

BEFORE THE STATE ENGINEER OF OREGON

Malheur County

IN THE MATTER OF THE APPLICATION)
OF RAY DUNCAN FOR THE APPROVAL)
OF A CHANGE IN POINTS OF DIVERSION))
OF WATER FROM SOUTH FORK WILLOW)
CREEK)
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O R D E R
APPROVING APPLICATION

On May 3, 1962, Ray Duncan of Ontario, Oregon, filed an application in the office of the State Engineer for the approval of changes in points of diversion of water from the South Fork Willow Creek, pursuant to the provisions of ORS 540.510 to 540.530.

By decree of the Circuit Court for Malheur County, entered June 6, 1916, In the Matter of the Determination of the Relative Rights to the Use of the Waters of Willow Creek and its tributaries, a water right was established in the name of J. H. Rose for the use of the waters of South Fork Willow Creek for the irrigation of, among other lands, 1.0 acre in the SW $\frac{1}{4}$ NE $\frac{1}{4}$, 35 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, 35 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, 17 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, 37 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$, 30 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ and 3 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 28, and 7.5 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and 20 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 29 and 35 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ and 35.5 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 32, and 23 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 33, all being in Township 14 South, Range 39 East, W. M., with dates of priority of 1872, 1873, 1876 and 1882 and 1884. These lands are irrigated by means of three unnamed ditches, the points of diversion of said ditches being described as:

Upper Diversion: 730 feet South and 1430 feet West from the E $\frac{1}{2}$ corner of Section 32, and being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$, said Section 32, Township 14 South, Range 39 East, W. M.

Middle Diversion: 435 feet South and 625 feet East from the northwest corner of Section 33 and being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$, said Section 33, Township 14 South, Range 39 East, W. M.

Lower Diversion: 1930 feet North and 650 feet East from the southwest corner of Section 28, and being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$, said Section 28, Township 14 South, Range 39 East, W. M.

The applicant herein, owner of the lands above described, proposes to maintain the two diversions described as Upper and Middle diversions and to irrigate the lands also by means of three pumping plants, the points of diversion of said pumping plants to be located:

- (1) 2711 feet North and 3593 feet East from the S $\frac{1}{2}$ corner of Section 29, and being within the S $\frac{1}{2}$ NW $\frac{1}{4}$, Section 28,
- (2) 544 feet North and 3227 feet East from the S $\frac{1}{2}$ corner of Section 29, and being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 28,
- (3) 1623 feet South and 2784 feet East from the S $\frac{1}{2}$ corner of Section 29, and being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 33, all being in Township 14 South, Range 39 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 points of diversion of water, if any there were, namely: at the county courthouse in Vale, Oregon, on July 12, 1962, at 9:30 o'clock a.m. The notice was published in the Ontario Argus-Observer, a newspaper printed and having general circulation in Malheur County, Oregon, for a period of three weeks in the issues of May 21, 28 and June 4, 1962. The date set for hearing in said notice was not less than thirty days after the last publication of the notice.

Mr. Frank Elfering, Watermaster of District No. 9, has filed a report to the effect that the proposed changes in points of diversion may be made without injury to existing rights.

No objections having been filed and it appearing that the proposed changes in points 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 proposed change in points of diversion of water from South Fork Willow Creek be and the same is hereby approved and that the lands to which the heretofore described water right is appurtenant, to-wit: 1.0 acre in the SW $\frac{1}{4}$ NE $\frac{1}{4}$, 35 acres in the

SW $\frac{1}{2}$ NW $\frac{1}{2}$, 35 acres in the SE $\frac{1}{2}$ NW $\frac{1}{2}$, 17 acres in the NE $\frac{1}{2}$ SW $\frac{1}{2}$, 37 acres in the NW $\frac{1}{2}$ SW $\frac{1}{2}$, 30 acres in the SW $\frac{1}{2}$ SW $\frac{1}{2}$ and 3 acres in the SE $\frac{1}{2}$ SW $\frac{1}{2}$, Section 28, and 7.5 acres in the NE $\frac{1}{2}$ SE $\frac{1}{2}$ and 20 acres in the SE $\frac{1}{2}$ SE $\frac{1}{2}$, Section 29 and 35 acres in the NE $\frac{1}{2}$ NE $\frac{1}{2}$ and 35.5 acres in the SE $\frac{1}{2}$ NE $\frac{1}{2}$, Section 32 and 23 acres in the NW $\frac{1}{2}$ NW $\frac{1}{2}$, Section 33, all being in Township 14 South, Range 39 East, W. M., with dates of priority of 1872, 1873, 1876 and 1882 and 1884, may be irrigated by means of the Upper and Middle ditches and three pumping plants to be located as follows, to-wit:

Upper Ditch Diversion: 730 feet South and 1430 feet West from the E $\frac{1}{2}$ corner of Section 32, and being within the NW $\frac{1}{2}$ SE $\frac{1}{2}$, said Section 32, Township 14 South, Range 39 East, W. M.

Middle Diversion: 435 feet South and 625 feet East from the northwest corner of Section 33 and being within the NW $\frac{1}{2}$ NW $\frac{1}{2}$, said Section 33, Township 14 South, Range 39 East, W. M.

Pumping Diversion No. 1: 2711 feet North and 3593 feet East from the S $\frac{1}{2}$ corner of Section 29, and being within the SW $\frac{1}{2}$ NW $\frac{1}{2}$, Section 28, Township 14 South, Range 39 East, W. M.

Pumping Plant No. 2: 544 feet North and 3227 feet East from the S $\frac{1}{2}$ corner of Section 29, and being within the SW $\frac{1}{2}$ SW $\frac{1}{2}$, Section 28, Township 14 South, Range 39 East, W.M.

Pumping Plant No. 3: 1623 feet South and 2784 feet East from the S $\frac{1}{2}$ corner of Section 29, and being within the SW $\frac{1}{2}$ NW $\frac{1}{2}$, Section 33, Township 14 South, Range 39 East, W.M.

It is FURTHER ORDERED that the construction work shall be completed and the change in point of diversion of water made on or before October 1, 1964, 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 diverted at the new points of diversion shall not exceed the quantity of water that is available at the old points of diversion.

It is FURTHER ORDERED that the following provisions shall be carried out prior to diverting any water at the new points of diversion as herein approved:

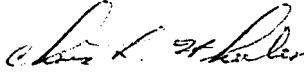
A. That weirs for measuring the water to which the applicant is entitled shall be installed at the following described locations, to-wit:

1. Below the Upper Diversion, located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 32, Township 14 South, Range 39 East, W.M., and above the point where the water from the well is discharged into Willow Creek, in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, said Section 32.
2. Below the proposed pumping plant No. 1, located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 28, Township 14 South, Range 39 East, W. M.

B. That the plans of the weirs be approved before the beginning of construction work by the Watermaster of Malheur County, Oregon, and that the weirs be installed under the general supervision of said watermaster.

Dated at Salem, Oregon, this 14th day of January, 1963.

*Noted on Permit
Vol. 5, p. 298 & 299
Cert. # 1612*


CHRIS L. WHEELER
State Engineer