

BEFORE THE STATE ENGINEER OF OREGON

Deschutes County

IN THE MATTER OF THE APPLICATION)
OF THE CITY OF BEND, OREGON, FOR)
THE APPROVAL OF A CHANGE IN USE,)
PLACE OF USE AND POINT OF DIVER-)
SION OF WATER FROM TUMALO CREEK)
AND A CHANGE IN PLACE OF USE OF)
WATER FROM DESCHUTES RIVER.)

O R D E R

APPROVING APPLICATION

On May 22, 1957, the City of Bend, Oregon, filed an application in the office of the State Engineer for the approval of a change in use, place of use and point of diversion of water from Tumalo Creek and a change in place of use of water from Deschutes River, pursuant to the provisions of ORS 540.510 to 540.530.

In the adjudication proceedings determining the relative rights to the use of the waters of Tumalo Creek and its tributaries a water right was established for the irrigation of 21.5 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 17, 30 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 22, 32.5 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 26, 17.5 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, 5 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and 38.5 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 35, Township 16 South, Range 11 East, W. M., and 25 acres in the NE $\frac{1}{4}$, Section 3, Township 17 South, Range 11 East, W. M., and NE $\frac{1}{4}$, Section 35, Township 16 South, Range 11 East, W. M., with a date of priority of September 1900. Subsequently the State Engineer entered an order wherein the water right appurtenant to 28 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, said Section 35, were transferred therefrom, leaving a water right for 10.5 acres in said SE $\frac{1}{4}$ SE $\frac{1}{4}$. These lands are irrigated through either the Tumalo Feed Canal or the Columbia Southern Canal, the point of diversion of the Tumalo Feed Canal being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 23, Township 17 South, Range 11 East, W. M., and the point of diversion of the Columbia Southern Canal being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 2, Township 18 South, Range 10 East, W. M.

The right to the use of water from Tumalo Creek for the irrigation of the above described lands is limited to a rate of flow of one-seventieth of one

cubic foot per second per acre and the quantity of water diverted during the irrigation season from April 15 to October 15 of each year is limited to a diversion of not to exceed 1.8 acre feet per acre.

In the Deschutes River adjudication proceedings the Deschutes County Municipal Improvement District was adjudicated a right to the use of 9.5 cubic feet per second of the waters of Deschutes River with a date of priority of 1905, which right was made appurtenant to all lands within the district.

Permit No. 19628, issued to the Deschutes County Municipal Improvement District, is for a supplemental supply of water from Crater Creek, Little Crater Creek and three springs for the irrigation of, among other lands, 39 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, 40 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and 40 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 35, Township 16 South, Range 11 East, W. M.

An agreement dated May 9, 1957 between the City of Bend and Deschutes County Municipal Improvement District provides that only the right to the use of the water of Tumalo Creek for the irrigation of 142 acres is to be transferred to the City of Bend for municipal purposes. The agreement further provides that the City of Bend will perpetually pay to the Deschutes County Municipal Improvement District the annual assessments for operation and maintenance, the payment of outstanding indebtedness including outstanding bonds, and for replacements and capital repairs on the basis of 142 acres, each acre to be assessed equally as all other lands within the district are assessed.

It is the desire of the District that the 142 acres are to be divested of all water rights and those rights from all sources other than Tumalo Creek are to be transferred to other lands within the District or canceled.

The applicant herein, proposes to transfer the water rights appurtenant to 142 acres of the lands described in paragraph 2 hereof, to-wit: 21.5 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 17, 30 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 22, 32.5 acres in

the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 26, 17.5 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, 5 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and 10.5 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 35, Township 16 South, Range 11 East, W. M., and 25 acres in the NE $\frac{1}{4}$, Section 3, Township 17 South, Range 11 East, W. M., and the NE $\frac{1}{4}$, Section 35, Township 16 South, Range 11 East, W. M., from irrigation purposes to that of municipal use within the corporate limits of the City of Bend, Oregon and surrounding territory served by its water supply pipeline and to divert the water at the City of Bend's intake from Tumalo Creek in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 7, Township 18 South, Range 10 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 change in use, place of use and point of diversion of water, if any there were, namely: at the county courthouse in Bend, Oregon, on August 21, 1957, beginning at 10:00 o'clock a.m. The notice was published in the Bend Bulletin, a newspaper printed and having general circulation in Deschutes County, Oregon, for a period of three weeks in the issues of June 25 and July 2 and 9, 1957. The date set for hearing in said notice was not less than thirty days after the last publication of said notice.

