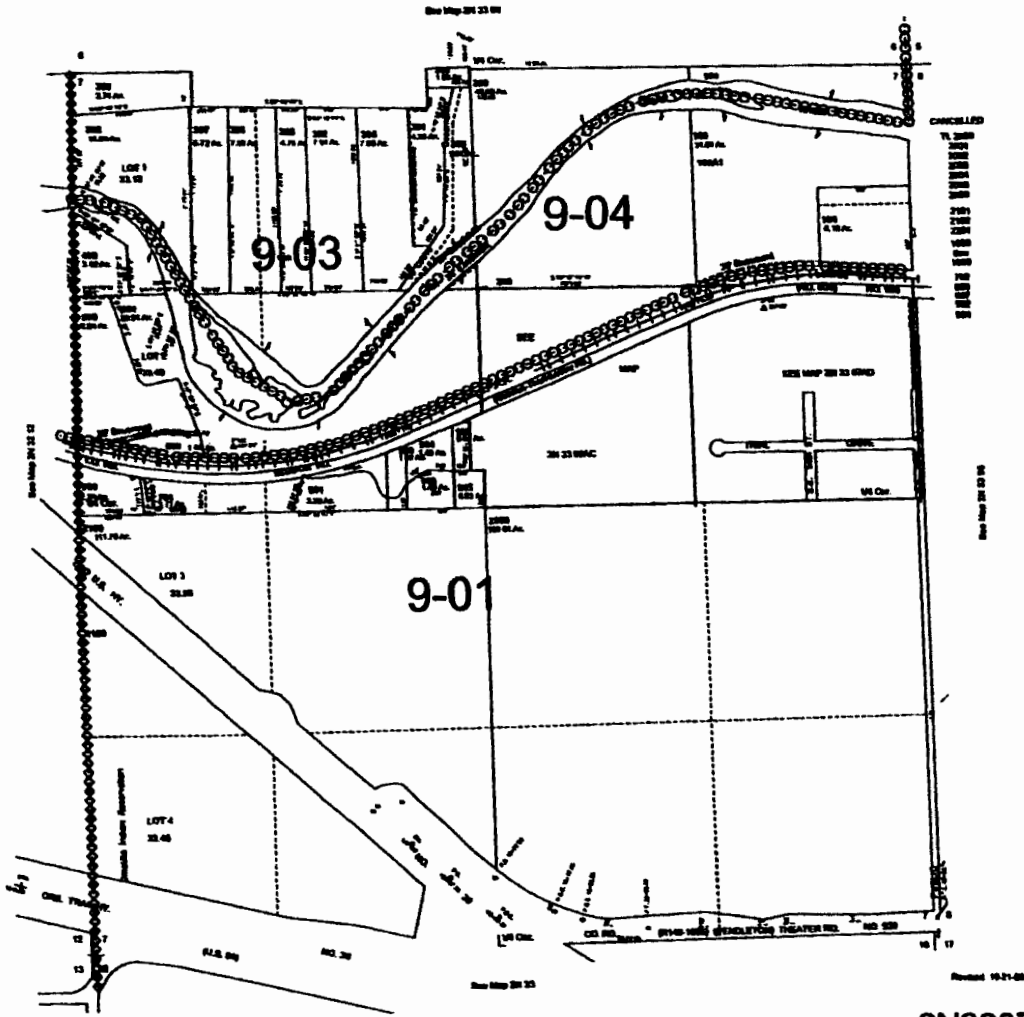
This map was prepared for Assessment & Taxation purposes only and was NOT prepared nor is it suitable for legal, engineering or surveying purposes.

SEC 7 T2NR33E WM
UMATILLA COUNTY

SCALE 1"=400'

2N3307

AERIAL PHOTO NO 4P-101



2N3307

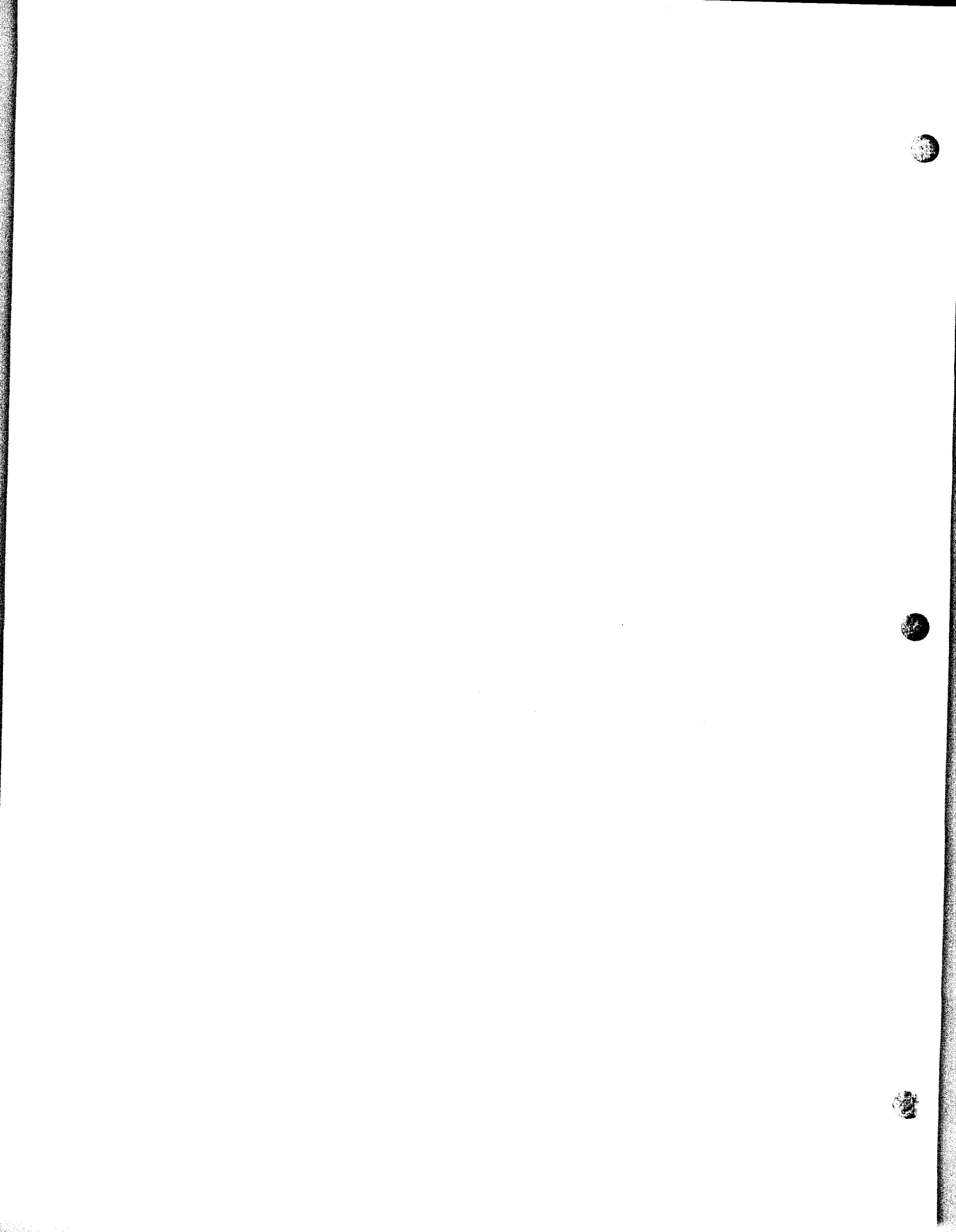
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2

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WATER RESOURCES DEPT.
SALEM, OREGON

July, 31, 1997

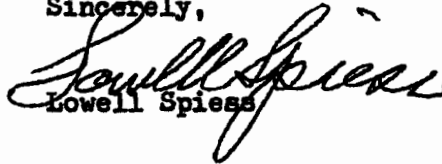
Water Resources Dept
Pendleton, Or.

