



This is the appointed time and place for a hearing before the Water Resources Director in the matter of water right transfer applications numbered 3917 and 3918, in the name of W. D. Sherburn, for changes in place of use and/or points of diversion from Ten Mile Creek, pursuant to the Water Resources Director's notice dated September 22, 1978.

I am James W. Carver, Jr., from the Water Resources Department, duly authorized to preside at this hearing. The hearing is being conducted in accord with the Administrative Procedure Act, ORS chapter 183, and the Administrative Rules adopted by the Water Resources Director, principal rules being set forth in the publication "The Attorney General's Model Rules of Procedure Under the Administrative Procedure Act", effective November 25, 1977, as duly adopted by the Water Resources Director.

Let the records show that the applicant, Mr. W. D. Sherburn, is present and is represented by Mr. William D. Cramer, Attorney at Law, Burns, Oregon. The protestant is represented by Mr. Clifford Looney, Attorney at Law, Vale, Oregon, and by Mr. James A. Callahan, Attorney at Law, Winnemucca, Nevada.

Prior to convening the hearing, with agreement between counsel, there was a pre-hearing conference at which time a stipulation was formulated by counsel .... Would one of you gentlemen like to read that stipulation into the record at this time? You may proceed, Mr. Cramer.

CRAMER: Thank you, Mr. Carver.

The stipulation reads as follows: "At any times when a division of water becomes necessary on Ten Mile Creek when the big squirt sprinkler of the applicant, with maximum capacity of 900 gallons per minute, is being used, the diversion at the point in Section 16, Township 40 South, Range, 43 East W.M., will be limited to 150 miners inches of water, and water diverted at that point will not be used to irrigate the lands with the 1873 water rights."

H.O.: Thank you, Mr. Cramer.

CALLAHAN: So stipulated on behalf of the protestant.

H.O.: Is this so stipulated on behalf of the applicants?

Cramer: Yes, it is.

H.O.: Allright, thank you, Gentlemen.

CALLAHAN: I have one further matter in relation to the application .... or did you want to consider that seperately?

H.O.: That stipulation, to my understanding, applies only to the applicant's application No. 3917, dealing with the 1873 water right. Now, we also have a second matter before us; application No. 3918, which deals with a proposed change in place of use for some 7.58 acres from the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 32, to the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 21, all within Township 40 South, Range 43 East, and a change in point of diversion for that said 7.58 acres, being a portion of the 1884 water right.

CALLAHAN: On behalf of protestant, The First National Bank of Nevada, we withdraw our protest in relation to that application.

H.O.: Thank you. And on the basis of the aforesaid stipulation, this would settle the protest in regard to application No. 3917.

CALLAHAN: That's my understanding.

H.O.: Thank you, Gentlemen. It appears that the issues that are before the Water Resources Director in this matter have been spoken to. Is there any further information or evidence or statement that should be given in behalf of the applicants? Mr. Cramer?

CRAMER: Not that I can think of.

H.O.: Anything further on behalf of the protestants? Mr. Callahan?

CALLAHAN: First National Bank, none, Sir.

H.O.: Thank you, Gentlemen. This will conclude the hearing.

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

MALHEUR COUNTY

IN THE MATTER OF APPLICATIONS )  
OF W.D. SHERBURN FOR APPROVAL )  
OF CHANGES IN PLACE OF USE AND )  
POINTS OF DIVERSION OF WATER )  
FROM TEN MILE CREEK )  
-----

NOTICE OF  
HEARING

NOTICE TO:

\*W. D. Sherburn  
c/o William D. Cramer  
Attorney at Law  
P.O. Box 646  
Burns, Oregon 97720

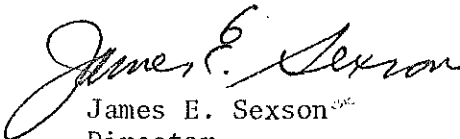
\*First National Bank of Nevada  
c/o James A. Callahan  
Attorney at Law  
Professional Building, Suite 1  
Winnemucca, Nevada 89445

Frank Elfering  
Watermaster  
Malheur County Courthouse  
Vale, Oregon 97918

Notice is given hereby that the hearing in the matter of water right transfer applications Nos. 3917 and 3918, in the name of W. D. Sherburn, for approval of changes in place of use and points of diversion of water from Ten Mile Creek, and a protest by the First National Bank of Nevada against approval of said applications, originally scheduled for July 25, 1978, at the Malheur County Courthouse in Vale, Oregon, as set forth in the Water Resources Director's notice dated May 22, 1978, and published in the May 31, June 7 and June 14, 1978, issues of The Malheur Enterprise newspaper, will be held on Thursday, October 26, 1978, in the City of Ontario Council Room, City Hall, 444 SW Fourth Street, Ontario, Oregon, commencing at 9:00 a.m. MDT.