The Deschutes County Municipal Improvement District, owner of the lands involved herein, on June 5, 1957 by authority of and pursuant to a resolution adopted by the Board of Directors of said District on May 7, 1957, approved the proposed transfer of the water rights appurtenant to the said 142 acres for irrigation purposes to the City of Bend, Oregon, for municipal purposes.

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

NOW, THEREFORE, it hereby is ORDERED that the water right from Tumalo Creek hereinbefore described as appurtenant to 142 acres, to-wit: 21.5 acres

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C-51
C-75
in the NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 17, 30 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 22, 32.5 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 26, 17.5 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, 5 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ and 10.5 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 35, Township 16 South, Range 11 East, W. M., and 25 acres in the NE $\frac{1}{4}$, Section 35, Township 16 South, Range 11 East, W. M., and NE $\frac{1}{4}$, Section 3, Township 17 South, Range 11 East, W. M., with a date of priority of September 1900, be severed therefrom and simultaneously and without loss of priority transferred to the City of Bend, Oregon, for municipal use within the corporate limits of the said city and surrounding territory served by its water supply pipelines and said water shall be diverted at the City of Bend's intake from Tumalo Creek located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 7, Township 18 South, Range 10 East, W. M.

It is FURTHER ORDERED that the water so transferred shall be applied to beneficial use by the City of Bend, Oregon, on or before October 1, 1960 or within such extension of time as may be granted by the State Engineer for good cause shown.

It is FURTHER ORDERED that the quantity of water heretofore used for irrigation of 142 acres from Tumalo Creek described in paragraph 8 hereof and by this order transferred to municipal purposes by the City of Bend, Oregon, shall be limited to a maximum diversion of 2.03 cubic feet per second, beginning on April 15 and ending on October 15 of each year, and the total quantity diverted during said period shall not exceed 255.6 acre feet, measured at the meter in the existing pipeline and at the meter to be installed in the parallel pipeline now under construction.

It is FURTHER ORDERED that a meter shall be installed in the parallel pipeline now under construction at a point opposite or near the meter in the existing pipeline, said meter to be approved by the watermaster of Deschutes County, Oregon, before the beginning of construction work and installed under his general supervision.

It is FURTHER ORDERED that that part of the right to the use of 9.5 cubic feet per second of the waters of Deschutes River with a date of priority

of 1905, appurtenant to the lands described in paragraph 8 hereof be severed therefrom and simultaneously and without loss of priority transferred to the remaining lands having water rights within the Deschutes County Municipal Improvement District.

It is FURTHER ORDERED that the lands involved herein and described in Permit No. 19628, to-wit: 39 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, 40 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, and 40 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 35, Township 16 South, Range 11 East, W. M., be eliminated from said permit.

It is FURTHER ORDERED that certificate of water right heretofore issued to R. H. Bayley and recorded at page 51, and certificate of water right heretofore issued to F. W. Leverage and recorded at page 74, and certificate of water right heretofore issued to Chas. J. Mock and recorded at page 75, all in Volume 1, State Record of Water Right Certificates, which certificates cover a part of the lands from which the water is being transferred herein, be and the same are canceled.

It is FURTHER ORDERED that certificate of water right heretofore issued to Columbia Southern Irrigation Company and recorded at page 104, Volume 1, State Record of Water Right Certificates, which certificate covers, among other lands, a part of the lands from which the water is being transferred herein, be and the same hereby is canceled and that a new certificate of water right be issued to the Deschutes County Municipal Improvement District, successor in interest to the Columbia Southern Irrigation Company, covering the balance of the lands not involved in this proceeding.

It is FURTHER ORDERED that upon receipt of proof satisfactory to the State Engineer of application of water to beneficial use for municipal purposes within the corporate limits of the City of Bend, Oregon, and surrounding