REFERENCE: Transfer 7379

Property in question was irrigated from Crispin
Ditch thru 1994, at which time we were forced
to discontinue flood irrigation.

We purchased the propert from Knepp on May 17, 1994
We irrigated from the ditch thru 1994.

Sincerely,


Lowell Spiess

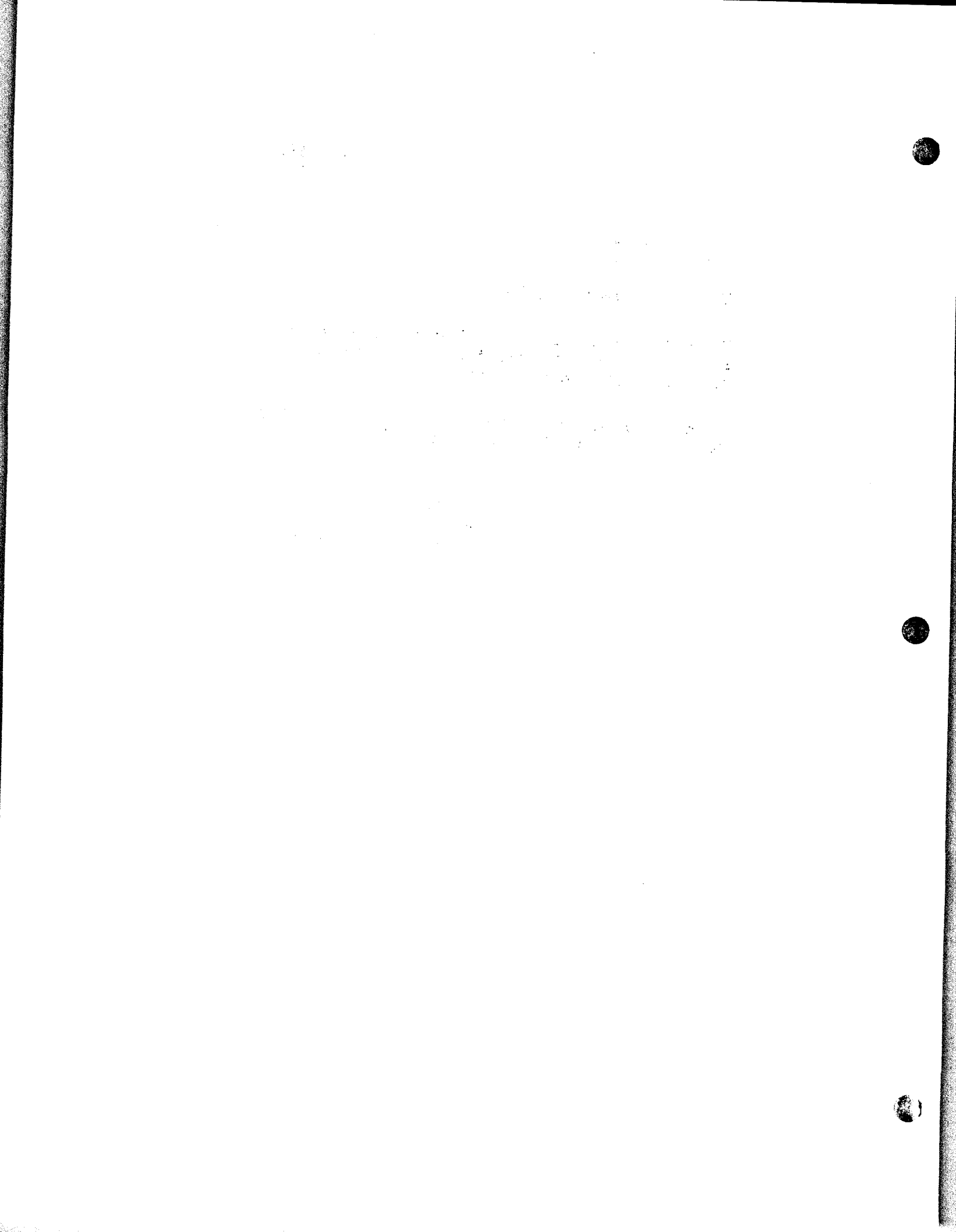
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Document
3

State of Oregon
WATER RESOURCES DEPARTMENT
APPLICATION FOR TRANSFER OF WATER RIGHT

11511
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JUN 26 1998

Applicant: Linda Shafer & Lowell Spiess WA: _____
Mailing Address: P.O. Box 430
Pendleton Oregon 97801 276-5930
City or town State Zip Phone
Type of change: Change in Point of Diversion
(In point of diversion place of use or heretofore made of the water)

1. WATER RIGHT

- A) Is the water right in your name? No If not, list name below:
(Yes, No)
- B) Was the water right determined by a court decree? No
(Yes, No)
 - 1. If yes, list the title of the proceedings: _____
 - 2. Certificate No: _____
- C) Was the water right acquired by a water permit? Yes
(Yes, No)
 - 1. If yes, list the Permit No: 1234
 - 2. Certificate No: 1320
- D) Date of priority right: June 12, 1912
- E) What are your reasons for the proposed changes? The Diversion Ditch has been discontinued and it is planned to pump directly from the Umatilla River.
- F) The water will be completely applied to the proposed use on or before: June 1, 1998

2. LOCATION OF AUTHORIZED USE

A) What is the source of water (river, stream, well)? Umatilla River

B) Describe the authorized point of diversion:

Location in Reference to Survey Corner	1/4, 1/4 of Section	Section	Township	Range
<u>N 75° E 120' from SE 1/4, SW 1/4 of Section 6</u>	<u>SW 1/4, SE 1/4</u>	<u>6</u>	<u>2N</u>	<u>32E</u>
<u>1/4 of Section 6</u>				

33E

- C) What is the name of the ditch used? Crispin Ditch
- D) What is the use to which the water is applied? Irrigation of pasture and alfalfa fields.

E) Give the location of the authorized area irrigated or place of use other than for irrigation:

Township	Range	Section	1/4, 1/4 of Section	No. of acres irrigated
<u>2N</u>	<u>32E</u>	<u>1</u>	<u>SE 1/4, SE 1/4</u>	<u>4.28 acs.</u>

- F) Is the land within an irrigation district? Yes ___ No X
If Yes, which district? _____
- G) County Umatilla

3. LOCATION OF PROPOSED USE:

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

A) Describe the proposed point of diversion:

