

BEFORE THE STATE ENGINEER OF OREGON

Umatilla County

IN THE MATTER OF THE APPLICATION )  
OF R. A. LOW AND ARTHUR C. NICOSON )  
FOR THE APPROVAL OF CHANGES IN )  
POINTS OF DIVERSION OF WATER FROM )  
BEAR CREEK AND WEST BIRCH CREEK )  
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ORDER APPROVING  
TRANSFER NO. L-101

On October 16, 1969, R. A. Low and Arthur C. Nicoson filed an application in the office of the State Engineer for the approval of changes in points of diversion of water from Bear Creek and West Birch Creek, pursuant to the provisions of ORS 540.510 to 540.530.

By Decree of the Circuit Court for Umatilla County, entered September 9, 1916, In the Matter of the Determination of the Relative Rights of the Various Claimants to the Use of the Waters of Umatilla River and its Tributaries, a water right was adjudicated in the name of J. E. Smith Livestock Company for the irrigation of, among other lands, 3.5 acres in SE¼ SW¼ and 1.5 acres in SW¼ SE¼, Section 10, Township 2 South, Range 31 East, W.M. irrigated from a point of diversion located S 62° 15' E 1610 feet from the NW corner of Section 15, Township 2 South, Range 31 East, W.M. being within the NE¼ NW¼ of said Section 15, 12.5 acres in NW¼ NW¼, 3.0 acres in SW¼ NW¼, Section 1, 3.0 acres in NE¼ NE¼, 4.0 acres in SW¼ NE¼, 14.0 acres in NE¼ SW¼, 4.0 acres in SW¼ SW¼, 3.0 acres in SE¼ SW¼, 9.0 acres in NW¼ SE¼, Section 2, 1.5 acres in NE¼ NE¼, 7.0 acres in SE¼ NE¼, 0.5 acre in NE¼ SE¼, 2.5 acres in NW¼ SE¼, Section 10, and 10.0 acres in NW¼ NW¼, Section 11, Township 2 South, Range 31 East, W.M. irrigated from a point of diversion located N 34° 45' W 2880 feet from the SE corner of Section 10, Township 2 South, Range 31 East, W.M. being within the NW¼ SE¼ of said Section 10, 7.0 acres in NE¼ NE¼, 4.0 acres in SW¼ NE¼, 4.5 acres in SE¼ NE¼, Section 2, Township 2 South, Range 31 East, W.M.,

3.0 acres in NW¼ SW¼ and 10.0 acres in SW¼ SW¼, Section 36, Township 1 South, Range 31 East, W.M. irrigated from a point of diversion located N 48° E 3850 feet from the SW corner of Section 2, Township 2 South, Range 31 East, W.M. being within the NW¼ SE¼ of said Section 2, 1.0 acre in NW¼ SW¼, 17.0 acres in SW¼ SW¼, Section 36, Township 1 South, Range 31 East, W.M. irrigated from a point of diversion located S 6° E 460 feet from the NW corner of Section 1, Township 2 South, Range 31 East, W.M. being within the NW¼ NW¼ of said Section 1 from Bear Creek with a date of priority of 1881, and 8.0 acres in NW¼ NW¼, Section 1, Township 2 South, Range 31 East, W.M., 4.0 acres in NE¼ SW¼, 21.5 acres in NW¼ SW¼, Section 36, Township 1 South, Range 31 East, W.M. irrigated from a point of diversion located S 20° 30' E 3280 feet from the NW corner of Section 1, Township 2 South, Range 31 East, W.M. being within the NW¼ SW¼ of said Section 1, 3.0 acres in SE¼ NW¼, Section 1, Township 2 South, Range 31 East, W.M., 8.5 acres in NE¼ SW¼, 4.0 acres in NW¼ SW¼, 13.0 acres in SE¼ SW¼, Section 36, Township 1 South, Range 31 East, W.M. irrigated from a point of diversion located S 21° 30' E 3200 feet from the NW corner of Section 1, Township 2 South, Range 31 East, W.M. being within the NW¼ SW¼ of said Section 1, from West Birch Creek with a date of priority of 1899.