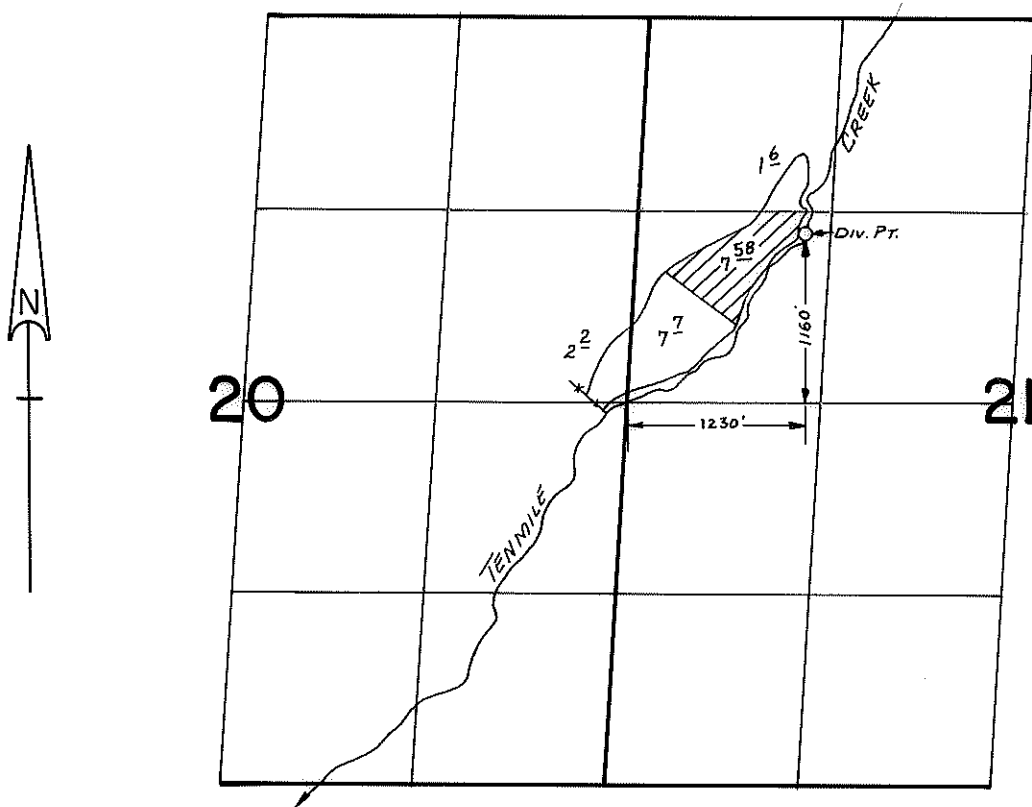
All interested parties should appear at the above named time and place to submit evidence for or against approval of the above described applications.

Dated at Salem, Oregon this 22nd day of September, 1978.

  
James E. Sexson  
Director

\*CERTIFIED MAIL - Return Receipt Requested

# T.40S.,R.43E.,W.M.



SCALE: 1" = 1320'

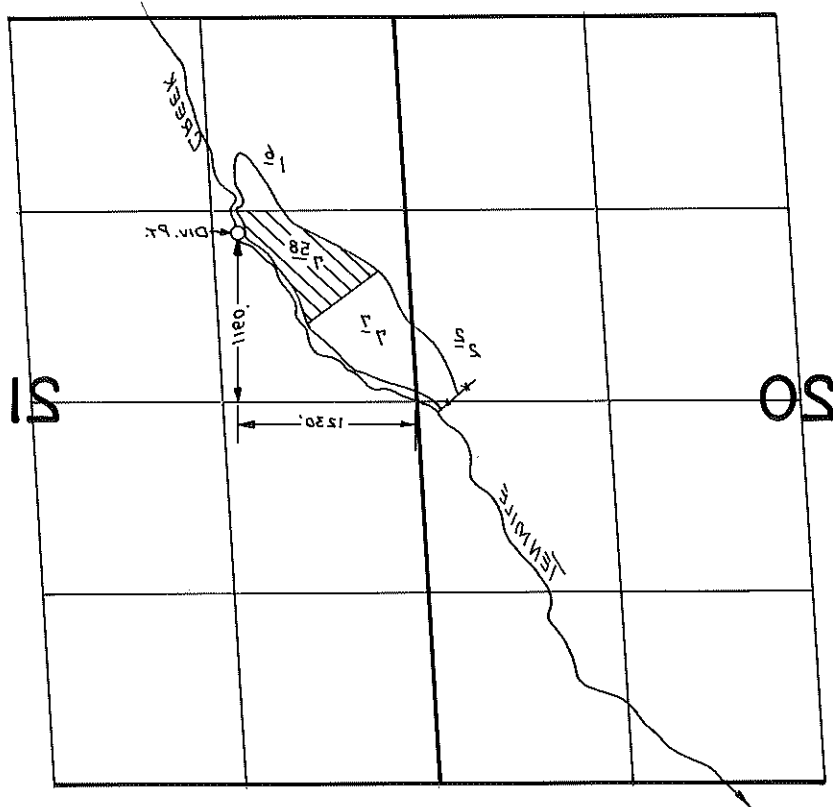
## FINAL PROOF SURVEY UNDER

Transfer No. 3918  
Application No. .... Permit No. ....  
IN NAME OF

..... W. D. SHERBURN .....

Surveyed July 24, 1985, by L. M. TOLL .....

T.402, R.43E, W.M.