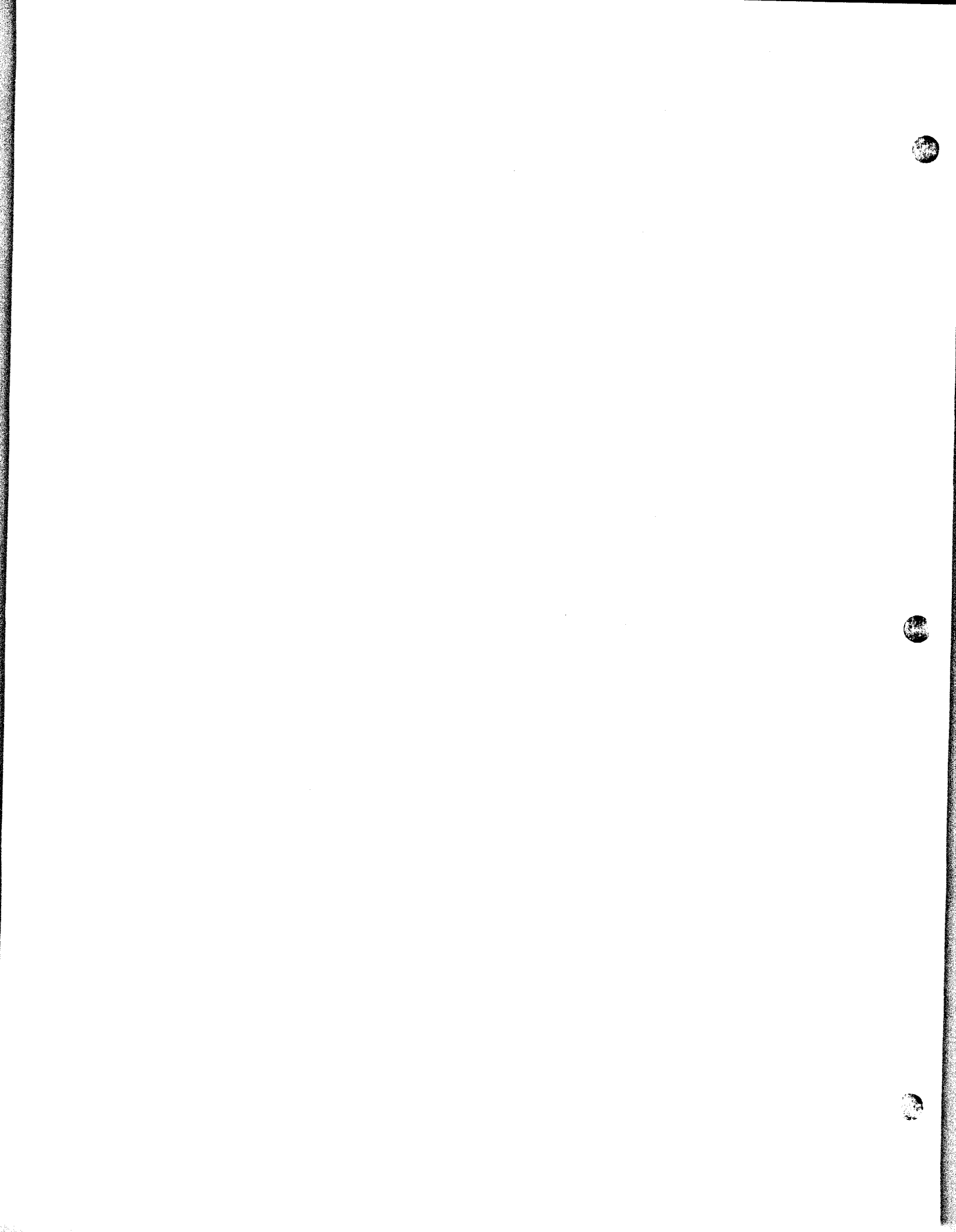
Location in Reference to Survey Corner	1/4, 1/4 of Section	Section	Township	Range

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JUL 22 2015



Document
3A

NOTE: Answer questions B, C, D, and E only if the application is for a change in use or place of use.

B) Are the lands from which you propose to transfer your water right free of all encumbrances? _____ (Yes, No)

C) If no, give the description below of existing encumbrances:

Encumbrance	Held by	Amount

D) What is the use to which the water will be applied? _____

E) Give the proposed location of the area irrigated, or place of use if other than for irrigations:

Township	Range	Section	1/4, 1/4 of Section	No. of acres irrigated

4. EXHIBITS

The following exhibits shall be attached to and made part of the application:

- A) A map prepared by a Certified Water Right Examiner showing the location of the present and proposed points of diversion, the authorized and proposed places of use and, if any, lands from the existing right that would not be subject to transfer.
- B) A copy of the current recorded deed to the subject lands.
- C) Affidavits from any other landowners or encumbrance holders with interest in the original water right stating that they have no objection to the proposed transfer.
- D) Evidence that the water has been used within the last five years.

5. NAME AND ADDRESS OF RECEIVING LANDOWNER(S) IF OTHER THAN APPLICANT:

6. REMARKS: The 4.0 acres immediately to the North of this 4.28 acres is part of T-6961 to Clyde Hunt.

I (we) Linda Shafer, Lowell Spiess, applicant(s), hereby swear that I (we) have read the above application for transfer of water right and that the statements made are true and correct. Dated and signed this 5th day of June, 1995.

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Linda Shafer
(Signature)
Lowell Spiess
(Signature)

Subscribed and sworn to before me

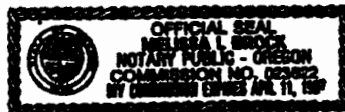
Michael J. Beach
Notary Public for Oregon

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SALEM, OR

(Notarial Seal)



My commission expires 4-11-97

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Document

4

STATE OF OREGON

COUNTY OF UMATILLA

ORDER APPROVING A CHANGE IN POINT OF DIVERSION

Pursuant to ORS 540.510 to 540.530, after notice was given and no objections were filed, and finding that no injury to existing water rights would result, this order approves, as conditioned or limited herein, TRANSFER 7379 submitted by

LINDA SHAFER AND LOWELL SPIESS
P.O. BOX 430
PENDLETON, OREGON 97801.

The right to be modified, as evidenced by a portion of Certificate 68390, was perfected under Permit 1234 with a date of priority of JUNE 14, 1912. The right allows the use of UMATILLA RIVER, a tributary of the COLUMBIA RIVER, for IRRIGATION OF 4.28 ACRES. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.05 cubic foot per second, if available at the authorized point of diversion: SW~~X~~ SW~~X~~, SECTION 6, T 2 N, R 33 E, WM; NORTH 75° EAST 120' FROM THE SW~~X~~ SW~~X~~, SECTION 6, or its equivalent in case of rotation, measured at the point of diversion from the source.

The use shall conform to any reasonable rotation system ordered by the proper state officer.

The authorized place of use is located as follows:

SW~~X~~ SW~~X~~ 4.28 ACRES
SECTION 1
TOWNSHIP 2 NORTH, RANGE 32 EAST, W.M.

The right to use the water for the above purpose is restricted to beneficial use on the lands or place of use described.

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T-7379.BW

JUL 06 2015

SALEM, OR
Special Order Volume 51, Page 924 .

SALEM, OR



The applicant proposes to change the point of diversion to:

NW¼ NW¼, SECTION 7, T 2 N, R 33 E, WM; 660 FEET SOUTH AND 15 FEET EAST FROM THE NORTHWEST CORNER, SECTION 7.

THIS CHANGE TO AN EXISTING WATER RIGHT MAY BE MADE PROVIDED THE FOLLOWING CONDITIONS ARE MET BY THE WATER USER:

1. The proposed change shall be completed on or before October 1, 1998.
2. The quantity of water diverted at the new point of diversion, together with that diverted at the old point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
3. The water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
4. Water shall be acquired from the same surface water source as the original point of diversion.
5. The water user shall install and maintain a fish screen or by-pass device. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning of construction and shall be installed under the supervision of the Oregon Department of Fish and Wildlife.

The water user may participate in the Oregon Department of Fish and Wildlife's cost sharing program for installation of screening and by-pass devices in accordance with ORS 540.525.

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JUL 22 2015

T-7379.BW

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SALEM, OR
Special Order Volume 51, Page 925.

SALEM, OR

[The text in this document is extremely faint and illegible. It appears to be a multi-paragraph document, possibly a letter or a report, but the specific content cannot be discerned.]

Document #4
4B

Certificate 68390 is canceled. A new certificate will be issued to confirm that portion of the right NOT involved in this transfer. When satisfactory proof of the completed change is received, a new certificate confirming this water right will be issued.

