

BEFORE THE STATE ENGINEER OF OREGON

Josephine County

IN THE MATTER OF THE APPLICATION)
OF ALVIN J. AND EDITH V. PHILLIPS)
FOR THE APPROVAL OF A CHANGE IN)
PLACE OF USE AND POINT OF DIVERSION)
OF WATER FROM SUCKER CREEK)
-----)

ORDER APPROVING
TRANSFER NO. P-79

On February 17, 1965, Alvin J. and Edith V. Phillips of Cave Junction, Oregon, filed an application in the office of the State Engineer for the approval of a change in place of use and point of diversion of water from Sucker Creek, pursuant to the provisions of ORS 540.510 to 540.530.

By Decree of the Circuit Court for Josephine County, Oregon, entered May 27, 1913, In the Matter of the Determination of the Relative Rights to the Use of the Waters of Sucker Creek and its Tributaries, a water right was established in the name of A. J. Fulk for the use of the waters of Sucker Creek for domestic and stock use and the irrigation of, among other lands, 4 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$, 10 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and 37 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 35, Township 39 South, Range 8 West, W.M., with a date of priority of 1857. This right was confirmed by certificate recorded at page 7129, Volume 7, State Record of Water Right Certificates. The water is conveyed to these lands by means of the Briggs Tannery Ditch, the point of diversion of said ditch being located 2500 feet north and 300 feet east from the S $\frac{1}{4}$ corner of Section 31, and being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$, said Section 31, Township 39 South, Range 7 West, W.M.

The applicants herein, owners of the lands above described, propose to transfer the water right appurtenant to 16.8 acres of these lands, to-wit: 2.8 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and 14 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, therefrom without loss of priority to 10.7 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and 6.1 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 35, Township 39 South, Range 8 West, W.M., and to convey the water to these lands, together with water for domestic and stock use and the irrigation of the remaining

lands described in paragraph two hereof, by means of a pumping plant, the point of diversion to be located 1100 feet south and 1330 feet west from the E $\frac{1}{4}$ corner of Section 35 and being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$, said Section 35, Township 39 South, Range 8 West, 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 place of use and point of diversion of water, if any there were, namely: at the county courthouse in Grants Pass, Oregon, on July 6, 1965, at 9:30 a.m. The notice was published in The Grants Pass Bulletin, a newspaper printed and having general circulation in Josephine County, Oregon, for a period of three weeks in the issues of May 13, 20, 27, 1965. The date set for hearing in said notice was not less than thirty days after the last publication of the notice.

Mr. Robert B. Steimer, Watermaster of District No. 12, has filed a report to the effect that the proposed change in place of use and point of diversion of water may be made without injury to existing rights.

No objections having been filed and it appearing that the proposed change in place of use and point of diversion may be made without injury to existing rights, the application should be approved.

Ronald Tycer, mortgagee, has filed a statement that he has no objection to the proposed changes.

NOW, THEREFORE, it hereby is ORDERED that the change in place of use of water is approved and the water right hereinbefore described as appurtenant to 2.8 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and 14.0 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 35, Township 39 South, Range 8 West, W.M., with a date of priority of 1857, be severed therefrom and simultaneously and without loss of priority transferred to 10.7 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and 6.1 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 35, Township 39 South, Range 8 West, W.M.

It is FURTHER ORDERED that the proposed change in point of diversion of water from Sucker Creek, to-wit:

From a point located 2500 feet north and 300 feet east from the S $\frac{1}{4}$ corner of Section 31 and being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$, said Section 31, Township 39 South, Range 7 West, W.M.

To a point to be located 1100 feet south and 1330 feet west from the E $\frac{1}{4}$ corner of Section 35 and being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$, said Section 35, Township 39 South, Range 8 West, W.M.

for domestic and stock use and the irrigation of 14.7 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$, 6.1 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, 7.2 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and 23 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 35, Township 39 South, Range 8 West, W.M., with a date of priority of 1857, is approved.

It is FURTHER ORDERED that said water so transferred shall be applied to beneficial use on or before October 1, 1966.

It is FURTHER ORDERED that the quantity of water diverted at the new point of diversion shall not exceed the quantity of water that is available at the old point of diversion and shall not exceed 1.02 cubic feet per second and that the use of water for irrigation purposes shall be confined to the season April 1 to October 31 of each year.

It is FURTHER ORDERED that the following provision shall be effective when in the judgment of the watermaster it becomes necessary to install headgates and measuring devices.

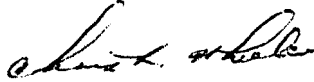
That the diversion works shall include a weir or other suitable device for measuring the water to which the applicant is entitled.

That the plans of the weir or other suitable 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 certificate of water right heretofore issued to A. J. Fulk and recorded at page 7129, Volume 7, State Record of Water Right Certificates, is canceled and in lieu thereof a new certificate be issued covering the balance of the lands not involved in this proceeding, and upon receipt of proof satisfactory to the State Engineer of completion of the authorized change

in point of diversion and place of use, a certificate of water right shall be issued to Alvin and Edith V. Phillips confirming the change in point of diversion and the extent to which the water has been applied beneficially.

Dated at Salem, Oregon, this 29th day of November, 1965.



CHRIS L. WHEELER
State Engineer