

December 16, 1970

46714
13075
T-2361

Mr. Robert W. Wade
Registered Land Surveyor
5th and Highland
Coos Bay, Oregon 97420

Dear Mr. Wade:

We simply have not been able to keep pace with the number of applications, letters, and notices required at the end of the irrigation season and a large number of people have good reasons for requesting immediate action on their particular communication.

Mr. Erichsen's last letter said water use will be discontinued in only one house, not two as earlier claimed. I have made changes in the applications for this and also as outlined in my letter dated September 2, 1970.

The application for transfer is enclosed and should be examined, the changes initialed and the affidavit of applicant completed and notarized.

Slight changes were made in the application for a permit. I think "school building use" is more descriptive and general than "domestic use-school building" and there is no reason to restrict the irrigation to the athletic field instead of including all the school grounds. There were two typographical errors under "Remarks" also.

The application for permit has been endorsed so that in order to retain its date of priority, it should be returned to this office on or before February 16, 1971. Upon return of these applications we will prepare notice for publication and will keep these at the top of the stack.

Very truly yours,

Trevor Jones
Assistant

TJ:slv

Enclosures

September 2, 1970

13075
46714

Transfer 2361

Bedingfield, Grant and Bedingfield
Attorneys at Law
Fitzpatrick Building, P.O. Box 29
Coos Bay, Oregon 97420

ATTENTION: J. B. Bedingfield and
J. B. Bedingfield, Jr.

Gentlemen:

I should have written the last letter regarding the application of School District No. 9 to include answers to your questions which would have made it more clear. I will number the answers to agree with the questions.

1. Certificate 21693 describes the right to appropriate the quantity of water beneficially used for the school, janitors residence and teachers residence not to exceed 0.06 cubic foot per second.
2. The priority date is October 16, 1929.
3. The diversion point is located in the certificate as being in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 27, Township 25 South, Range 12 West, W.M. This is an obvious clerical error and Section 34 should have been listed.
4. We do not have record of the flow of this stream involved.
5. A water right exists for use from one stream only.
6. No mention was made of irrigation of athletic fields in the application and permit and there is no record of this use when proof was submitted. I don't believe this is included in a right for "domestic supply for school house." We would not take issue with irrigation of shrubbery and lawns around the building to the extent these are part of the landscaping.

September 2, 1970

7. The proposed change is from use in two residences to school use so we are required by ORS 540.520 (2) to publish notice. The place of use of water from use in one school building to school use in another building does not require notice.

8 & 9. Parts of my earlier suggestions regarding proper applications are based on this information which was submitted earlier.

10. If the use of water in the two residences was not discontinued for five years or more before the transfer application was filed in April 1970, the application for change in use is proper. Until the application for change in use is approved by the State Engineer, the District does not have the right to use the quantity of water formerly used at the residences at either school site.

11 & 12. Answered in detail in later explanation of my earlier suggestions.

13. The only action other persons can take following publication of notice is to protest the approval of the application to change the use from the residences to the new school building. The protestant would have to submit a detailed statement of how he would be injured if the change was allowed. If a valid protest was filed the State Engineer would hold a hearing to take evidence prior to rendering a decision. I fail to see how a change from use in two residences to use in a school in like quantity could cause injury to another right. If the claim was made that the right to use of water in the residences was lost by non-use, action as provided by ORS 540.610 through 540.641 is required and this claim is not proper under ORS 540.520 and 540.530.

If the application for approval of a change in use and place of water is changed as I suggested and the application is approved, the School District would have a right under the original date of priority to appropriate not exceeding C.06 cubic foot per second (the original quantity) from the unnamed stream at the diversion point located by the District's engineer. This does not result in any loss of right or change in date of priority.

There are two changes in use of water involved. One is a result of the new construction requiring part of the water heretofore used in the old building. The second is the discontinuance of water in two residences. The use of water in a single family residence does not usually exceed 600 gallons per day which includes lawn and garden irrigation of an ordinary lot. The original

September 2, 1970

right did not divide the 0.06 cubic foot per second between the uses listed but I think that the quantity of water heretofore used in the two houses did not exceed 0.002 cubic foot per second. According to the information submitted there is to be no reduction in school size so there is no water available for irrigation. Specifically, I believe the application should be changed to change the type of use for 0.002 cubic foot per second from domestic use in two houses to school use at the new location and to change the place of use of 0.02 cubic foot per second from the old school location to the new building location. This leaves 0.038 cubic foot per second for the old building and allows 0.022 cubic foot per second at the new building for a total of 0.06 cubic foot per second. The date of priority is not changed from the original and neither is the total quantity.