WITNESS the signature of the Water Resources Director, affixed AUG 08 1997.



Martha O. Pagel, Director

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1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that this is essential for the proper management of the organization's finances and for ensuring compliance with applicable laws and regulations.

2. The second part of the document outlines the specific procedures that should be followed when recording transactions. This includes details on how to properly categorize expenses, how to handle receipts, and how to ensure that all entries are supported by appropriate documentation.

3. The third part of the document provides a summary of the key points discussed in the previous sections. It reiterates the importance of accuracy and the need for thorough documentation in all financial reporting.



**KRUMBEIN
ENGINEERING LTD.**

Document 5

*NOTE: There is
no direction ~~shown~~ on
FP Map*

- CONSULTING
- ENGINEERS
- SURVEYORS
- PLANNERS

1999

Linda Shafer
Lowell Spiess
P.O. Box 430
Pendleton, OR. 97801

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SEP 30 1999

Re: Transfer 7379

WATER RESOURCES DEPT.
SALEM, OREGON

Dear Ms. Shafer & Mr. Spiess;

At your request I visited your property located in the Southeast quarter of the Southeast quarter of Section 1, Township 2 North, Range 32 East, W.M. You are irrigating 4.28 acres which is the maximum allowed under this permit.

The pump is shared with Clyde Hunt and as described in Transfer 6961 Final Proof dated 9 September 1999, is South 02 degrees 22'30" East a distance of 448.2 feet from the Southeast corner of said Section 1, Township 2 North, Range 32 East, W.M. The pump is a 7.5 HP electric rated at 3750 RPM and draws directly from the Umatilla River. The day I visited September 17, 1999 the pump was producing 50 PSI which produces 65 GPM. There is a buried 4 inch mainline to your property corner where a 3 inch valve connects to your system. No sprinklers were running on your property at the time but the 2 inch handlines appeared to have a maximum of five heads that could be on at any one time which would limit the flow to 20 GPM with the 4 GPM heads. The land is flat and is approximately 12 feet higher than the Umatilla River.

The survey was based upon survey ties to monuments in the Crispin Addition and the Section corners shown. These monuments are on file in the Umatilla County Surveyors records.

The Final Proof survey and inspection of use was completed on September 17, 1999. The terms and conditions as called for in Transfer 7379 were complete as of that date. The facts contained in this report and the accompanying Final Proof map are correct to the best of my knowledge.

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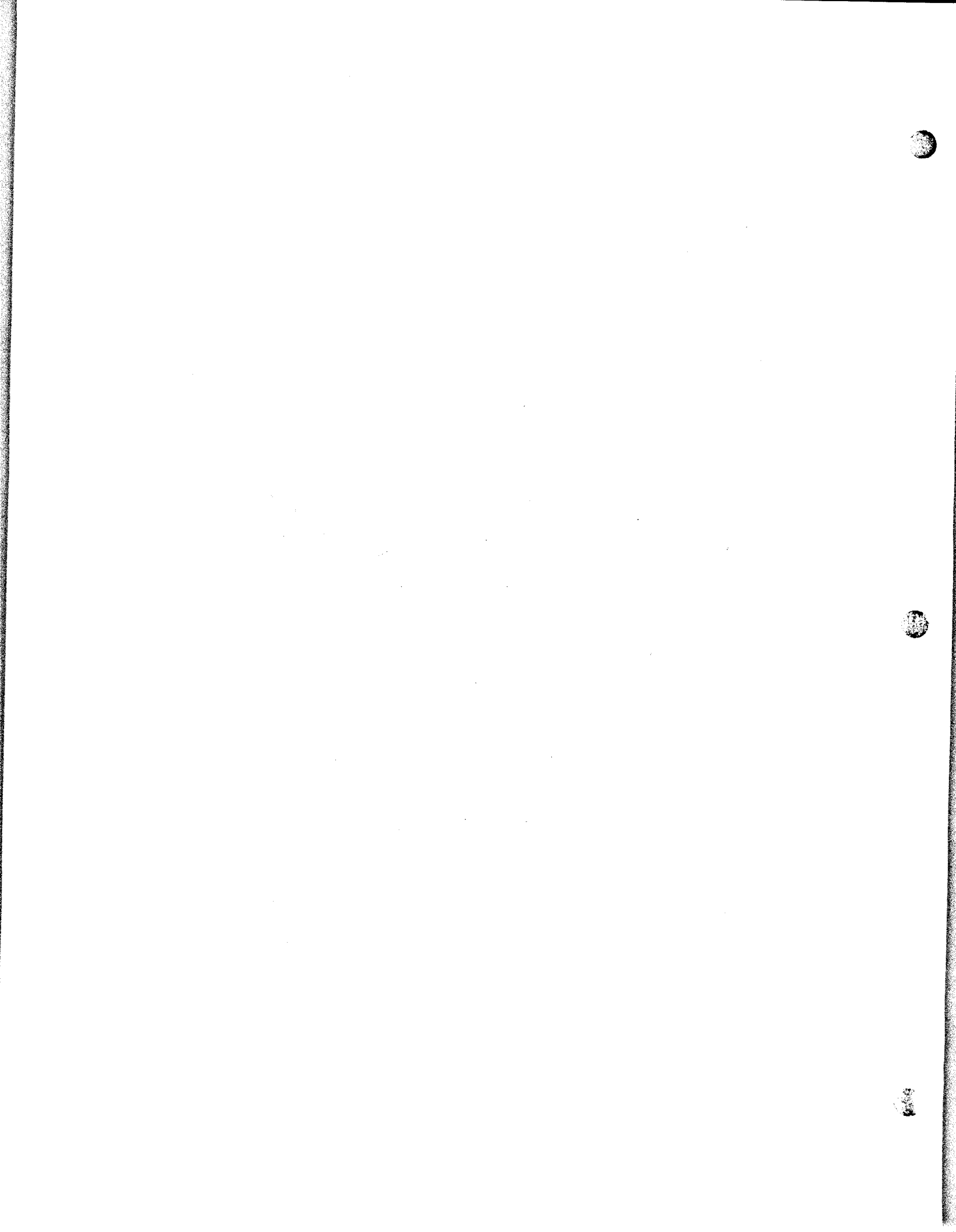


David H. Krumbein
David H. Krumbein, CWRE 076

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JUL 22 2015

SALEM, OR





**CERTIFICATE OF SERVICE
AFFIDAVIT ASSERTING NON USE**

OAR 690-17-0400 requires that an affiant provide proof that affidavit asserting non-use has been served upon the legal land owner and occupant of the lands to which the water right is appurtenant.