The applicants herein, owners of the lands above described, propose to irrigate 1.5 acres in NE¼ NE¼, 7.0 acres in SE¼ NE¼, 3.5 acres in SE¼ SW¼, 0.5 acre in NE¼ SE¼, 2.5 acres in NW¼ SE¼, 1.5 acres in SW¼ SE¼, Section 10, Township 2 South, Range 31 East, W.M., from a point of diversion to be located N 27° 30' W 3000 feet from the SE corner of Section 10, Township 2 South, Range 31 East, W.M. being within the SW¼ NE¼ of said Section 10, 2.0 acres in SW¼ SW¼, Section 2, 10.0 acres in NW¼ NW¼, Section 11, Township 2 South, Range 31 East, W.M. from a point of diversion to be located S 25° E 500 feet from the SW corner of Section 2, Township 2 South, Range 31 East, W.M. being

within the NW¼ NW¼ of said Section 11, 3.0 acres in NE¼ SW¼, 2.0 acres in SW¼ SW¼, 3.0 acres in SE¼ SW¼, Section 2, Township 2 South, Range 31 East, W.M. from a point of diversion to be located N 66° 15' E 1320 feet from the SW corner of Section 2, Township 2 South, Range 31 East, W.M. being within the SW¼ SW¼ of said Section 2, 8.0 acres in SW¼ NE¼, 11.0 acres in NE¼ SW¼, 8.0 acres in NW¼ SE¼, Section 2, Township 2 South, Range 31 East, W.M. from a point of diversion to be located N 48° E 3850 feet from the SW corner of Section 2, Township 2 South, Range 31 East, W.M. being within the NW¼ SE¼ of said Section 2, 12.5 acres in NW¼ NW¼, 3.0 acres in SW¼ NW¼, Section 1, 10.0 acres in NE¼ NE¼, 4.5 acres in SE¼ NE¼, Section 2, Township 2 South, Range 31 East, 4.0 acres in NW¼ SW¼, 27.0 acres in SW¼ SW¼, Section 36, Township 1 South, Range 31 East, W.M. from a point of diversion to be located S 6° E 460 feet from the NW corner of Section 1, Township 2 South, Range 31 East, W.M. being within the NW¼ NW¼ of said Section 1, from Bear Creek, and 8.0 acres in NW¼ NW¼, 3.0 acres in SE¼ NW¼, Section 1 Township 2 South, Range 31 East, W.M. from a point of diversion to be located S 46° E 1450 feet from the NW corner of Section 1, Township 2 South, Range 31 East, W.M. being within the NW¼ NW¼ of said Section 1, 12.5 acres in NE¼ SW¼, 25.5 acres in NW¼ SW¼ and 13.0 acres in SE¼ SW¼, Section 36, Township 1 South, Range 31 East, W.M. from a point of diversion to be located N 66° E 1200 feet from the SW corner of Section 36, Township 1 South, Range 31 East, W.M. being within the SW¼ SW¼ of said Section 36, from West Birch Creek.

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 of water, if any there were, namely: at the county courthouse in Pendleton, Oregon, on August 19, 1970, at 9:30 a.m. The notice was published in The Pendleton Record, a newspaper printed and having general circulation in Umatilla

County, Oregon, for a period of three weeks in the issues of June 25, July 2 and 9, 1970. The date set for hearing in said notice was not less than thirty days after the last publication of the notice.

Mr. Jerry F. Haines, Watermaster of District No. 5, has filed a report to the effect that the proposed changes in points of diversion of water 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 changes in points of diversion of water from Bear Creek, to-wit:

From a point located S 62° 15' E 1610 feet from the NW corner of Section 15, Township 2 South, Range 31 East, W.M. being within the NE¼ NW¼ of Section 15, Township 2 South, Range 31 East, W.M.

From a point located N 34° 45' W 2880 feet from the SE corner of Section 10, Township 2 South, Range 31 East, W.M. being within the NW¼ SE¼ of Section 10, Township 2 South, Range 31 East, W.M.

From a point located N 48° E 3850 feet from the SW corner of Section 2, Township 2 South, Range 31 East, W.M. being within the NW¼ SE¼ of Section 2, Township 2 South, Range 31 East, W.M.

From a point located S 6° E 460 feet from the NW corner of Section 1, Township 2 South, Range 31 East, W.M. being within the NW¼ NW¼ of Section 1, Township 2 South, Range 31 East, W.M.