SCALE: 1" = 1350'

FINAL PROOF SURVEY  
UNDER

Transfer No. 3918  
Application No. .... Permit No. ....  
IN NAME OF

..... W. D. SHERBURN

Surveyed July 24 1985 by L. W. TOL

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

MALHEUR COUNTY

IN THE MATTER OF THE APPLICATION )  
OF W. D. SHERBURN FOR APPROVAL OF)  
CHANGES IN PLACE OF USE & POINT )  
DIVERSION OF WATER )  
- - - - -

ORDER APPROVING  
TRANSFER NO. 3918

On March 30, 1978, an application was filed in the office of the Water Resources Director by W. D. Sherburn for approval of changes in place of use and point of diversion of water from Ten Mile Creek, pursuant to the provisions of ORS 540.510 to 540.530.

By Decree of the Circuit Court for Malheur County, entered December 23, 1963, a right was established in the name of Alice D. Bankofier, which includes the use of water from Ten Mile Creek, with a date of priority of 1884, for irrigation of 7.58 acres in NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 32, Township 40 South, Range 43 East, W.M. The authorized point of diversion for this right is located North 86 degrees 50 minutes East, 1632 feet from the Northeast Corner of Section 20, being within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 16, Township 40 South, Range 43 East, W.M. (North Ditch).

The applicant herein, owner of the lands above described in Section 32, proposes to change the place of use and point of diversion therefrom and, without loss of priority, to irrigate in lieu thereof a certain 7.58 acres in SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 21, Township 40 South, Range 43 East, W.M., by diversion of water from a point located 1994 feet South and 1126 feet East from the Northwest Corner of Section 21, being within the SW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 21, Township 40 South, Range 43 East, W.M.

Notice of the application, pursuant to ORS 540.520(2), was published in The Malheur Enterprise, a newspaper printed and having general circulation in Malheur County, Oregon, for a period of three weeks in the issues of May 31, June 7 and 14, 1978.

A protest by the First National Bank of Nevada against approval of water right transfer application No. 3918 was filed in the office of the Water Resources Director on July 13, 1978, and was subsequently withdrawn by the protestant on October 26, 1978.

Mr. Frank Elfering, Watermaster, has filed a statement to the effect that the proposed changes in place of use and point of diversion may be made without injury to existing rights.

No other objections having been filed and it appearing that the proposed changes in place of use and point of diversion may be made without injury to existing rights, the application should be approved.

NOW, THEREFORE, it hereby is ORDERED that the requested changes in place of use and point of diversion of water from Ten Mile Creek, as described herein, without loss of priority, are approved.

It is FURTHER ORDERED that the quantity of water diverted at the new point of diversion shall not exceed the quantity of water available at the old point of diversion under the subject right.

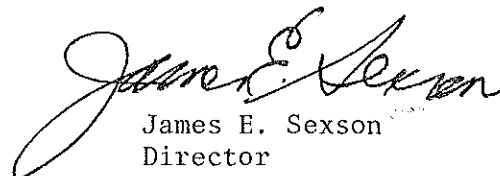
It is FURTHER ORDERED that the following provisions shall be effective when in the judgment of the watermaster it becomes necessary to install headgates and measuring devices:

That the diversion works shall include an in line flow meter, a weir, or other suitable device for measuring the water to which the applicant is entitled;

That the type and plans of the measuring device be approved by the watermaster before the beginning of construction work and that the weir or measuring device be installed under the general supervision of said watermaster.

It is FURTHER ORDERED that the construction work shall be completed and the change in point of diversion of water made and that said water so transferred shall be applied to beneficial use on or before October 1, 1980.

Dated at Salem, Oregon this 8th day of November, 1978.

  
James E. Sexson  
Director





INFO W.D. STERBURN - SHOWED us Div. & PLACE of Use

DIV. DIRECT FROM CREEK

Pump - DDC }  
Motor DEUTCH 6cyl deisel gas } loaned to rancher over by  
Denio so not on farm  
this date

Pipe 1  
Heads 31 } 1 - Gun MOUNT with 1/4 mile reel  
1 3/4" RING NOZZLE (approx 950 gpm)  
(1 gun max)

USE - ALFALFA

LIFT - 0 to - 10

TIE - 41045-178-211R.

Larry Tol  
WLB  
9/24/85

April 1, 1987

W.D. Sherburn  
Box 55  
McDermitt, NV 89421

REFERENCE: File T-3918

The order approving your request for change in point of diversion and place of use was for 7.58 acres.

The findings of our survey show that you are irrigating 19.08 acres. The enclosed map print indicates where we have placed the acreage; however, if you would prefer it to be in another area within the SW 1/4 NW 1/4 of Section 21, you may color the area of your preference and return the map so that our records can be changed accordingly.

In order to have a legal right to irrigate the additional lands, an application for a permit would have to be submitted. I do not know whether or not water would be available from Ten Mile Creek with a 1987 date of priority.

Submitting an application for a change in place of use of an earlier right might also be an option.

We will hold action on this file for 30 days to allow you the opportunity to consider this information.

Sincerely,

THOMAS E. SHOOK  
Senior Water Rights Examiner

TES:wpc  
9424D



T-3918  
#1 on Map.

