

BEFORE THE STATE ENGINEER OF OREGON

Harney County

IN THE MATTER OF THE APPLICATION)
OF JULIUS H. BALZHISER FOR A CHANGE)
IN POINT OF DIVERSION OF WATER FROM)
POISON CREEK SLOUGH. -----)

O R D E R

APPROVING APPLICATION

On December 22, 1953, Julius H. Balzhiser, Burns, Oregon, filed an application for the approval of a change in point of diversion of water from Poison Creek Slough, tributary to Silvies River, pursuant to ORS 540.510.

By decree of the circuit court of the State of Oregon for Harney County, entered February 13, 1926, in the Matter of the Determination of the Relative Rights to the Use of the Waters of Silvies River and Its Tributaries, a water right was adjudicated in the name of Ferdinand Denstedt for the irrigation of 125 acres of land from Poison Creek Slough and Foley Slough with a date of priority of 1912. The description of the lands, as set forth in the decree is 25 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, 20 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, 40 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, and 40 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 13, Township 23 South, Range 31 East, W. M.

The point of diversion is not described in the decree but the application describes the point of diversion as 250 feet south and 800 feet west from the northeast corner of Section 24, Township 23 South, Range 31 East, W. M. At this point is a concrete structure in the channel of Poison Creek Slough with provisions for installing flashboards to raise the water surface. This structure is known as the Brown Dam and this structure will be designated herein as the Brown Dam.

The applicant herein, owner of the above described lands, proposes to change the point of diversion for the irrigation of the above described lands upstream to a dam located 1,075 feet north and 570 feet east from the S $\frac{1}{2}$ corner of Section 13, Township 23 South, Range 31 East, W. M.

Notice by publication as provided by ORS 540.520 was given in The Burns Times Herald, a newspaper printed and having general circulation in Harney County, in which county the lands are located, for a period of three weeks, being the issues of January 15, 22 and 29, 1954. The time for hearing as fixed in the notice, namely: March 11, 1954, was not less than thirty days after the last publication of notice.

On March 1, 1954, objection to approval of the application was filed by Alfred L. Brown, Burns, Oregon.

On March 11, 1954, beginning at 10:00 a.m. a hearing was held in the court house at Burns, Oregon, at which Julius H. Balzhiser, the applicant, appeared represented by his legal counselor, Robert D. Lytle of the Law Firm of Lytle, Kilpatrick and Schroeder, Vale, Oregon, and Alfred L. Brown, the protestant, appeared represented by his legal counselor, C. B. McConnell, Burns, Oregon.

At the hearing, both parties introduced evidence and after the hearing the State Engineer, accompanied by Mr. Julius Balzhiser, Mr. Alfred L. Brown and other interested parties made an examination of the premises.

On March 11, 1954 at the time of hearing and examination of Poison Creek Slough and lands by the State Engineer, the flow of water in Poison Creek Slough was small and no water was checked or diverted for irrigation.

In order to secure additional information a survey was made by Herbert L. Coffman, Assistant State Engineer, on March 23 and 24, 1954. This survey consisted of running a level line using turns not exceeding 300 feet, from the Brown Dam upstream to the place where Poison Creek Slough crosses the west line of Section 13, Township 23 South, Range 31 East, W. M., which is the west line of lands owned by Charles D. Falk and the elevations of the water surface of Poison Creek Slough were determined. The elevations of some of the land west and near the center of Section 13, Township 23 South, Range 31 East, W. M., and the bottom of the

of the ditch which Mr. Balzhiser uses to carry water for the irrigation of lands described in the application were obtained.

Attached hereto is a map and profile showing the water surface of Poison Creek Slough, Balzhiser Ditch and elevations of lands located near the center of said Section 13, which map was prepared by Mr. Coffman from his survey. This map and profile will be referred to hereafter as the Coffman Map.

This order is based upon the evidence introduced at the hearing and the data obtained from Mr. Coffman's survey.

It appears that prior to 1946 water for the irrigation of the lands described in Mr. Balzhiser's application was diverted from Poison Creek Slough by raising the water surface at the Brown Dam.

From the testimony of Mr. Charles D. Falk and others, it appears that in 1946 there was constructed in the channel of Poison Creek Slough an earth fill in which a corrugated metal pipe with a 6 foot diameter was installed. This structure was located at the proposed new point of diversion described in the application. It appears that the water surface of Poison Creek Slough was raised by installing flashboards at the upper end of the conduit. In 1953 this structure was removed and in November 1953 a new reinforced concrete structure was built in the channel of Poison Creek Slough. This structure, which will be referred to herein as the Balzhiser Dam, is divided into three sections, each with a clear width of 5 feet. It is constructed so that the water surface can be raised by means of flashboards or gates.