I certify that on 21 Day of July, 2015, I served the attached Affidavit Asserting Non Use of Water Right by mailing in a sealed envelope, with first class postage prepaid, a copy thereof addressed as follows:

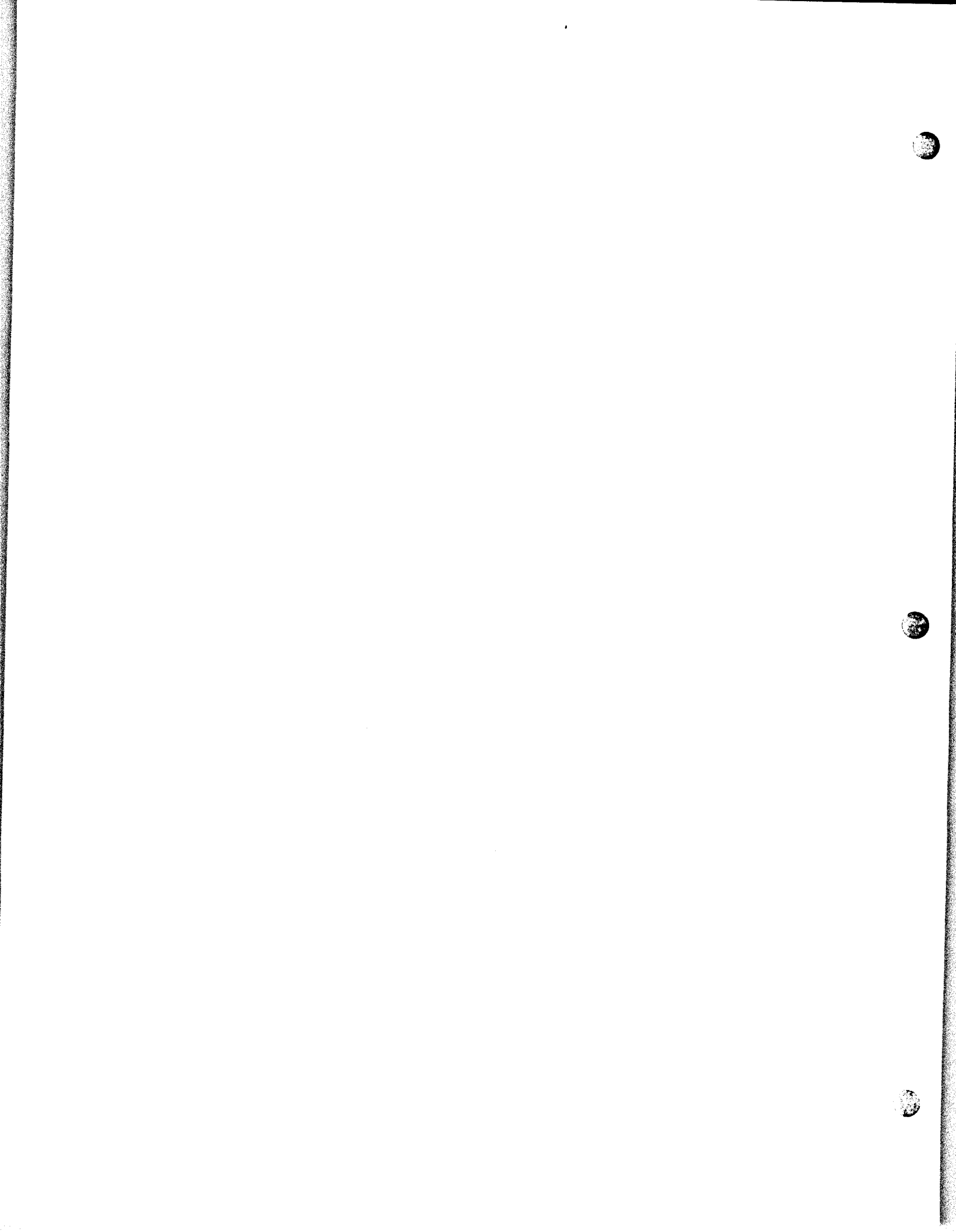
Name: *CS Riverside Farm Holding LLC*
Address: *PO Box 1088*
City, State, Zip: *Pendleton OR*

Name:
Address:
City, State, Zip:

Name:
Address:
City, State, Zip:

Name:
Address:
City, State, Zip:

[/s/ Signature] *Cory L. Hunt*
Title



BEFORE THE WATER RESOURCES DEPARTMENT



State of Oregon)
County of Umatilla) ss

AFFIDAVIT ASSERTING
NON-USE OF WATER RIGHT

1. I, Patricia K. Hunt
(Legal Name)
of 240 N.E. 35th Street
(Address)
Pendleton, Oregon, 97801
(City) (State) (Zip Code)

Phone (541) 376-7560, say that:

2. Water Right Certificate number 88083
issued to ^{CS RIVERSIDE FARM} ~~HOLDING LLC~~ _U authorizes use of water from (source) Umatilla
River for (use) horse pasture
under a priority date of 6/14/1912

3. The total number of acres described in the certificate is 4.28.

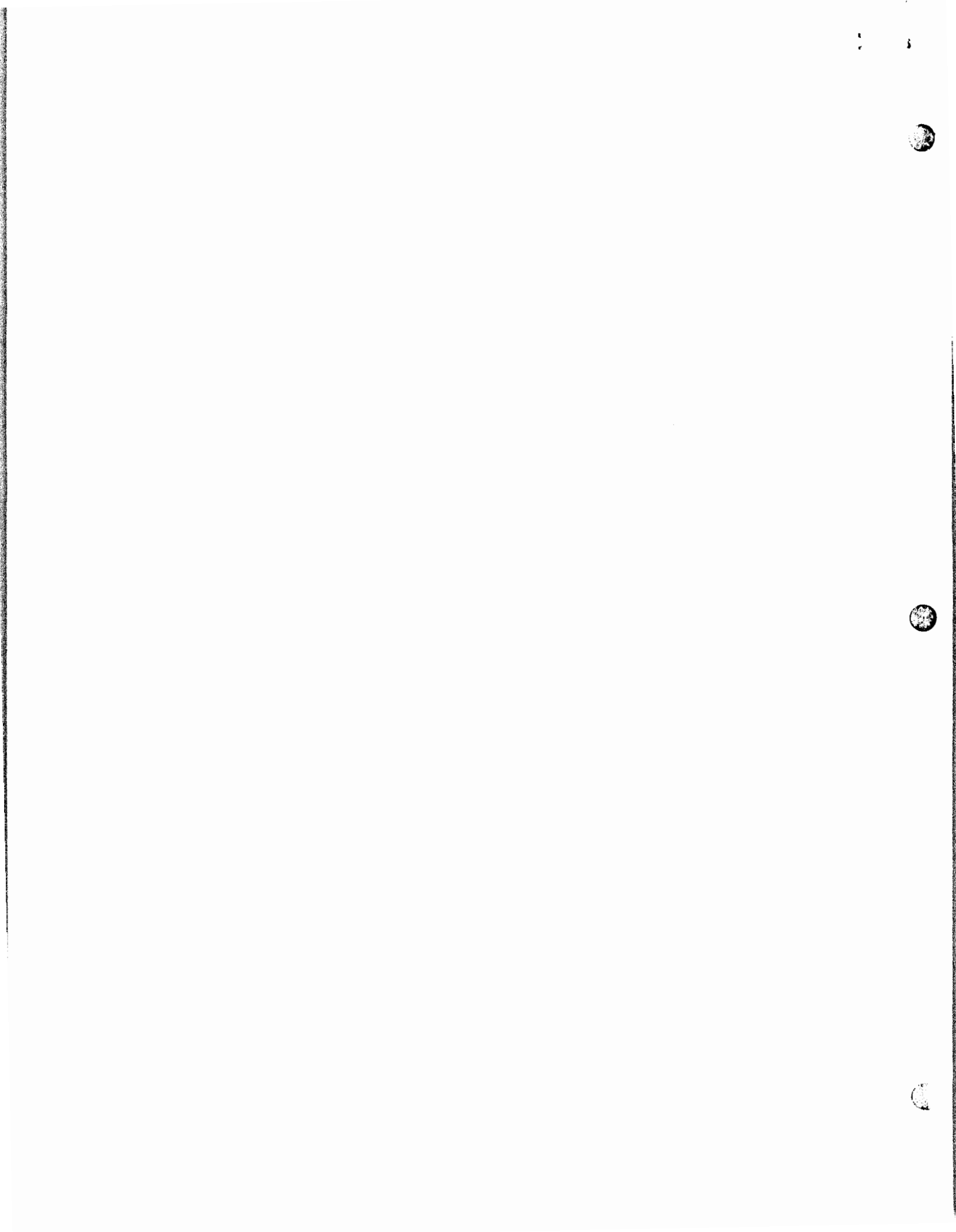
4. The subject water right is located within Tax Lot(s) 3800, in Township 2N
N/S, Range 32 E/W, in the SE 1/4 SE 1/4, of
Section(s) 1, Umatilla County Oregon.