RECEIVED

APR 20 1978

WATER RESOURCES DEPT.  
SALEM, OREGON

# Application for Transfer of Water Right

RECEIVED

MAR 30 1978

WATER RESOURCES DEPT.  
SALEM, OREGON

To the WATER RESOURCES DIRECTOR OF OREGON:

I, W. D. Sherburn (Name of applicant)

of Box 121 (Mailing address), McDermitt (City)

State of Nevada (Zip Code) 89421, 522-3789 (Phone number), do hereby make application for change

Place of use and point of diversion (In point of diversion; place of use; use heretofore made of the water)

1. Is the water right recorded in your name? no Alice D. Bankofier  
Joe Bankofier, Geo. W. Malkinson, estate  
(If not, give name)

2. Was your water right determined by Decree of Court? Yes If so, give title of proceedings  
(Yes or No)

Lula Simpson vs. Joe Bankofier et al number of certificate equity 4095  
none

3. Was your water right acquired by Water Right Permit? no If so, give number  
(Yes or No)

of permit ..... Number of certificate .....

NOTE: If the entire right of record is not directly involved in the requested change, only that part of the right that is directly involved should be considered in answering the balance of the questions on this form.

4. The source of water is Ten Mile Creek

5. What is the date of priority of your water right? 1873 (per decree) 1884

6. The authorized point of diversion is located 1632 ft. N. 86° 50' and 0 ft. from the S. W.  
(N. or S.) (E. or W.)

corner of Sec. 16 being within the SE 1/4 SW 1/4 of Section 16 Tp. 40 S. R. 43 E. W. M.,  
(No. N. or S.) (No. E. or W.)

in the county of Malheur The name of the ditch used is .....

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

7. The proposed point of diversion is located 1994 ft. S. and 1126 ft. E. from the N.W.  
(N. or S.) (E. or W.)

corner of Sec. 21 being within the SW 1/4 NW 1/4 of Section 21 Tp. 40 S. R. 43 E. W. M.,  
(No. N. or S.) (No. E. or W.)

in the county of Malheur The name of the ditch to be used is .....

8. The use to which the water is applied is Irrigation  
(Irrigation, Mining, Power, Manufacturing, etc.)

Location of area irrigated, or place of use if other than irrigation:

Township North or South	Range E. or W. of Willamette Meridian	Section	List ¼-¼ of Section	Number Acres To Be Irrigated
40 S.	43 E.	32	NW¼ of NW¼	7.58 acres

(If more space required, attach separate sheet)

9. Are you the legal owner of the above described lands? Yes  
(If not owner, explain your interest)

10. To your knowledge, has any portion of the water right above described undergone a period of five or more consecutive years of nonuse? no  
(Yes or No)

NOTE: Answer questions 11, 12 and 13 if application is for change in use or place of use.

11. Are the lands from which you propose to transfer your water right free of all encumbrances, including taxes, mortgages, liens, etc.? no  
(Answer Yes or No)

12. If not, give below a description of existing encumbrances:

NATURE OF ENCUMBRANCE	HELD BY	AMOUNT
1st Mortgage <i>bk (on whole place)</i>	F. H. A.	\$100,000

13. The use to which the water is to be applied is Irrigation  
(Irrigation, power, mining, manufacturing, domestic supplies, etc.)

Location of area to be irrigated, or place of use if other than irrigation:

Township North or South	Range E. or W. of Willamette Meridian	Section	List ¼-¼ of Section	Number Acres To Be Irrigated
40 S.	43 E.	21	SW¼ of NW¼	7.58 acres

(If more space required, attach separate sheet)

14. Reasons for the proposed changes are Change in method of irrigation. Now using a mobile  
type sprinkler mounted on traveling carrier. Pump picks up water from a sump and delivers  
it to sprinkler head mounted on mobile self propelled carrier

15. Construction work will be completed on or before May 15, 1978

16. The water will be completely applied to the proposed use on or before June 15, 1978

Remarks .....

**NOTE:** THIS APPLICATION MUST BE ACCOMPANIED BY A MAP OR MAPS SHOWING THE BEFORE AND AFTER LOCATIONS OF THE POINT OF DIVERSION AND/OR PLACE OF USE, AS THE CASE MAY BE.

**AFFIDAVIT OF APPLICANT**

I, W. D. Sherburn, the applicant herein, being first duly sworn, depose and say that I have read the above and foregoing application for transfer of water right; that I know the contents thereof and that the statements therein made are true and correct to the best of my knowledge and belief.

In Witness Whereof, I have hereunto set my hand this 27th day of March, 1978

W. D. Sherburn  
(Name of applicant)

Subscribed and sworn to before me this 27th day of March, 1978

[Notarial Seal]

[Signature]  
NOTARY PUBLIC FOR OREGON

My commission expires January 24, 1981

TENNILE CR. → OREGON CANYON CR

WRJT-0982-01

\*\*\* OREGON WATER RESOURCES DEPARTMENT \*\*\*  
\*\*\* WATER RIGHTS DIVISION \*\*\*  
\*\*\* WATER RIGHT DATA INPUT FORM \*\*\*

PAGE 1  
RUN ON: 3/20/81 AT: 9:08

WATER RIGHT NO. T000039181 PERMIT NO. OMD143 CERTIF. NO.  
ORIG. NO. PREV. NO. T0000B1001 SUPER. NO.