At the time Mr. Coffman made his survey, the water surface of Poison Creek Slough had been raised by installing flashboards in the Brown Dam. Mr. Coffman's survey shows that the water surface of Poison Creek Slough at the west line of Section 13, Township 23 South, Range 31 East, W. M., was only 0.13 of a foot higher than at the Brown Dam and at the Balzhiser Dam, in which there were no flashboards in place, the water surface of Poison Creek Slough was the same elevation as at the Brown Dam.

Extending from the Balzhiser Dam on the north side, in a northeasterly direction to the head of a ditch used to convey water for the irrigation of part of the applicant's lands, is an earth dike. The length of this dike is approximately 385 feet with an approximate top width of 11 feet and with a height varying from 3 to $5\frac{1}{2}$ feet. This dike was constructed to divert water into said ditch which will be designated herein as the Balzhiser Ditch. From the profile of the bottom of the Balzhiser Ditch, shown on the Coffman map it is seen that there is one place a short distance below the head of the ditch that the bottom of the ditch is approximately one foot higher than at the head. On March 24, 1954, the depth of water in the box at the head of the Balzhiser Ditch was 1.2 feet and the depth of water at the high point in the canal was only 0.30 of a foot. The Balzhiser Ditch has an average bottom width of about 5.25 feet, and an average top width of about 8.33 feet with a maximum depth of about 1.5 feet.

It appears that when the water surface of Poison Creek Slough is at an elevation to divert water into the Balzhiser Ditch that water for the irrigation of lands described in the application located west and south of Poison Creek Slough can be diverted. The application does not state where the water for the irrigation of these lands is to be diverted but the map filed with the application shows a ditch diverting from Poison Creek Slough a few feet east of where said creek crosses the north and south center line of Section 13, Township 23 South, Range 31 East, W. M. It is assumed that this is the ditch that will be used to convey water for the irrigation of lands located south and west of Poison Creek Slough.

From the Coffman map it is seen that the elevation of the top of the Balzhiser Dam is 99 feet or one foot lower than the top of the Brown Dam; (Elevation of the top of the Brown Dam assumed as 100 feet) that the elevation of lands owned by Charles D. Falk located in the $SE\frac{1}{4}$ of the $NW\frac{1}{4}$, and $NE\frac{1}{4}$ of the $SW\frac{1}{4}$, Section 13, Township 23 South, Range 31 East, W. M., varies from 98 feet to 99.9 feet in relation to the assumed elevation of the Brown Dam. Mr. Coffman states that at the time of his survey that none of these lands was covered with water.

It is evident that with any appreciable flow of water in Poison Creek Slough that if flash boards are installed in the Balzhiser Dam level with the top of the dam that part of the lands owned by Mr. Falk will be flooded, which would result in injury.

From the available information, the elevation which the water surface of Poison Creek Slough can be raised in relation to the top of the Balzhiser Dam without flooding lands owned by Mr. Falk located north of Poison Creek Slough in Section 13, Township 23 South, Range 31 East, W. M., cannot be accurately determined and it appears that conditions are such that it will be impossible to obtain more definite information as to this during this irrigation season.

It appears that if the water surface at the Balzhiser Dam is not raised so as to flood lands not owned by the applicant that the application should be approved but to make it possible for the watermaster to regulate the Balzhiser Dam, it is necessary in this order to make definite the maximum elevation that the water surface at the Balzhiser Dam can be raised to. Based upon the available information it is believed that the Balzhiser Dam should be operated so that the water surface of Poison Creek Slough should not be higher than four-tenths of a foot below the top of the upper end of the concrete in this structure.

NOW, THEREFORE, it hereby is ORDERED that the proposed change in point of diversion of water from Poison Creek Slough to-wit:

From the Brown Dam in the channel of Poison Creek Slough at a point located 250 feet south and 800 feet west from the northeast corner of Section 24, Township 23 South, Range 31 East, W. M.,

to the Balzhiser Dam located in the channel of Poison Creek Slough at a point located 1,075 feet north and 570 feet east from the south $\frac{1}{4}$ corner of Section 13, Township 23, South, Range 31 East, W. M.,


for the irrigation of 25 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, 20 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, 40 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and 40 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 13, Township

23 South, Range 31 East, W. M., with a date of priority of 1912, be and the same hereby is approved, providing that there is installed one or more headgates in the applicant's diversion structure with gate lifts with provisions for locking the gate or gates, the number of gates and plans with gate lifts and locks to be approved by the watermaster.

It is FURTHER ORDERED that the Balzhiser Dam shall be regulated so that the water surface of Poison Creek Slough shall not be higher than four-tenths of a foot below the top of the upper end of the concrete in the Balzhiser Dam.

It is FURTHER ORDERED that the construction works shall be completed and the change in point of diversion of water made on or before October 1, 1954, and upon completion of such work, satisfactory proof shall be filed with the State Engineer.

Dated at Salem, Oregon, this 5th day of April, 1954.


CHAS. E. STRICKLIN
State Engineer

*Noted on Decree on Mandate
Vol. 9, p. 147*