

BEFORE THE STATE ENGINEER OF OREGON

Wheeler County

IN THE MATTER OF THE APPLICATION)
OF C. A. MC CARTY FOR THE APPROVAL)
OF CHANGES IN POINTS OF DIVERSION)
AND PLACES OF USE OF WATER FROM)
JOHN DAY RIVER)

ORDER APPROVING
TRANSFER NO. M-165

On May 16, 1966, C. A. McCarty filed an application in the office of the State Engineer for the approval of changes in points of diversion and places of use of water from John Day River pursuant to the provisions of ORS 540.510 to 540.530.

In the John Day River Adjudication proceedings a water right was established in the name of William Nichols evidenced by certificate 25632 for the use of the waters of John Day River for the irrigation of, among other lands, 20.3 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$, 17.1 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$, 32.8 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$, 40.0 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, 10.0 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$, 30.0 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$, 17.7 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$, 5.0 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$, 6.7 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$, and 10.4 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 5, Township 9 South, Range 25 East, W.M. and Federal Land Bank evidenced by certificate 25162 for the irrigation of 8.8 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 33, Township 8 South, Range 25 East, W.M., with a date of priority of 1905.

These lands under certificate 25632 are irrigated from a point of diversion located 1930 feet South and 30 feet West from the NE corner of Section 5 being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 5, Township 9 South, Range 25 East, W.M., and the lands under certificate 25162 are irrigated from a point of diversion located 2900 feet South and 520 feet East from the NW corner of Section 9 being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 9, Township 9 South, Range 25 East, W.M.

The applicant herein, owner of the lands above described, proposes to change the place of use of the irrigation of 12.8 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$, 3.0 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, 1.0 acre in NE $\frac{1}{4}$ SW $\frac{1}{4}$, 12.0 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$, 5.2 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$, and 3.1 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 5, Township 9 South, Range 25 East, W.M., with a date of priority of 1905, to 18.4 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$, 0.9 acre in SE $\frac{1}{4}$ NE $\frac{1}{4}$, 10.3 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$, and 7.5 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 5, Township 9 South, Range 25 East, W.M., and irrigate these lands together with the balance of the land from three points of diversion to be located: 2290 feet South and 330 feet West from the NE corner of Section 5 being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 5, Township 9 South, Range 25 East, W.M., 720 feet South and 720 feet West from the NE corner of Section 5 being within Lot 1 (SE $\frac{1}{4}$ NE $\frac{1}{4}$), Section 5, Township 9 South, Range 25 East, W.M., and 957 feet North and 4686 feet West from the SE corner of Section 33 being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, Township 8 South, Range 25 East, W.M.

Notice of the filing of the application was given by publication setting forth a time and place certain for hearing objections to the proposed changes in points of diversion and places of use of water, if any there were, namely: at the county courthouse in Fossil, Oregon, on May 27, 1968 at 9:30 a.m. The notice was published in The Journal, a newspaper printed and having general circulation in Wheeler County, Oregon, for a period of three weeks in the issues of April 25, May 2 and 7, 1968. The date set for hearing in said notice was not less than thirty days after the last publication of the notice.

Mr. Wayne J. Overcash, Watermaster of District No. 4, has filed a report to the effect that the proposed changes in points of

diversion and places of use of water may be made without injury to existing rights.

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

NOW, THEREFORE, it hereby is ORDERED that the change in places of use of water is approved and the water right hereinbefore described as appurtenant to 12.8 acres in SW¼ NW¼, 3.0 acres in SE¼ NW¼, 1.0 acre in NE¼ SW¼, 12.0 acres in NW¼ SW¼, 5.2 acres in SW¼ SE¼, and 3.1 acres in SE¼ SE¼, Section 5, Township 9 South, Range 25 East, W.M., with a date of priority of 1905, be severed therefrom and simultaneously and without loss of priority transferred to 18.4 acres in SW¼ NE¼, 0.9 acre in SE¼ NE¼, 10.3 acres in NE¼ SE¼, and 7.5 acres in NW¼ SE¼, Section 5, Township 9 South, Range 25 East, W.M.

It is FURTHER ORDERED that the proposed changes in points of diversion of water from John Day River, to-wit:

From a point located 1930 feet South and 30 feet West from the NE corner of Section 5 being within the NE¼ SE¼ of Section 5, Township 9 South, Range 25 East, W.M.

From a point located 2900 feet South and 520 feet East from the NW corner of Section 9 being within the NW¼ SW¼ of Section 9, Township 9 South, Range 25 East, W.M.

To a point to be located 2290 feet South and 330 feet West from the NE corner of Section 5 being within the NE¼ SE¼ of Section 5, Township 9 South, Range 25 East, W.M.

To a point to be located 720 feet South and 720 feet West from the NE corner of Section 5 being within Lot 1 (SE¼ NE¼), Section 5, Township 9 South, Range 25 East, W.M.

for the irrigation of 38.7 acres in Lot 2 (SW¼ NE¼), 18.0 acres in Lot 1 (SE¼ NE¼), 15.0 acres in Lot 4 (SW¼ NW¼), 37.0 acres in Lot 3 (SE¼ NW¼), 9.0 acres in NE¼ SW¼, 18.0 acres in NW¼ SW¼, 28.0 acres in NE¼ SE¼, 12.5 acres in NW¼ SE¼, 1.5 acres in SW¼ SE¼, and 7.3

acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 5, Township 9 South, Range 25 East, W.M., and 8.8 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 33, Township 8 South, Range 25 East, W.M., with a date of priority of 1905, and

To a point to be located 957 feet North and 4686 feet West from the SE corner of Section 33 being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 33, Township 8 South, Range 25 East, W.M.

for the irrigation of 5.0 acres in Lot 4 (SW $\frac{1}{4}$ NW $\frac{1}{4}$), Section 5, Township 9 South, Range 25 East, W.M., with a date of priority of 1905, is approved.

It is FURTHER ORDERED that said water so transferred shall be applied to beneficial use and the change in point of diversion made on or before October 1, 1969.

It is FURTHER ORDERED that the quantity of water diverted at the new points of diversion shall not exceed the quantity of water that is available at the old points of diversion and shall be limited to 1/40 cubic foot per second per acre irrigated from April 1 to September 30; further limited to one acre-foot per acre per calendar month; total of five acre-feet per acre for season, measured at point of diversion.

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

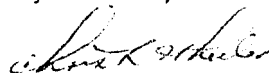
That the diversion works shall include an in-line flow meter, a weir, or other suitable device for measuring the water to which the applicant is entitled.

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 certificates of water right heretofore issued to William Nichols and recorded at page 25632, Volume

18, State Record of Water Right Certificates and to Federal Land Bank and recorded at page 25162, Volume 17, State Record of Water Right Certificates, are canceled and in lieu thereof new certificates be issued covering the balance of the lands not involved in this proceeding, and upon receipt of proof satisfactory to the State Engineer of completion of the authorized changes in points of diversion and places of use, certificates of water right shall be issued to C. A. McCarty confirming the extent to which the water has been applied beneficially and the changes in points of diversion.

Dated at Salem, Oregon, this 4~~th~~ day of June, 1968.



CHRIS L. WHEELER
State Engineer