NAME: W. D. SHERBURN  
ADDRESS: Box 121  
CITY/STATE/ZIP/COUNTY: MC DERMITT, NV 89421

STREAM-ID <u>11 0030 0030 0040</u>	RIV. MI.	WM. DIST. <u>09</u>	W. R. TYPE <u>SEC</u>	STATUS <input checked="" type="checkbox"/>
CANCEL YEAR ---->	CONSTR. COMPLT --> <u>06 10 1979</u>	YR. LAST USED ---->	<u>          </u>	NEXT ACTION DUE -->
PRIORITY -----> <u>12 31 1984</u>	PUT TO USE -----> <u>06 10 1979</u>	LAST TRANS. DATE -->	<u>          </u>	LAST TRANS. TYPE -->
APPLICATION ---> <u>03 30 1978</u>	SURVEYED ----->	EXAM. FEE ----->	<u>20.00</u>	RECORDING FEE ----> <u>25.00</u>
PERMIT ISSUE --> <u>11 08 1978</u>	CONCURRENCE ---->	CYCLE STATUS ---->	<u>          </u>	REPORTED FLAG ---->
CONSTR. STRT. --> <u>11 08 1978</u>	CERTIFIED ----->	CORRES. INIT. ---->	<u>          </u>	CORRES. DATE ---->

POINT-OF-DIVERSION DATA: TWNSP RNGE SECT QTR/QTR STREAM-ID	RIV. MI.	RATE	STATUS	S OR P
<u>400S 430E 21 B C 11 0030 0030 0040</u>		<u>0.190</u>	<u>V</u>	<u>P</u>

PLACE-OF-USE DATA: TWNSP RNGE SECT QTR/QTR CNTY USE % CNSMTV ACRES	STATUS	S OR P
<u>400S 430E 21 B C 23 1R 100 7.58</u>	<u>V</u>	<u>P</u>

\*\* REMARKS; - - - - ->  
\*\* DATED -->  
\*\* POD: 1994' S & 1126' E FM NW  
\*\* COR S 21. CHANGES POU & POD PART OF  
\*\* ALICE P. BANKOFFER 10 MILE CR DECREE  
\*\* RT, MISC DEC P143. OLD POD NORTH  
\*\* DITCH, N86°50'E, 1632' FM NE COR S 20.  
\*\*  
\*\*

W.R.I.S.	
Assembled	<u>5-17-85</u> by <u>SD</u>
Entered	_____ by _____
Verified	_____ by _____



NOTICE OF COMPLETION OF CHANGE IN  
Diversion from Ten Mile Creek

place of use & point of diversion from Ten Mile Creek  
APPLICATION NO. 3918

PURSUANT TO TRANSFER APPLICATION NO. \_\_\_\_\_  
I, \_\_\_\_\_, hereby certify that completion

I, K. D. Sherburn, hereby certify that completion  
of works and use of water to the extent intended within the provisions

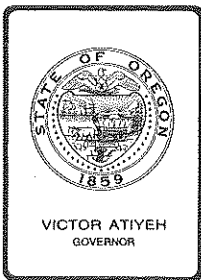
of the order of the Water Resources Director approving said water  
right transfer application was accomplished by June 10, 1979.

[Signature]  
Signature

April 30, 1980  
Date

(Mail to the Water Resources Department, Salem, Oregon 97310.)

[Handwritten initials]



## *Water Resources Department*

### MILL CREEK OFFICE PARK

555 13th STREET N.E., SALEM, OREGON 97310

PHONE (503) 378-3066  
1-800-452-7813

May 19, 1980

W. D. Sherburn  
Box 121  
McDermitt, Nevada 89421

REFERENCE: Files No. T-3917, T-3918

The notices of completion of works and use of water under the provisions of the order of the Water Resources Director approving water right transfer applications No. 3917 and 3918, for changes in place of use and point of diversion of water from Ten Mile Creek, were received and, in line with the general practice of this office, a survey will be made at a later date.

After the survey, proof may be made and certificate of water right issued covering the actual use of water as found by the engineer. (In case of irrigation, any lands described in the order that have not been irrigated will be automatically eliminated from the water right.)

In the meantime, the orders will be evidence of the water rights in question as long as the authorized beneficial use of water is continued.

Your copies of the orders which were returned with the completion notices are enclosed. These should be kept with your records.

Sincerely,

SAMUEL R. ALLISON  
Supervisor  
Transfer Section

SRA:avs

cc: Frank Elfering, Watermaster

0647A Super Copy  
0999A

COPY



Water Resources Department  
MILL CREEK OFFICE PARK

855 13th STREET N.E., SALEM, OREGON 97310

PHONE (503) 548-4000  
1-800-452-7615

May 14, 1990

W. D. Anderson  
Box 181  
Hosier, Oregon 97111

Reference: Files 90-1-214, 1-215

The notice of completion of work and use of water under the provisions of the state of the Water Resources Department approving water right transfer applications for 214 and 215, for changes in place of use and point of diversion of water from Mill Creek, were received and, in line with the general practice of this office, a survey will be made at a later date.

After the survey, should any be made and completion of water right transfer covering the actual use of water as found by the engineer. (In case of irrigation, any lands described in the order that have not been irrigated will be automatically eliminated from the water right.)

In the meantime, the order will be evidence of the water right in question as long as the authorized beneficial use of water is continued.

Your copies of the order which were returned with the completion notices are enclosed. These should be kept with your records.

