

BEFORE THE STATE ENGINEER OF OREGON

Douglas County

IN THE MATTER OF WATER)
RIGHT APPLICATION NO.)
43197 IN THE NAMES OF)
CLARENCE D. AND MARY L.)
COLLINS _ _ _ _ _)

Order Approving Application

On January 16, 1967 an application in the names of Clarence D. Collins and Mary L. Collins, husband and wife, was filed in the office of the State Engineer for a permit to appropriate 0.25 cubic foot per second of water from Mitchell Creek, tributary of Cow Creek, at two points of diversion within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30, Township 30 South, Range 5 West, W. M. for the irrigation of 2 acres within the said SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30. Diversion point No. 1 is located 342.5 feet South and 270 feet East from the Northwest corner of the A. J. Tiller Donation Land Claim No. 63, and proposed diversion point No. 2 is located 67.5 ft. South and 230 ft. East from the same point of reference. The application is designated in the records of the State Engineer as water right application numbered 43197, and enjoys a tentative priority date of June 12, 1967.

A protest in the name of Basil B. Schofield was filed in the office of the State Engineer on April 18, 1967 against approval of the said application. In the protest it is alleged that the proposed appropriation of water would interfere with the protestant's use of water from his nearby well.

Pursuant to the State Engineer's notice of hearing, dated August 2, 1967, a hearing on the matter of the application and the protest against it was held before James W. Carver, Jr., Deputy State Engineer, in the office of the Riddle Police Chief at Riddle, Oregon on August 17, 1967, commencing at 9 a.m.

The protestant, Basil B. Schofield, appeared in his own behalf. The applicants, Clarence D. Collins and Mary L. Collins appeared in their own behalf. Also present at the hearing were Elsie L. Schofield, wife of

the protestant, and Mr. M. John Youngquist, State Watermaster for District #15, within which the proposed appropriation is located.

Mitchell Creek originates near the 3,000 ft. elevation in the mountainous area about 5 miles south and east of Riddle, Oregon, and flows in a northerly direction to a confluence with Cow Creek about 3/4 mile upstream from the confluence of Cow Creek with the South Umpqua River. Testimony shows that the stream is seasonal in nature and that flow is greatest during the late winter or early spring, usually declining to no flow during the latter part of the irrigation season.

The channel of Mitchell Creek, where it passes through the property of the applicants, is approximately 20 ft. in width and varies from approximately 4 to 8 ft. in depth below the valley flow on either side of the channel. A few feet upstream from proposed diversion point No. 1 and between diversion points Nos. 1 and 2, outcrops of basalt occur and form barriers across the bottom of the channel. Reaches of the stream channel between the outcrops contain deposits of gravels of assorted sizes up to several inches in diameter. During times of low flow, water is visible in the channel where it runs over the basalt outcrops and disappears from view in the gravel deposits.

The protestant's well is located on the east side of Mitchell Creek, being approximately 80 ft. east of the applicants' proposed diversion point No. 2. Testimony shows that the applicants' well is a dug well with a total depth of approximately 13 ft., the upper ten feet being cased with a square, cast in place, concrete casing with the interior opening being about 3 ft. square. The well below the concrete casing enlarges to approximately 4 by 5 ft., the longer dimension extending farthest to the South. Mr. Schofield testified that he had been down in the well for the purpose of cleaning out the well during the months of August or September in past years. Mr. Schofield stated that the well bottom is on the top of a hard rock layer, that the rock cannot be broken with a pick and that no depression has been constructed into the hard rock material. Mr. Schofield testified that he observed water coming

into the well and that it was entering from the southerly side right at the bottom of the well on the surface of the hard rock layer.

On July 31, 1967, the Watermaster, assisted by Mr. Burl Oar, made a hand level and leveling rod traverse from the pump located at point of diversion No. 2 to the protestant's well. At the time of the traverse, the water surface at diversion point No. 2 was approximately 2 ft. above the water surface in the protestant's well.

Mr. Schofield testified that water from the well is used for domestic purposes in his residence and a rental house on the Schofield property, for irrigation of a garden approximately 50 by 100 ft. in size, and for stock water, being usually for one milk cow and one or two beef animals.

The testimony of the protestant indicates that when Mitchell Creek is in times of low flow and water is diverted at the applicants' point of diversion No. 2, that there is interaction between the flow of Mitchell Creek and the protestant's well, with the result that the protestant's well, as constructed, is not capable of developing adequate ground water to meet the needs of the protestant's uses.

CONCLUSIONS

The protestant's right to appropriate ground water for his existing uses is found under the Ground Water Act of 1955, and more specifically under the provisions of ORS 547.545. The protestant's right to appropriate water for his uses does not extend to the flow of Mitchell Creek.

A permit that might be issued in approval of the applicants' subject application would authorize appropriation from the flow of Mitchell Creek only, and would not authorize the development and appropriation of ground water.

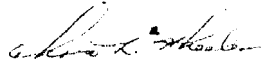
From the testimony presented it appears that the protestant's well is not properly constructed to develop the amount of water available to him in the aquifer.

The protestant, under the burden of proof, has not shown that the proposed appropriation of water from the natural flow of Mitchell Creek would substantially interfere with his existing right to appropriate ground water for domestic and stock water uses and irrigation of less than one-half acre of garden and lawn. Therefore it appears that the subject application for permit should be approved.

ORDER

NOW, THEREFORE it is hereby ORDERED that water right application numbered 43197 in the names of Clarence D. Collins and Mary L. Collins for a permit to appropriate water from Mitchell Creek at two points of diversion located within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30, for irrigation of 2 acres within the said SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30, said points of diversion Nos. 1 and 2 being further described as being 342.5 feet south and 270 feet east and 67.5 feet south and 230 feet east, respectively, from the northwest corner of the A. J. Tiller donation land claim No. 63, be approved by issuance of a permit to appropriate water in the amount of not to exceed 0.03 cubic foot per second of water with a date of priority of June 12, 1967.

Dated at Salem, Oregon this 21st day of September, 1967.


CHRIS L. WHEELER
State Engineer