

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, )  
CRATER, LITTLE CRATER CREEKS AND )  
THREE SPRING BRANCHES. )  
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O R D E R

APPROVING APPLICATION

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On June 11, 1959, 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, Crater and Little Crater Creeks and Three Spring Branches pursuant to the provisions of ORS 540.510 to 540.530.

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Following is a summary of the water rights appurtenant to the lands involved in the application:

(a) 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 23.2 acres in the NW $\frac{1}{4}$  NE $\frac{1}{4}$ , 28.7 acres in the SW $\frac{1}{4}$  NE $\frac{1}{4}$ , 12.4 acres in the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , 16.4 acres in the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , and 23.6 acres in the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 7, and 9 acres in the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 8, Township 16 South, Range 12 East, W. M., with a date of priority of September 1900, and 7.6 acres in the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 7, and 20 acres in the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 8, Township 16 South, Range 12 East, W. M., with a date of priority of June 1, 1907, from Tumalo Creek. The right to the use of water from Tumalo Creek for the irrigation of these 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.

(b) Certificate of water right issued to the Tumalo Irrigation District and recorded at page 26050, Volume 17, State Record of Water Right Certificates confirms a right under Permit No. 19628 for the irrigation of, among other lands, 20 acres in the NE $\frac{1}{4}$  NE $\frac{1}{4}$ , 16.4 acres in the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , 1.8 acres in the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , and 0.8 acre in the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 7, and 1 acre in the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , and 33.6 acres in the SW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 8, Township 16 South, Range 12 East, W. M., and supplemental irrigation of 23.2 acres in the NW $\frac{1}{4}$  NE $\frac{1}{4}$ , 28.7 acres in the SW $\frac{1}{4}$  NE $\frac{1}{4}$ , 12.4 acres in the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , 24 acres in the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , and 23.6 acres in the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 7, and 29 acres in the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 8, Township 16 South, Range 12 East, W. M., with a date of priority of October 29, 1913 from Tumalo Creek, Crater Creek, Little Crater Creek and Three Spring Branches. These lands, together with the lands described in paragraph (a) preceding, 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 amount of water used for irrigation, together with the amount secured under any other rights existing for the same lands, shall be limited to:

Cubic Feet Per Second Per Acre at Diversion

Cubic Feet Per Second Per Acre at Diversion					Total Acre Feet Per Acre at Diversion During Season
April 1 to <u>May 1</u>	May 1 to <u>May 15</u>	May 15 to <u>Sept. 15</u>	Sept. 15 to <u>Oct. 1</u>	Oct. 1 to <u>Nov. 1</u>	
1 ft. to 80 acres	1 ft. to 60 acres	1 ft. to 32.4 ac.	1 ft. to 60 acres	1 ft. to 80 acres	9.91

(c) Certificate of water right issued to the Tumalo Irrigation District and recorded at page 26051, Volume 17, State Record of Water Right Certificates confirms a right under Permit No. 624 for the use of water stored in Crescent Lake Reservoir with a date of priority of April 7, 1911,

for the supplemental irrigation of all lands described in paragraphs (a) and (b) preceding.

(d) In the adjudication proceedings determining the relative rights to the use of the waters of Deschutes River and its tributaries a water right was established in the name of the Deschutes County Municipal Improvement District for the use of 9.5 cubic feet per second of the waters of Deschutes River with a date of priority of 1905, which water right is appurtenant to all lands within the district including those lands described in paragraphs (a) and (b) preceding.

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Agreements between the City of Bend, Oregon, and the Deschutes County Municipal Improvement District (now Tumalo Irrigation District) dated November 17, 1958 and June 10, 1959, provide that the right to the use of water from Tumalo Creek, Crater Creek, Little Crater Creek and Three Spring Branches for the irrigation of 194.1 acres of the 214.5 acres described in paragraphs 2 (a) and (b), is to be transferred to the City of Bend, Oregon for municipal purposes. The agreements further provide that the City of Bend will perpetually pay to the Tumalo Irrigation 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 194.1 acres, each acre to be assessed equally as all other lands within the district are assessed. The agreements further provide that no water right shall be transferred from 20.4 acres in the SW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 8, Township 16 South, Range 12 East, W. M. The agreements further provide that the land from which the water is being transferred shall be divested of all remaining water rights except for the 20.4 acres in the SW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 8, Township 16 South, Range 12 East, W. M. That part of the 9.5 cubic feet per second of water from Deschutes River appurtenant to the 194.1 acres is to be transferred to the remaining

lands within the district and that part of the right for the use of the storage water from Crescent Lake Reservoir is to be eliminated from the certificate of water right heretofore issued to the Tumalo Irrigation District.

