

BEFORE THE OREGON WATER RESOURCES COMMISSION

ORDER APPROVING AN EXCHANGE OF WATER

Pursuant to ORS 540.333 to 540.543, after notice was given and no objections were filed, this order approves, as conditioned or limited herein, EXCHANGE 8170E submitted by

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The rights to be used are the right perfected under Permit 47091, Certificate 65143, with a date of priority of MAY 26, 1981 and the right perfected under Permit G-10144, Certificate 65144, with a date of priority of SEPTEMBER 20, 1983. Certificate 65143 allows the use of BUTTE CREEK, a tributary of the PUDDING RIVER, for IRRIGATION of 6.8 ACRES. The amount of water to which this right is entitled is limited to the amount actually beneficially used and shall not exceed 0.044 cubic foot per second, if available at the original point of diversion:

NE $\frac{1}{4}$ NW $\frac{1}{4}$, as projected within DLC 41, SECTION 8, T 6 S, R 1 E, WM; 1130 FEET SOUTH AND 100 FEET WEST FROM THE N $\frac{1}{4}$ CORNER, SECTION 8, or its equivalent in case of rotation, measured at the point of diversion from the source. Certificate 65144 allows the use of TWO WELLS, in the BUTTE CREEK BASIN, for SUPPLEMENTAL IRRIGATION of the same 6.8 ACRES. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.043 cubic foot per second, if available at the original wells: NW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 17, T 6 S, R 1 E, WM; 1200 FEET SOUTH AND 80 FEET EAST; 1470 FEET SOUTH AND 1990 EAST; BOTH FROM THE NW CORNER, SECTION 17, or its equivalent in case of rotation, measured at the wells.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-EIGHTIETH of one cubic foot per second per acre or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2 $\frac{1}{2}$ acre-feet for each acre irrigated during the irrigation season of each year.

NOTICE: This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within 60 days of the date of service of this order.

The authorized place of use, is located as follows:

NE $\frac{1}{4}$ NW $\frac{1}{4}$ 6.8 ACRES
SECTION 9
TOWNSHIP 6 SOUTH, RANGE 1 EAST, W.M.

The applicant proposes to exchange surface water for Certificate 65144 because that right is insufficient at the new point of diversion. The applicant will divert water from Butte Creek for the rights perfected under Certificates 65143 and 65144. In exchange, the applicant proposes to replace the water diverted from Butte Creek for Certificate 65144 with ground water, appropriated from the wells allowed under Certificate 65144 and discharged into Butte Creek approximately three-quarters of a mile downstream from the proposed surface water diversion.

The proposed point of diversion is located as follows:

SE $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 8, T 6 S, R 1 E, WM; 950 FEET NORTH AND 630 FEET WEST FROM THE SE CORNER, SECTION 8.

The proposed point of discharge is located as follows:

NE $\frac{1}{4}$ NW $\frac{1}{4}$, as projected within DLC 41, SECTION 8, T 6 S, R 1 E, WM; 1130 FEET SOUTH AND 100 FEET WEST FROM THE N $\frac{1}{4}$ CORNER, SECTION 8.

Pursuant to ORS 540.533, any person holding a water right may apply to the Commission for permission to use water from another source in exchange for supplying replacement water in an equal amount to satisfy prior appropriations from the other source, if:

- (a) The source of the person's appropriation is at times insufficient to fully satisfy the appropriation;
- (b) Better conservation and use of the waters of the state can be accomplished; or
- (c) The person can develop water for appropriation under the permit for use of water for an instream purpose, but cannot economically convey the water to its point of use.

ORS 540.537 requires the Commission to approve the water exchange unless it finds any of the following:

- (a) The proposed exchange would adversely affect other appropriators.
- (b) The proposed exchange would be too difficult to administer.
- (c) The proposed exchange would adversely affect the public interest as determined under ORS 537.170(8).
- (d) A sufficient quantity of water would not be available to replace the water to be used under the exchange. In determining whether replacement water will be equal to the water exchanged, the commission may consider relative consumptive uses and transmission losses.

Notice of the exchange was published in the Department's weekly notice. Notice was also published in the local newspaper for three consecutive weeks. In addition, notice and a request for comments were provided to the Departments of Fish and Wildlife, Agriculture, and Environmental Quality. No comments or protests, beyond ODFW's request for fish screens, were received. The Watermaster reviewed the application and said there would be no injury with the proposed conditions.

Miscellaneous flow measurements taken by the Watermaster's office found the flow in Butte Creek at the proposed point of diversion range from 47 cfs (June 28, 1995) to 7.4 cfs (August 17, 1996). Water rights issued authorize diversion of up to 3.66 cfs between the proposed point of diversion and the point where the ground water is discharged into Butte Creek. Discussions with the Watermaster indicate that water is always flowing through the stream reach involved in the exchange application. Based on miscellaneous measurements and observation, sufficient water is available.

An instream water right exists for Butte Creek from the mouth to RM 15, which includes this reach. The discharge point of the ground water is at approximately RM 12. The instream right is not met on an annual basis. When the exchange is in operation the flow in this three-quarter mile reach will be reduced by 0.043 cfs (19.3 gpm), an impact too small to be measured in the stream. Below RM 12 there will be no impact from the exchange. ODFW was contacted by staff and their only comment on the exchange was a request for fish screens. From this we conclude the instream water right will not be injured.

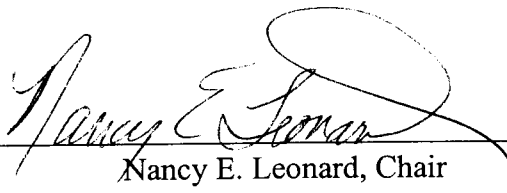
As conditioned, we conclude that the exchange: (a) would not adversely affect other appropriators; (b) would not be too difficult to administer; (c) would not adversely affect the public interest; and (d) a sufficient quantity of water is available.

THIS EXCHANGE MAY BE MADE PROVIDED THE FOLLOWING CONDITIONS ARE MET BY THE WATER USER:

1. The proposed exchange shall be completed on or before October 1, 2000.
2. The Water User may divert from Butte Creek, at the proposed point of diversion, the quantity of water actually beneficially needed, not to exceed 0.085 cubic foot per second, being up to 0.044 cfs for the right perfected under Permit 47801, and up to 0.043 cfs for the right perfected under Permit G-10144, provided that for any water diverted for Permit G-10144 an equal amount of water shall be discharged into Butte Creek from ground water. The quantity of water diverted and appropriated from both sources shall not exceed 2½ acre feet per acre irrigated during the irrigation season.
3. The Water User may divert water from Butte Creek for Permit G-10144 provided all intervening diversions entitled to receive water are satisfied. This condition shall be met when Butte Creek water is flowing past the ground water discharge point and there are no requests for delivery of water by the Watermaster from intervening water users.
4. The Water User shall install and maintain headgates, in-line flow meters, weirs, or other suitable devices for measuring and recording the quantity of water diverted from and discharged into Butte Creek. The types and plans of the headgates and measuring devices must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
5. The water user shall operate and maintain the headgates and measuring devices, as needed. The Watermaster may operate the headgates and monitor the accuracy of the measuring devices, as needed.

6. The Water User shall keep a complete record of the amount of water used and shall report the amounts used when requested by the Department.

WITNESS the signature of the Water Resources Commission Chair, affixed JUL 15 1999.



Nancy E. Leonard, Chair

Date of Service: JUL 20 1999