Whenever the old building is completely abandoned and the new facilities enlarged an application for change of place of use for the quantity left for the gym and cafeteria could be made.

If the total area to be irrigated does not exceed 13.0 acres, the new application for a permit does not need change.

When both applications are approved and assuming beneficial use of water is made to the limits of the permit and transfer, the School District will have a right to appropriate the quantity of water beneficially used not exceeding 0.06 cubic foot per second from the southerly diversion point for use in the old and new school buildings under a priority date of October 16, 1929.

The permit approving the second application when issued will be for the appropriation of not to exceed 0.183 cubic foot per second from the stream on which the southerly diversion point is located with any deficiency in the available supply to be made up by appropriation from the tributary stream at the easterly diversion point. The use of water will be for irrigation of 13.0 acres and school use. The water for use in the two school buildings will be restricted to the tributary stream under this permit because the original right covers all the water needed from the main stream. The priority date for this will be April 17, 1970.

I have spent considerable time on this and believe on the basis of the information I have, it protects the School District to the fullest extent possible. I will make the necessary changes on receipt of authorization if you agree with this or I will return this for correction if you prefer.

September 2, 1970

Frankly I do wonder if an application for approval for the change in use from the two residences to use in the school building is worthwhile. Assuming maximum use in two houses was 0.002 cubic foot per second or approximately 1200 gallons per day, 0.058 cubic foot per second or about 37,490 gallons per day remains for school use. I do not have enrollment figures or know if State school standards set a minimum figure for water, but I believe this to be more than adequate for the school. If you abandoned the use in the houses and dealt with school use only to change the place of use for part of the water and the diversion point, no publication is required and no delay caused by publication. The right reduces slightly but I wonder if the difference is critical. I am not pressing this approach, but offer it only for your consideration.

Very truly yours,

Trevor Jones
Assistant

TJ:cjs

RECEIVED
AUG 28 1970

BEDINGFIELD, GRANT AND BEDINGFIELD
ATTORNEYS AT LAW
FITZPATRICK BUILDING
COOS BAY, OREGON 97420

STATE ENGINEER
SALEM, OREGON

P. O. BOX 29
TELEPHONE 267-2181

J. B. BEDINGFIELD
D. J. GRANT
J. B. BEDINGFIELD, JR.

August 27, 1970

Mr. Jones
State of Oregon
Engineer
Public Services Building
Summer & Court N.E.
Salem, Oregon 97301

Dear Mr. Jones:

Enclosed please find check in the sum of \$2.00. Please furnish us with a certified copy of the Water Right Certificate in connection with the Coos River School.

Very truly yours,

BEDINGFIELD, GRANT & BEDINGFIELD


James B. Bedingfield, Jr.

JBB:bs
Enclosure

46714
13075
19204

March 5, 1970

Harlan, Gessford and Erichsen
Architects and Engineer
5th and Highland
Coos Bay, Oregon 97420

ATTENTION: R. H. Erichsen, Managing Partner

Dear Mr. Erichsen:

I have prepared an application for approval of a change in place of use and point of diversion of water for School District No. 9 for the right perfected under permit No. 9319. This has been prepared from our records on the assumption that no part of the right has been forfeited by failure to use the water for a period of five successive years. If the District agrees with the application as prepared, the affidavit of applicant should be completed by an authorized representative of the District and the application returned together with fees of \$35.00.

If the changes in the school will result in the irrigation of a considerably larger area, such as a new athletic field on the new building grounds, the application for a permit to appropriate water from a secondary source could also include a quantity from the primary stream for the additional irrigation.

The application for a permit to appropriate 0.6 cubic foot per second of the waters of an unnamed stream submitted by the School District has been filed as application No. 46714. Also submitted were prints of maps showing the point of diversion and place of use and fees of \$20.00 for which our receipt No. 17732 is enclosed.