Sincerely,

WALTER W. MILLER  
Director  
Transfer Section

WWS:ms

cc: Frank Elford, administrator

cc: WA super copy  
WWS:ms

COPY

378-3066

July 27, 1979

William D. Cramer  
Attorney at Law  
P.O. Box 646  
Burns, Oregon 97720

RE: Files Nos. T-3917, T-3918

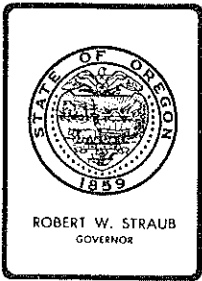
Dear Mr. Cramer:

Here are additional copies of the orders and transmittal letter sent in November of 1978 in regard to transfer applications Nos. 3917 and 3918. The originals must have gone astray.

Sincerely,

James W. Carver, Jr.  
Engineer

JWC:lcj



*Water Resources Department*

MILL CREEK OFFICE PARK

555 13th STREET N.E., SALEM, OREGON 97310

PHONE 378-3066

November 9, 1978

W. D. Sherburn  
c/o William D. Cramer  
Attorney at Law  
Box 121  
McDermitt, Nevada 89421

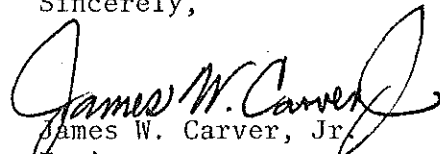
RE: Files No. T-3917, T-3918

Dear Mr. Sherburn:

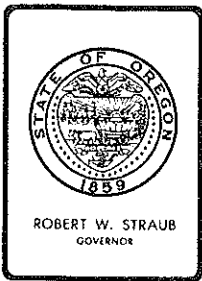
Enclosed are certified copies of the orders of the Water Resources Director approving water right transfer applications No. 3917 and 3918 for changes in place of use and point of diversion of water from Ten Mile Creek.

The time in which to accomplish completion of the works and beneficial use of the water to the extent intended, as authorized by the orders, expires on October 1, 1980. Forms for reporting such completion of works and use of water are enclosed for your convenience.

Sincerely,

  
James W. Carver, Jr.  
Engineer

JWC:lcj  
cc: Frank Elfering, Watermaster



## *Water Resources Department*

MILL CREEK OFFICE PARK

555 13th STREET N.E., SALEM, OREGON 97310

PHONE 378-3066

November 9, 1978

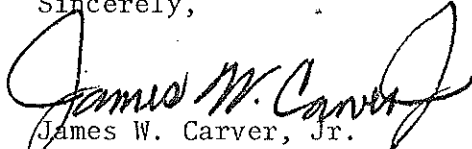
First National Bank of Nevada  
c/o James A. Callahan  
Attorney at Law  
Professional Building, Suite 1  
Winnemucca, Nevada 89445

RE: Files No. T-3917, T-3918

Gentlemen:

Enclosed are certified copies of the orders of the Water Resources Director approving water right transfer applications No. 3917 and 3918, in the name of W. D. Sherburn, for changes in place of use and point of diversion of water from Ten Mile Creek.

Sincerely,

  
James W. Carver, Jr.  
Engineer

JWC:lcj

cc: Frank Elfering, Watermaster



STATE OF OREGON

INTEROFFICE MEMO

TO: TRANSFERS, WATER RIGHTS DIVISION

DATE: May 26, 1978.

FROM: Frank Elfering, Watermaster

RECEIVED

MAY 30 1978

WATER RESOURCES DEPT.  
SALEM, OREGON

SUBJECT: WATER RIGHT TRANSFER APPLICATION NO. 3917,3918  
IN THE NAME OF W.D. Sherburn

In my opinion the proposed changes in place of use & point of diversion from TenMile Creek  
may be made without injury ~~would result in injury\*~~ to existing water rights.

Headgate notices ~~have~~ (have not) been issued for diversions from the source  
which serves this right.

If for change in point of diversion, is there any intervening point of diversion  
between the authorized and the proposed points of diversion? NO  
(yes or no)

In my opinion the order approving the subject transfer application should include  
the following in regard to the appropriator installing suitable measuring devices  
in the diversion works:

- (1) PRIOR to the diverting of water at the new point of diversion...
- ✓   (2) When in the judgement of the watermaster it becomes necessary...

\* The approval of this transfer application would result in injury to other  
water rights because \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# AFFIDAVIT OF PUBLICATION

Vale, Oregon June 14 - 1978

## TO MALHEUR ENTERPRISE, Dr.

To publishing attached Legal Notice in 3 issues \$ 49.00

STATE OF OREGON )  
County of Malheur )ss.