5. I am familiar with these lands and I am aware of the non-use of this water right because:

Our road and our land borders along two sides of this tax lot
and the property is viewed inside our home.

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BY OWRD
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6. I know from personal observation and state with certainty that the entire water right has not been used for:

anything From Jan 1995 Through June 29, 2015
(Use) (Month and year) (Month and year)

7. I have illustrated on the attached tax lot map the lands to which the water right in question is appurtenant.

8. I know from personal observation and state with certainty that a portion of this water right has not been used for:

_____ From _____ Through _____
(Use) (Month and year) (Month and year)

9. I have illustrated on the attached tax lot map, the location of the portion of the water right which has not been exercised, totaling 4.28 Acres.

10. Is the subject water right within the boundaries of an irrigation district or federal reclamation project? _____ Yes X No. If Yes: (Name of Irrigation District or Federal Reclamation Project)

11. I have read the provision of Oregon Revised Statutes 540.610(2) and Oregon Administrative Rules Chapter 690, Division 17 and believe the presumption of forfeiture for five or more consecutive years of non-use may not be rebutted by the holder(s) of this water right. ph (Initial to indicate you have read these laws)

12. I am willing to testify in a Contested Case Hearing to all allegations contained in this affidavit. I understand that as the proponent, I have the burden of proof on the alleged non-use issue. ph (Initial to indicate you have read this statement and understand your responsibilities).

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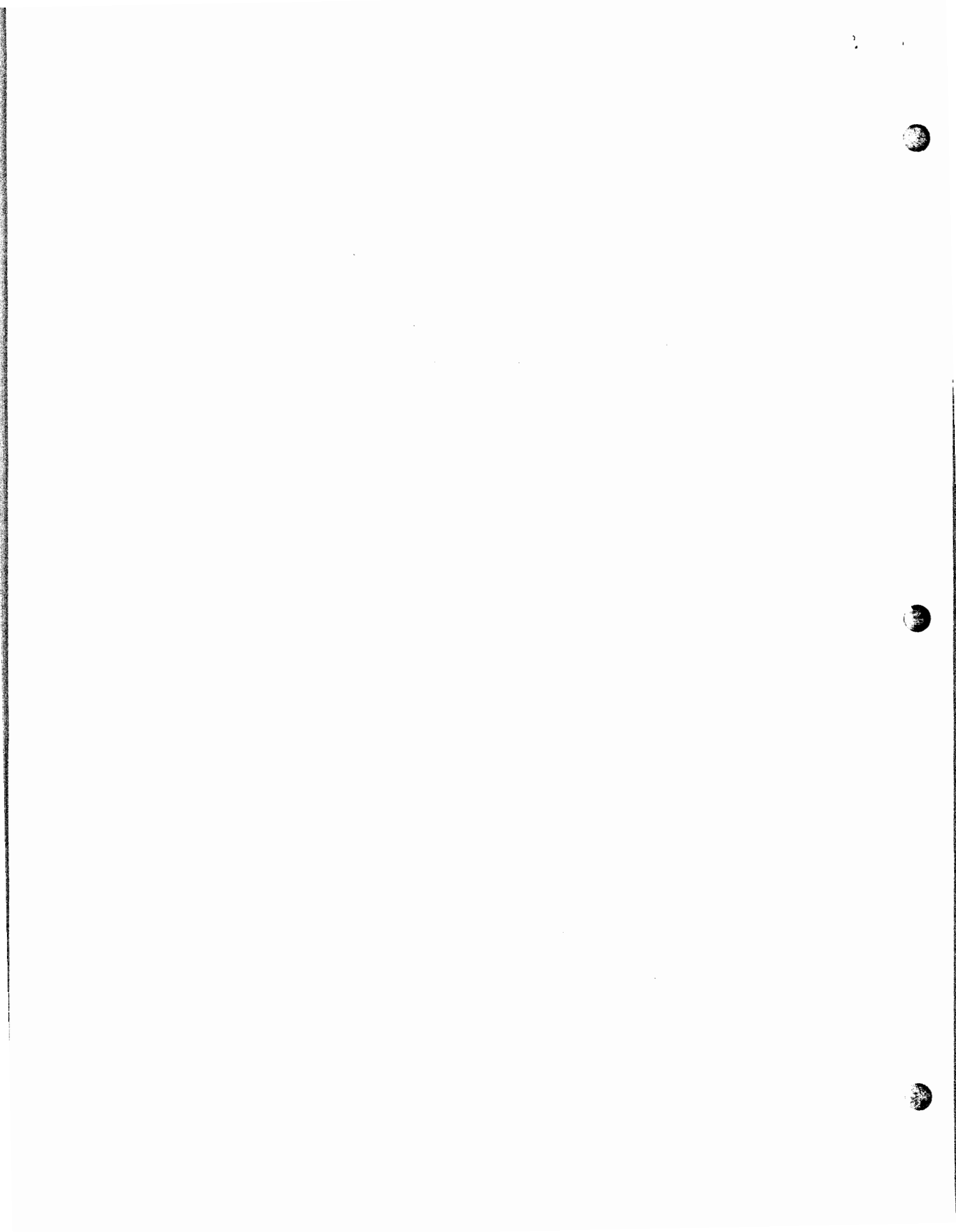
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Page 3 of 5

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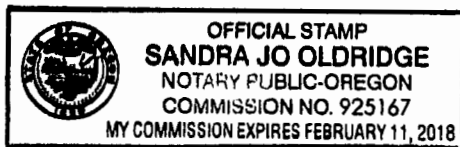




Under penalty of perjury, I do solemnly swear or affirm that the foregoing is a true statement of the facts as I know them to be from my personal knowledge.

Patricia K. Hunt
(Signature of Affiant)

Sworn to and subscribed before me this 30th Day of June, 2015.



Sandra Jo Oldridge
(Notary Public of Oregon)

My Commission Expires 02-11-2018

(SEAL)