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The City of Bend, Oregon, owner of the lands described in paragraph 2 herein, except for 20.4 acres in the SW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 8, Township 16 South, Range 12 East, W. M., proposes to transfer the right to the use of water from Tumalo Creek, Crater Creek, Little Crater Creek and Three Spring Branches appurtenant to the remaining 194.1 acres for 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.

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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 December 15, 1959, beginning at 9:30 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 October 20, 27 and November 3, 1959. The date set for hearing in said notice was not less than thirty days after the last publication of the notice.

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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 for the irrigation of <sup>20050 (5)</sup> 23.2 acres in the NW $\frac{1}{4}$  NE $\frac{1}{4}$ , <sup>25550 (5)</sup> 28.7 acres in the SW $\frac{1}{4}$  NE $\frac{1}{4}$ , <sup>20050 (5)</sup> 12.4 acres in the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , <sup>26500 (5)</sup> 16.4 acres in the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , and <sup>20.5</sup> 23.6 acres in the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , <sup>0.87</sup> Section 7, and 9 acres in the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 8, Township 16 South, Range 12 East, W. M., with a date of priority of September 1900, and <sup>26500 (5)</sup> 7.6 acres in the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 7, and <sup>26500 (5)</sup> 20 acres in the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 8, Township 16 South, Range 12 East, W. M., with a date of priority of June 1, 1907, 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 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. The quantity of water heretofore used for the irrigation of 140.9 acres from Tumalo Creek described above and by this order transferred to municipal purposes by the City of Bend, Oregon, shall be limited to a maximum diversion of 2.01 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 253.6 acre feet, measured at the existing meters in the city's parallel pipelines.

It is FURTHER ORDERED that the water right from Tumalo Creek, Crater Creek, Little Crater Creek and Three Spring Branches for the irrigation of 20 acres in the NE $\frac{1}{4}$  NE $\frac{1}{4}$ , <sup>20050 (5)</sup> 16.4 acres in the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , <sup>26500 (5)</sup> 1.8 acres in the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , and <sup>20050 (5)</sup> 0.8 acre in the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , <sup>20050 (5)</sup> Section 7, and 1 acre in the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , <sup>20050 (5)</sup> and 13.2 acres in the SW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 8, Township 16 South, Range 12 East, W. M., and supplemental irrigation of 23.2 acres in the NW $\frac{1}{4}$  NE $\frac{1}{4}$ , 28.7 acres in the SW $\frac{1}{4}$  NE $\frac{1}{4}$ , 12.4 acres in the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , 24 acres in the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , and

23.6 acres in the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 7, and 29 acres in the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 8, Township 16 South, Range 12 East, W. M., with a date of priority of October 29, 1913, 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. The quantity of water diverted under this appropriation, together with the quantity of water diverted under the right described in paragraph 7 above, shall not exceed the following:

Cubic Feet Per Second at Diversion						Total Acre Feet at Diversion During Season
April 1 to May 1	May 1 to May 15	May 15 to Sept. 15	Sept. 15 to Oct. 1	Oct. 1 to Nov. 1	Nov. 1 to April 1	
2.43	3.23	5.99	3.23	2.43	0	1923.5

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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 paragraphs 7 and 8 above, be severed therefrom and simultaneously and without loss of priority transferred to the remaining lands having water rights within the Tumalo Irrigation District.

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It is FURTHER ORDERED that the right to the use of water stored in Crescent Lake Reservoir for the irrigation of the lands described in paragraphs 7 and 8 hereof, be eliminated from certificate of water right issued to the Tumalo Irrigation District and recorded at page 26051, Volume 17, State Record of Water Right Certificates.

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, 1968 or within such extension of time as may be granted by the State Engineer for good cause shown.

It is FURTHER ORDERED that certificates of water right recorded at pages 73 and 87, Volume 1, and page 26050, Volume 17, State Record of Water Right Certificates, which certificates involve the lands from which the water right were transferred herein, be and the same hereby are cancelled. New certificates shall be issued in lieu thereof describing the lands not involved in this transfer.

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 territory served by its water supply pipelines, a certificate of water right shall be issued to the City of Bend, Oregon, to the extent to which the water has been used beneficially.

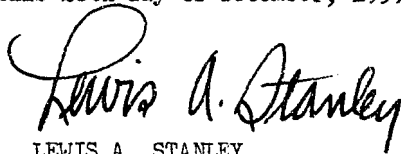
Dated at Salem, Oregon this 28th day of December, 1959.

*Noted on Decree*

*Vol. 16, p. 191*

□

*Cert. # 26508 as issued  
eliminates the lands  
from which the water  
was transferred to  
the City of Bend.*



LEWIS A. STANLEY  
State Engineer