To a point to be located N 27° 30' W 3000 feet from the SE corner of Section 10, Township 2 South, Range 31 East, W.M. being within the SW¼ NE¼ of Section 10, Township 2 South, Range 31 East, W.M.

for the irrigation of 1.5 acres in NE¼ NE¼, 7.0 acres in SE¼ NE¼, 3.5 acres in SE¼ SW¼, 0.5 acre in NE¼ SE¼, 2.5 acres in NW¼ SE¼, 1.5 acres in SW¼ SE¼, Section 10, Township 2 South, Range 31 East, W.M., with a date of priority of 1881,

To a point to be located S 25° E 500 feet from the SW corner of Section 2, Township 2 South, Range 31 East, W.M. being within the NW¼ NW¼ of

Section 11, Township 2 South, Range 31 East, W.M.

for the irrigation of 2.0 acres in SW $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 2, 10.0 acres in NW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 11, Township 2 South, Range 31 East, W.M., with a date of priority of 1881,

To a point to be located N 66° 15' E 1320 feet from the SW corner of Section 2, Township 2 South, Range 31 East, W.M. being within the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 2, Township 2 South, Range 31 East, W.M.

for the irrigation of 3.0 acres in NE $\frac{1}{4}$  SW $\frac{1}{4}$ , 2.0 acres in SW $\frac{1}{4}$  SW $\frac{1}{4}$ , 3.0 acres in SE $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 2, Township 2 South, Range 31 East, W.M., with a date of priority of 1881,

To a point to be located N 48° E 3850 feet from the SW corner of Section 2, Township 2 South, Range 31 East, W.M. being within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 2, Township 2 South, Range 31 East, W.M.

for the irrigation of 8.0 acres in SW $\frac{1}{4}$  NE $\frac{1}{4}$ , 11.0 acres in NE $\frac{1}{4}$  SW $\frac{1}{4}$ , 8.0 acres in NW $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 2, Township 2 South, Range 31 East, W.M., with a date of priority of 1881,

To a point to be located S 6° E 460 feet from the NW corner of Section 1, Township 2 South, Range 31 East, W.M. being within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 1, Township 2 South, Range 31 East, W.M.

for the irrigation of 12.5 acres in NW $\frac{1}{4}$  NW $\frac{1}{4}$ , 3.0 acres in SW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 1, 10.0 acres in NE $\frac{1}{4}$  NE $\frac{1}{4}$ , 4.5 acres in SE $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 2, Township 2 South, Range 31 East, 4.0 acres in NW $\frac{1}{4}$  SW $\frac{1}{4}$ , 27.0 acres in SW $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 36, Township 1 South, Range 31 East, W.M., with a date of priority of 1881, and from West Birch Creek, to-wit:

From a point located S 20° 30' E 3280 feet from the NW corner of Section 1, Township 2 South, Range 31 East, W.M. being within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 1, Township 2 South, Range 31 East, W.M.

From a point located S 21° 30' E 3200 feet from the NW corner of Section 1, Township 2 South, Range 31 East, W.M. being within the NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 1, Township 2 South, Range 31 East, W.M.

To a point to be located S 46° E 1450 feet from the NW corner of Section 1, Township 2 South, Range 31 East, W.M. being within the NW $\frac{1}{4}$  NW $\frac{1}{4}$  of

Section 1, Township 2 South, Range 31 East, W.M. for the irrigation of 8.0 acres in NW¼ NW¼, 3.0 acres in SE¼ NW¼, Section 1, Township 2 South, Range 31 East, W.M., with a date of priority of 1899,

To a point to be located N 66° E 1200 feet from the SW corner of Section 36, Township 1 South, Range 31 East, W.M. being within the SW¼ SW¼ of Section 36, Township 1 South, Range 31 East, W.M.

for the irrigation of 12.5 acres in NE¼ SW¼, 25.5 acres in NW¼ SW¼ and 13.0 acres in SE¼ SW¼, Section 36, Township 1 South, Range 31 East, W.M., with a date of priority of 1899, are approved.

It is FURTHER ORDERED that the construction work shall be completed and the changes in points of diversion of water made on or before October 1, 1971.

It is FURTHER ORDERED that the quantity of water diverted at the new points of diversion shall not exceed the quantity of water available at the old points of diversion and shall not exceed 1.56 cubic feet per second from Bear Creek and 0.78 cubic foot per second from West Birch Creek.

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.

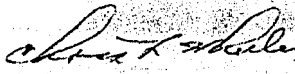
That the diversion works shall include an in-line flow meter, a weir, or other suitable device for measuring the water to which the applicant is entitled.

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 upon receipt of proof satisfactory to the State Engineer of completion of the authorized changes in points of diversion, a certificate of water right shall be issued to R. A. Low and Arthur C. Nicoson, or their successor in interest, to the extent to

which the water has been applied beneficially, said certificate to be issued at the time certificates are issued confirming the inchoate rights allowed in the Umatilla River Adjudication proceedings.

Dated at Salem, Oregon, this 31st day of August, 1970.

  
CHRIS L. WHEELER  
State Engineer ↓