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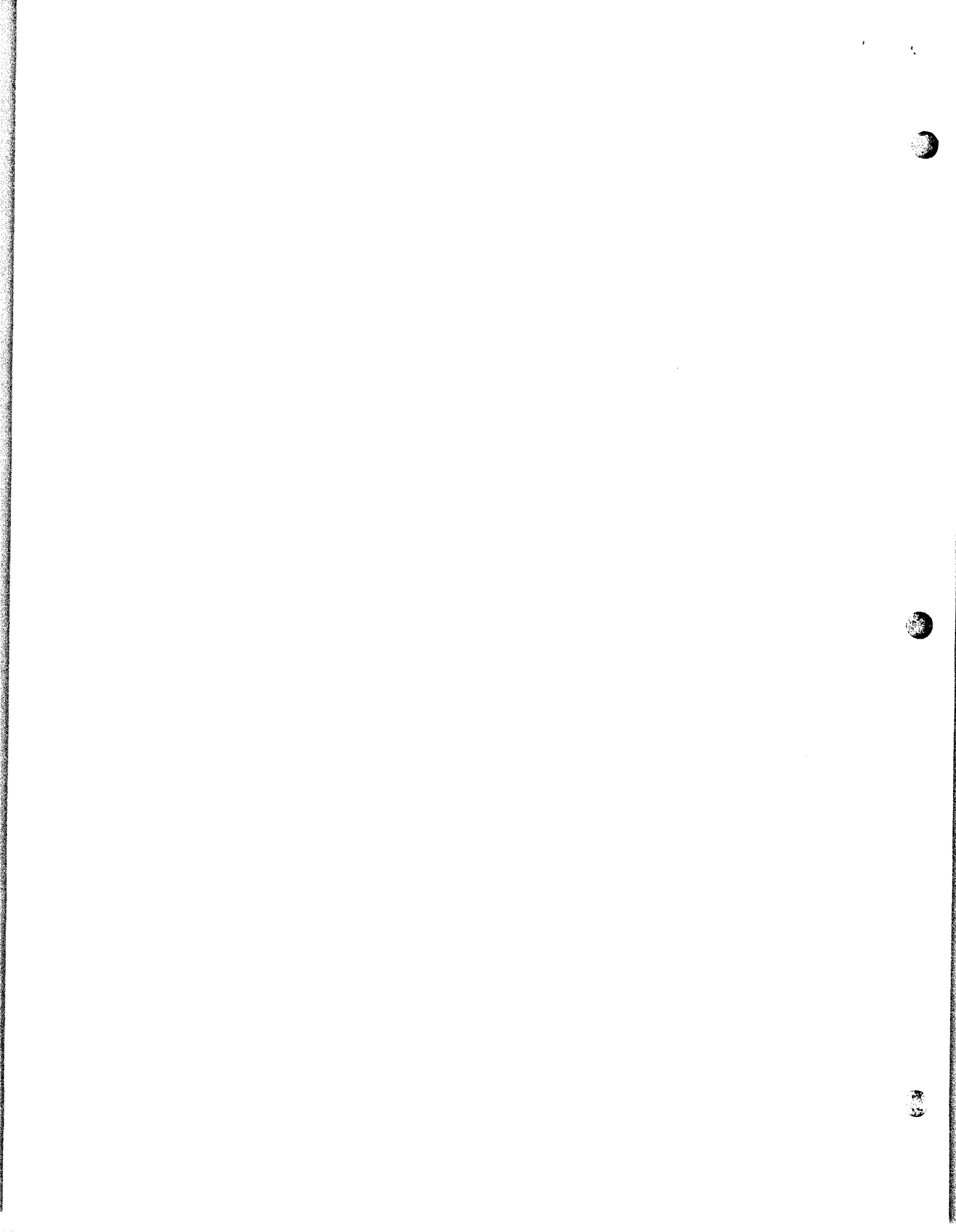
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WATER RESOURCES DEPT.
SALEM, OREGON

July, 31, 1997

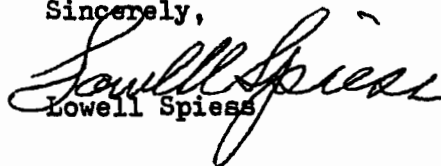
Water Resources Dept
Pendleton, Or.

REFERENCE: Transfer 7379

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to discontinue flood irrigation.

We purchased the propert from Knepp on May 17, 1994
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Lowell Spiess

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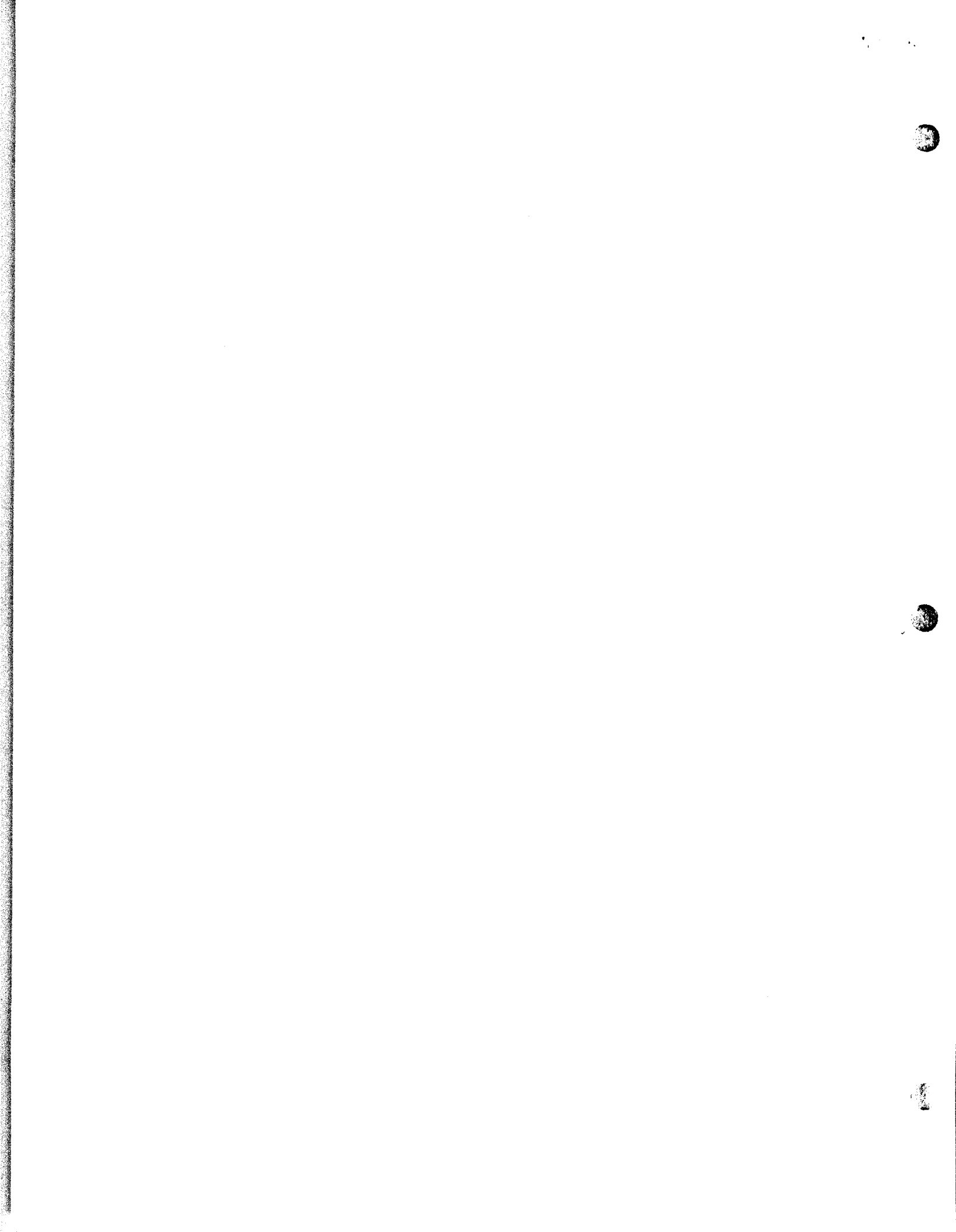
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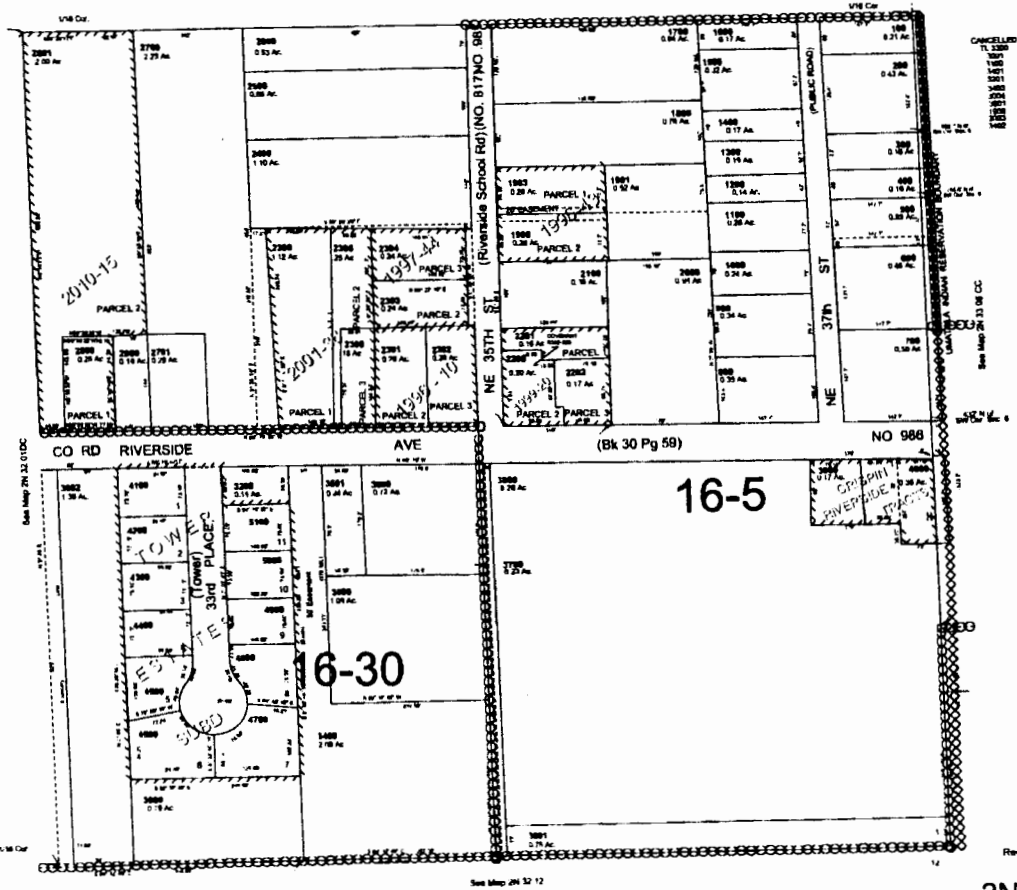
This map was prepared for Assessment & Taxation purposes only and was NOT prepared nor is it suitable for legal, engineering or surveying purposes.



