

## Marion County

IN THE MATTER OF THE PROTEST )  
 OF FRANK STENZEL AGAINST THE )  
 APPROVAL OF APPLICATION NO. )  
 17021 IN THE NAME OF THE CITY )  
 OF NEWPORT. )  
 - - - - - )

O R D E R  
 APPROVING APPLICATION  
 —

On August 9th, 1937, Paul Hudson, Water Commissioner, filed in the name of the City of Newport, an application for a permit to appropriate 3.0 second-feet of water from Little Creek for municipal use. The application, which was given No. 17021, indicates that diversion is contemplated in the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 28 and the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 32, Township 10 South, Range 11 West, and that the water is to be used in the City of Newport.

Frank Stenzel, holds Permit No. 12609 which was issued June 11, 1937, granting a right to the use of 1.5 second-foot of the waters of Little Creek for domestic and municipal use to be diverted in the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 28, Township 10 South, Range 11 West and used in Section 29 and 32, Township 10 South, Range 11 West, for the maintenance of a golf links and for domestic use.

On February 16, 1938, a protest by Mr. Stenzel against the approval of the City of Newport's Application No. 17021 was received by this office. The protest sets out in effect that the application should not be approved because during summer months the amount of water in Little Creek does not appreciably exceed 1.5 second-feet; that the number of users served by protestant is increasing; that there is no stream other than Little Creek to serve these users and that the approval of the application would prejudicially affect the public interest.

During an inspection made of Mr. Stenzel's project on September 3, 1938, a measurement of Little Creek one hundred feet below the Stenzel diversion showed a discharge of 0.12 second-foot. Another measurement made February 4, 1939 showed a flow of 5.68 second-feet at this place.

On November 22, 1938, a hearing was held at Toledo by a representative of the State Engineer's office for the purpose of determining the proper disposal to be made of the application in the name of the City of Newport.

Evidence was introduced by the protestant to the effect that 50 consumers are efficiently served by his water system; that new consumers are being added; and that use of water through the system is increasing.

The City of Newport presented evidence that more than 1000 taps are served by the city system and that the maximum use in 1938 was 500,000 gallons per day or about 0.77 second-foot. Witnesses for the city testified that demand is increasing and that the present source of supply is inadequate and unsatisfactory.

It is recognized that Mr. Stenzel's golf course, club house and water system represent a large investment. His application under which his Permit No. 12609 was issued, estimates the cost of his water system at \$8000.00. It is also realized that he should be protected in the beneficial use of any amount of water not exceeding the 1.5 second-foot specified in his permit. It appears, however, after a careful consideration of all the facts as presented at the hearing and after inspection and measurements of the stream at protestant's diversion, that under Section 47-402, Oregon Code 1930, which reads in part as follows: "Subject to existing rights all waters within the state may be appropriated for beneficial use, as herein provided, \* \* \*" and Section 47-503, Oregon Code 1930, which provides in part as follows: "\* \* \* It shall be the duty of the state engineer to approve all applications made in proper form which contemplate the application of water to a beneficial use, unless the proposed use conflicts with existing rights; \* \* \*", that the State Engineer is required by law to approve the application in question subject to existing rights, since it appears that the flow of Little Creek at times greatly exceeds the amount of water required to satisfy existing recorded rights as


represented by protestant's permit.

IT IS THEREFORE HEREBY ORDERED that Application No. 17021 in the name of the City of Newport be and the same hereby is approved.

The City of Newport has petitioned the State Engineer that its Application No. 17021 be approved to the exclusion of all subsequent appropriations as provided in Section 47-503, Oregon Code 1930, and it appearing to the State Engineer that all of the flow of Little Creek not required to satisfy existing rights should be preserved as a municipal supply for this municipality,

IT IS HEREBY FURTHER ORDERED that Application No. 17021 be and the same hereby is approved subject to existing rights to the exclusion of all subsequent appropriations of any of the waters of Little Creek.

Dated at Salem, Oregon this 1st day of March, 1939.

  
CHAS. E. STRICKLIN,  
State Engineer.