I, Warren G. Ayer being first duly sworn, depose and say that I am the Foreman Publisher of the printers of The Malheur Enterprise, which is a weekly newspaper of general circulation, printed and published in Vale in said county and state that such newspaper is made up of at least four pages of eight columns each and at least 21 inches in depth of matter; that such newspaper was regularly and uninterruptedly published each week for at least twelve consecutive months immediately preceding the first publication of attached Legal Notice and has more than 200

bona fide subscribers within said county; that the Legal Notice of which the one hereto attached is a true and correct copy as printed, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, once each week for 3 successive and consecutive weeks, being published 3

times commencing with the issue dated the 31st day of May, 19 78 and ending with the issue dated the 14th day of June, 19 78

That the amount of charge actually made and to be collected for such newspaper for such publication is \$ 49.00

[Signature]  
Foreman Publisher of the Printers

Subscribed and sworn to before me this 20th day of June, 19 78

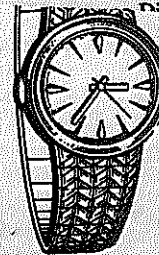
[Signature]  
Notary Public for Oregon

My commission expires August 11, 19 78

## Notices

### NOTICE OF WATER RIGHT TRANSFER APPLICATIONS NO. 3917 & 3918

Notice is given hereby that two applications have been filed in the office of the State Engineer by W. C. Chang, diver suan to S. B. Malheur, 1938 of 80 Miles NE SE Th ft wi 40 th la pd of tr S



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6

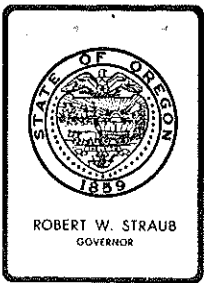
Reg. 5137

2 Pair Per Package

SPORT  
SOCKS  
WHITE

ok  
101





*Water Resources Department*

MILL CREEK OFFICE PARK

555 13th STREET N.E., SALEM, OREGON 97310

PHONE 378-3066

May 22, 1978

Malheur Enterprise  
P.O. Box 310  
Vale, Oregon 97918

RE: Files No. T-3917, T-3918

Gentlemen:

Enclosed is a notice for publication in the May 31;  
June 7 and 14, 1978, issues of your newspaper.

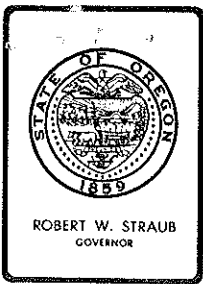
If, for any reason, the notice cannot be published  
on the three dates specified above, please return it to this  
office.

Upon completion, please forward an affidavit of pub-  
lication and statement for this service to this office.

Sincerely,

Wayne J. Overcash  
Water Rights Engineer

WJO:lcj  
cc: W.D. Sherburn  
cc: Frank Elfering, Watermaster



## Water Resources Department

MILL CREEK OFFICE PARK

555 13th STREET N.E., SALEM, OREGON 97310

PHONE 378-3066

April 6, 1978

W. D. Sherburn  
Box 121  
McDermitt, Nevada 89421

RE: Files No. T-3917, T-3918

Dear Mr. Sherburn:

We have your applications for changes in points of diversion and place of use of water from Ten Mile Creek under certain existing water rights, together with a map and your check in the amount of \$102.60. Our receipt No. 1882 is enclosed.

A review of the water right records shows that we are dealing with two separate water rights, as follows:

(1) By decree of the Circuit Court for Malheur County, entered June 30, 1933, a right was allowed in the name of Joe Bankofier for appropriation of 80 miners inches of water, with a priority date of 1873, for irrigation of lands in NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 29; S $\frac{1}{2}$  SE $\frac{1}{4}$  and NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 20, Township 40 South, Range 43 East, W.M.

The decree did not specify the number of acres or their location within the four "40's".

The diversion point for this right, as fixed by an order of the State Engineer, entered April 30, 1958, approving an application for Alice D. and Dave Bankofier for change in point of diversion, is located N 86° 50' E, 1632 feet from the NE Corner of Section 20, being within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 16, Township 40 South, Range 43 East, W.M.

(2) By decree of the Circuit Court for Malheur County, entered December 23, 1964, a right was established, in the name of Alice D. Bankofier, for appropriation of 149.6 miners inches of water, with a priority date of 1884, for irrigation of the following described 148.36 acres of land:

27.80 acres in SW $\frac{1}{4}$  NE $\frac{1}{4}$   
17.76 acres in SE $\frac{1}{4}$  NW $\frac{1}{4}$   
35.59 acres in NE $\frac{1}{4}$  SW $\frac{1}{4}$   
10.97 acres in NW $\frac{1}{4}$  SW $\frac{1}{4}$   
26.77 acres in SW $\frac{1}{4}$  SW $\frac{1}{4}$   
Section 29

0.09 acre in SE $\frac{1}{4}$  SE $\frac{1}{4}$   
Section 30

21.80 acres in NE $\frac{1}{4}$  NE $\frac{1}{4}$   
Section 31

7.58 acres in NW $\frac{1}{4}$  NW $\frac{1}{4}$   
Section 32

T 40 S, R 43 E, W.M.

The said order of the State Engineer, entered on April 30, 1958, fixes two points of diversion for this right, as follows:

(1) N 86° 50' E, 1632 feet from the NE Corner of Section 20, being within the SE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 16, Township 40 South, Range 43 East, W.M.

(2) S 20° 50' W, 6564 feet from the NE Corner of Section 20, being within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 29, Township 40 South, Range 43 East, W.M.

The received applications have been filed as transfer application No. 3917 for the proposed changes in point of diversion under the 1873 right; and as transfer application No. 3918 for the proposed changes in place of use and point of diversion under the 1884 right.