The application should request a permit to use water only from the secondary source so the location of diversion point No. 1 should be deleted from Item No. 4 and under "Remarks" include the information that the stream is a supplemental and/or emergency source. If you believe that additional water for irrigation will be required from the primary source at the southerly

March 5, 1970

diversion point, this could be included in the application. In such case, Item No. 1 should list two unnamed streams and both diversions should be left in Item No. 4 and an additional quantity of water for irrigation in Item No. 2 as well as an appropriate entry in Item No. 8.

We will also need transparencies of the maps submitted and if irrigation is to be added to the application, the irrigated area and number of acres must also be added to the map.

I believe these courses of action will protect the use of the School District. We believe the certificate issued in evidence of the right is valid, assuming the right was not lost by nonuse, despite the obvious error in the location of the diversion point. All other records concerning this right locate the diversion point in Section 34 and I could not agree with any claim that the right was voided simply because the diversion point is listed in Section 27 on the certificate.

There was a permit issued to George Smith for the appropriation of 1.1 cubic feet per second of the waters of Smith Creek which apparently is the school's source of water, so filing an application for a new permit just to correct the description of the diversion point does not seem to me to be the best course of action.

Permit No. 14798 which was issued approving application No. 12904 was canceled June 19, 1957, by authorization. The total quantity of water the system would deliver was covered by the first permit and proof could not be made with additional water under permit No. 14798.

Application No. 46714 is being returned endorsed so that in order to retain the priority date it must be returned to this office on or before May 4, 1970.

Very truly yours,

Trevor Jones
Assistant

TJ:slv

Enclosures

13075

February 6, 1970

Mr. R. H. Erichsen, Managing Partner
Harlan, Gessford and Erichsen
5th and Highland
Coos Bay, Oregon 97420

Dear Mr. Erichsen:

Mr. J. B. Bedingfield wrote last fall regarding water rights of School District No. 9. Without some additional information I cannot add much to my reply to him.

How far from the present school is the new one to be built? Are there to be added grades or a considerable increase in enrollment which requires the use of the old as well as the new buildings?

Perhaps the best course of action is to file an application for a permit to appropriate water for use in the new building now. When the use in the old building is discontinued, an application for change in place of use can be made.

Very truly yours,

Trevor Jones
Assistant

TJ:slv



**STATE WATER
RESOURCES BOARD**

RECEIVED
JAN 27 1970
STATE ENGINEER
SALEM OREGON

500 PUBLIC SERVICE BUILDING • SALEM, OREGON • 97310 • Ph. 364-2171 Ext. 1198

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January 26, 1970

Mr. R. H. Erichsen, Managing Partner
Harlan, Gessford and Erichsen
5th and Highland
Coos Bay, Oregon 97420

Dear Roy:

All matters discussed in your letter of January 23, 1970 appear to be within the jurisdiction of the State Engineer. I am forwarding your letter to Mr. Wheeler to reply to your questions concerning Water Right Certificate #9319 and related matters.

Sincerely,

DONEL J. LANE, DIRECTOR

By
Fred D. Gustafson
Chief Engineer

FDG/rh
cc
State Engineer

A ■ HARLAN ■ GESSFORD
ARCHITECTS

E ■ ERICHSEN
ENGINEER

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COOS BAY, OREGON 97420

RECEIVED
JAN 27 1970
STATE ENGINEER
SALEM OREGON

RECEIVED
JAN 26 1970

STATE WATER RESOURCES BOARD

January 23, 1970

Mr. Fred Gustafson, Chief Engineer
State Water Resources Board
500 Public Services Building
Salem, Oregon

Dear Fred:

The Attorney for School District #9 at Coos Bay has requested me to write you in regard to Water Right Certificate #9319. If you have any applications pending or receive any in the near future for water from this source at this point by people other than School District #9, would you please contact us immediately.

The School District is in the process of Constructing a new school at a new site and intends to transfer the water right place of use from the existing building to the new building. Both buildings will be in operation for the next five years but we feel the transfer should be made and I would like your recommendation on how best this can be handled.

We have also determined that the point of diversion shown on the map in Permit #9319 is incorrect and we wish to correct this at the same time. I was intending to fill out a new application for use of water at both school sites with the statement that when the old school is abandoned all water is to be used at the new site. This would be forwarded to your office together with corrected maps showing the point of diversion as it actually exists in the field and the new place of use. Your early reply will be appreciated.