SE1/4 SE1/4 SEC 1 T2N R32E WM
UMATILLA COUNTY
SCALE: 1" = 100'

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See Map 2N 32 01DA



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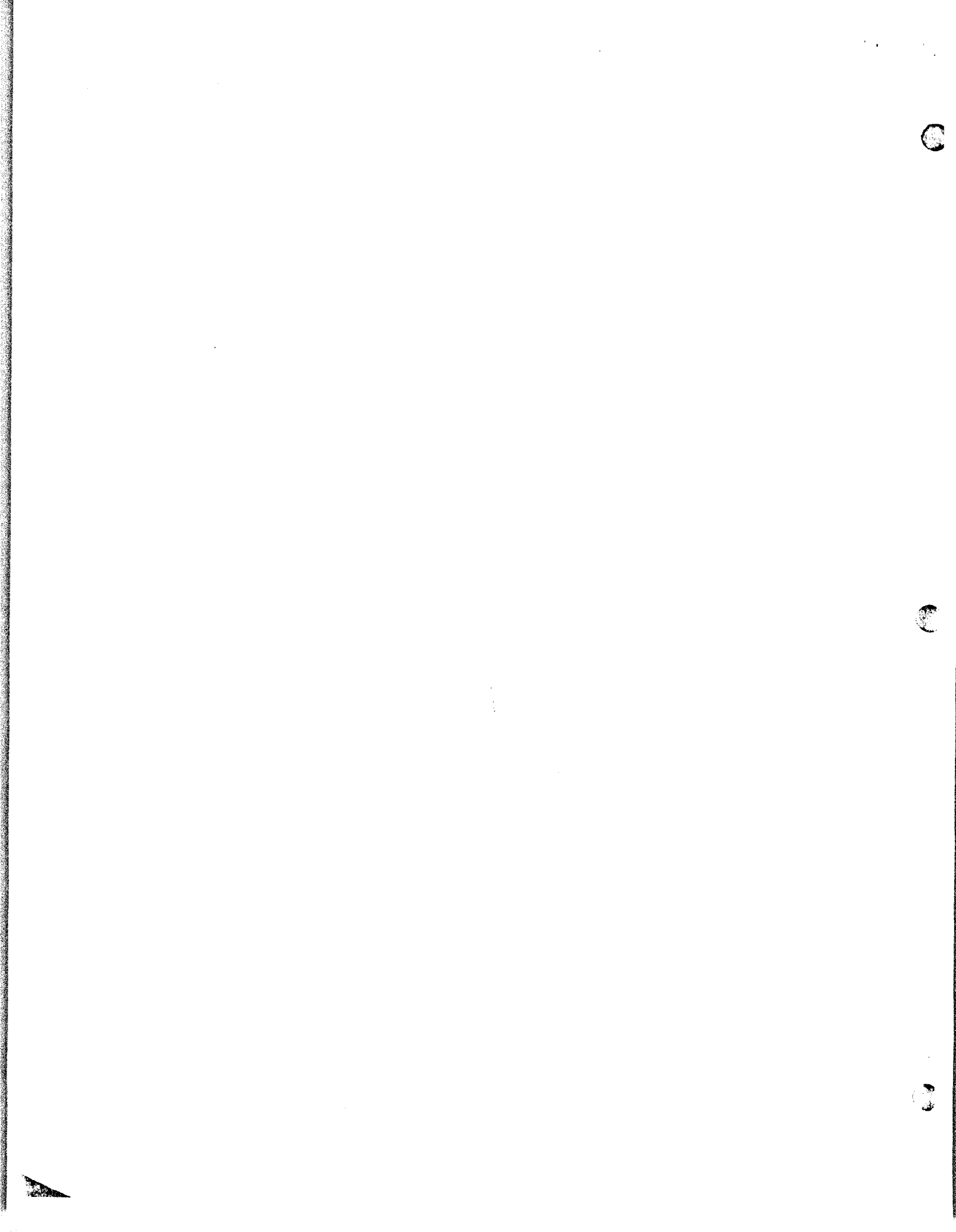
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SALEM, OR

2N3201DD



PARCEL 2 90.00
PARCEL 3 69.00

159'

159'

147.7'

147.7'

147'

214320100

432' N of SW Cor. Se

(Bk 30 Pg 59)

NO. 986

16-5

3800
8.28 Ac.

3700
0.23 Ac.

3801
0.75 Ac.

3900
0.17 Ac.

4000

0.35 Ac.

CRISPIN RIVERSIDE TRACTS

8

176.5'

N 0° 27' 20" E (North) 250'

50'

1 50'

126'

5'

18'

102'

126'

35.70'

73'

102'

102'

133.7'

142.7'

-579.7'-

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JUL 22 2015

SALEM, OR

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SALEM, OR

N 0° 20' E
247.6'





**CERTIFICATE OF SERVICE
AFFIDAVIT ASSERTING NON USE**

OAR 690-17-0400 requires that an affiant provide proof that affidavit asserting non-use has been served upon the legal land owner and occupant of the lands to which the water right is appurtenant.

I certify that on 21st Day of July, 2015, I served the attached Affidavit Asserting Non Use of Water Right by mailing in a sealed envelope, with first class postage prepaid, a copy thereof addressed as follows:

Name: <u>C S Riverside Farm Holding LLC</u>	Name:
Address: <u>P.O. Box 1088</u>	Address:
City, State, Zip: <u>Pennington, OR 97801</u>	City, State, Zip:

Name:
Address:
City, State, Zip:

Name:
Address:
City, State, Zip:

Patricia Hunt
[/s/ Signature]
Title

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