There are several items that will have to be corrected in regard to both of the applications. These have been discussed by telephone with Frank Elfering, Watermaster. I am sending your applications and map, together with copies of the decrees, a copy of the State Engineer's order, and a copy of a map that was received in evidence in the court proceedings, to Mr. Elfering; and he will contact you to help you with this matter.

The proposed changes in point of diversion will move the diversion points more than one-fourth mile along the stream; therefore, it is necessary that notice of the proposed changes be published at least once each week for three consecutive weeks in a newspaper that is printed and has general circulation in the county where the water right is located. When the applications are re-submitted, please submit a deposit of \$60 for this purpose and tell us which newspaper you prefer that we use. Any difference between the deposit and the actual cost will be settled with you upon completion of publication of notice.

Sincerely,

James W. Carver, Jr.  
Engineer

JWC:lcj  
cc: Frank Elfering, Watermaster

# 4 ON MAP.

# Application for Transfer of Water Right **RECEIVED**

MAR 30 1978  
WATER RESOURCES DEPT.  
SALEM, OREGON

To the WATER RESOURCES DIRECTOR OF OREGON:

I, W. D. Sherburn (Name of applicant)

of Box 121 (Mailing address) McDermitt (City)

State of Nevada, 89421 (Zip Code), 522-8789 (Phone number), do hereby make application for change

of an additional point of diversion (In point of diversion; place of use; use heretofore made of the water)

1. Is the water right recorded in your name? (If not, give name)

2. Was your water right determined by Decree of Court? yes (Yes or No) If so, give title of proceedings

Lulu Simpson vs. Joe Bankofier, et al number of certificate Equity 4095

3. Was your water right acquired by Water Right Permit? (Yes or No) If so, give number

of permit Number of certificate

NOTE: If the entire right of record is not directly involved in the requested change, only that part of the right that is directly involved should be considered in answering the balance of the questions on this form.

4. The source of water is Ten Mile Creek

5. What is the date of priority of your water right? 1873 (per decree)

*Note: Gillette map shows this to be N 31° 17' E but is plotted as 1° 10' N of E*

6. The authorized point of diversion is located N. 86° 10' E ft. 1632 from the SW corner of Section 16 being within the SE 1/4 SW 1/4 of Section 16 Tp. 40 S R. 43 E W. M., (No. N. or S.) (No. E. or W.)

in the county of Malheur The name of the ditch used is

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

7. The proposed point of diversion is located 571 ft. S. and 2391 ft. West from the SE corner of Section 20 being within the NW 1/4 NE 1/4 of Section 29 Tp. 40 S R. 43 E W. M., (No. N. or S.) (No. E. or W.)

in the county of Malheur The name of the ditch to be used is

8. The use to which the water is applied is irrigation  
 (Irrigation, Mining, Power, Manufacturing, etc.)

Location of area irrigated, or place of use if other than irrigation:

Township North or South	Range E. or W. of Willamette Meridian	Section	List ¼-¼ of Section	Number Acres To Be Irrigated
40 S	43 E	29	NWN E	36 Acres ?
		<del>29</del>	<del>SW ¼</del>	<del>29 Acres</del>
		<del>29</del>	<del>SE ¼</del>	<del>22 Acres</del>

(If more space required, attach separate sheet)

9. Are you the legal owner of the above described lands? yes  
 (If not owner, explain your interest)

10. To your knowledge, has any portion of the water right above described undergone a period of five or more consecutive years of nonuse? no  
 (Yes or No)

NOTE: Answer questions 11, 12 and 13 if application is for change in use or place of use.

11. Are the lands from which you propose to transfer your water right free of all encumbrances, including taxes, mortgages, liens, etc.? .....  
 (Answer Yes or No)

12. If not, give below a description of existing encumbrances:

NATURE OF ENCUMBRANCE	HELD BY	AMOUNT

13. The use to which the water is to be applied is Irrigation  
 (Irrigation, power, mining, manufacturing, domestic supplies, etc.)

Location of area to be irrigated, or place of use if other than irrigation:

Township North or South	Range E. or W. of Willamette Meridian	Section	List ¼-¼ of Section	Number Acres To Be Irrigated

(If more space required, attach separate sheet)

NOTE: THIS APPLICATION MUST BE ACCOMPANIED BY A MAP OR MAPS SHOWING THE BEFORE AND AFTER LOCATIONS OF THE POINT OF DIVERSION AND/OR PLACE OF USE, AS THE CASE MAY BE.

**AFFIDAVIT OF APPLICANT**

I, W. D. Sherburn, the applicant herein, being first duly sworn, depose and say that I have read the above and foregoing application for transfer of water right; that I know the contents thereof and that the statements therein made are true and correct to the best of my knowledge and belief.

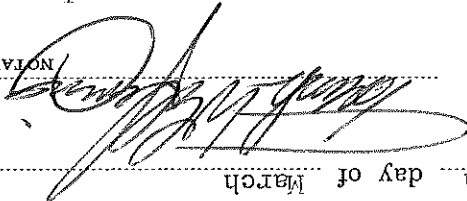
In Witness Whereof, I have hereunto set my hand this 27th day of March, 19 78

W. D. Sherburn  
(Name of applicant)

Subscribed and sworn to before me this 27th day of March, 19 78

[Notarial Seal]

NOTARY PUBLIC FOR OREGON



My commission expires January 24, 1981