Very truly yours,

HARLAN, GESSFORD & ERICHSEN



R. H. Erichsen, Managing Partner

RHE/sl
cc: Mr. James Bedingfield, Sr.

RE: 8068
8593
13075
19204

November 18, 1969

Bedingfield, Grant and Bedingfield
Attorneys at Law
Fitzpatrick Building
Coos Bay, Oregon 97420

ATTENTION J. B. Bedingfield

Gentlemen:

Apparently the engineer for School District No. 9 has contacted our watermaster regarding locations of diversion point, possible changes and possible changes of place of use.

I do not have enough information to discuss what you refer to as possible errors in source but can answer the questions regarding changes because of construction of a new school. If the new school is to be built on the same property as the old and the difference in location is slight then I do not think approval of the change is required. If the District has acquired a new site and there is a considerable change in location I think an application for approval of the change should be made. This would also require a map showing the location of the new school. If part of the old school will be used as well as part of the new until the new school is completed I think the application for change could be made after the change is complete.

If there are more grades added to the school another permit should be obtained for the addition.

Approved changes of any type do not change the priority or source of water.

I apologize for the delay in answering your letter. Some surgery kept me from the office from October 20 to November 10.

Very truly yours,

Trevor Jones
Assistant

TJ:mfm

BEDINGFIELD, GRANT AND BEDINGFIELD

ATTORNEYS AT LAW

FITZPATRICK BUILDING

COOS BAY, OREGON 97420

J. B. BEDINGFIELD
D. J. GRANT
J. B. BEDINGFIELD, JR.

P. O. BOX 29
TELEPHONE 267-2181

October 24, 1969

RECEIVED
OCT 27 1969

STATE ENGINEER
SALEM, OREGON

Mr. Chris L. Wheeler
State Engineer
516 Public Service Building
Salem, Oregon 97310

Dear Mr. Wheeler:

Under date of September 21, 1956, we applied for amended certificates under Water Permits No. 210, No. 5586, and No. 9319. These amended certificates were issued in the name of School District No. 36 and dated September 21, 1956. They are recorded at Pages 21691, 21692, and 21693, in your Water Rights Certificates Record, Volume 16. Recording date was November 13, 1956.

District 36 was consolidated with several other school districts in this area into what became School District 9C of Coos County, Oregon. Thereafter, District 9C became School District No. 9. District 9C and District 9 succeeded to all the rights of old School District No. 36. All of this can be verified through the office of the County Superintendent of Coos County. Each of these amended permits as issued designated the purposes of the use of the water to be "domestic supply for school house, janitor's residence, and teachers' residence".

The engineer for School District No. 9 is investigating the location of the sources named in these certificates, and also the pipelines leading therefrom to the school house and other buildings then served by this water, and which school is still being served. From examination of the certificates and other data, it appears that there may have been one or more mistakes made in designating sources of water as shown in these amended certificates. We will know whether there were mistakes made when the engineer locates the sources. As it appears now, the school is now and has been using the water from a source in Section 34. As of this writing, the writer believes the source to be mis-described in the certificates.

This school has and will continue to be dependent upon the supply of water which it believed it was obtaining when the

State Engineer
Re: School District No. 9
October 24, 1969

Page 2

original certificates and amended certificates were issued. We ask that no action be taken to cancel any permits until this matter can be straightened out.

Due to age and depreciation of the school buildings heretofore and now being served by this water supply, it has been necessary for the school to plan for relocation of the school. The new school, when built, will be located a short distance to the East of the old school site in the Southwest Quarter of the Northwest Quarter of Section 26, Township 25 South, Range 12 West, and in the Northwest Quarter of the Southwest Quarter of the same Section. The school will continue to conduct school on the old site until the completion of the new building at the new site, at which time we want the water diverted to the new site, and want to make certain we do not lose any priority rights in making this change-over from the old to the new school site.

We would appreciate a letter from you advising if this change-over can be made when the new site is ready for use, and also whether or not a new description of area and purposes of use will be required; also, if it is found that a mistake has been made in the description of the source or sources, where the dam and point of diversion have been located for the last thirty years, we would like to have assurance that corrections can be made assuring continued use of the water under the old priority rights.

The situation will be clarified after the district engineer gets through with his investigation.

Very truly yours,

BEDINGFIELD, GRANT & BEDINGFIELD


J. B. Bedingfield

JBB:McC