

BEFORE THE STATE ENGINEER OF OREGON

Jackson County

IN THE MATTER OF THE APPLICATION )  
OF MARION E. NICHOLS FOR THE APPRO- )  
VAL OF A CHANGE IN PLACE OF USE AND )  
POINT OF DIVERSION OF WATER FROM BON )  
MILLER CREEK, A TRIBUTARY OF BEAR CREEK.)  
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ORDER  
APPROVING APPLICATION

On May 27, 1958, Marion E. Nichols of 1550 Nevada Street, Ashland, 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 Bon Miller Creek pursuant to the provisions of ORS 540.510 to 540.530.

Certificate of water right issued to George C. Spencer and J. M. Spencer and recorded at page 1966, Volume 3, State Record of Water Right Certificates, confirms a right under Permit No. 1625 to the use of the waters of Bon Miller Creek for the irrigation of 5 acres in the SW $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 35, Township 38 South, Range 1 East, W. M., and 5 acres in the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 2, Township 39 South, Range 1 East, W. M., with a date of priority of April 19, 1913. These lands are irrigated through the Spencer ditch, the point of diversion of said ditch being located north 42 degrees east 1116 feet from the west quarter corner of Section 35, and being within the SW $\frac{1}{4}$  NW $\frac{1}{4}$ , said Section 35, Township 38 South, Range 1 East, W. M.

The applicant herein, owner of the lands above described, proposes to transfer the water right therefrom, without loss of priority, to 5 acres in the NW $\frac{1}{4}$  SW $\frac{1}{4}$  and 5 acres in the NW $\frac{1}{4}$  SW $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 35, Township 38 South, Range 1 East, W. M., and to irrigate said lands by means of a pumping plant, the point of diversion of said pumping plant to be located south 50 degrees east 550 feet from the west quarter corner of Section 35, and being within the NW $\frac{1}{4}$  SW $\frac{1}{4}$ , said Section 35, Township 38 South, Range 1 East, W. M.

Notice by publication as provided by ORS 540.520 was not given in connection with this application for the reason said section provides notice is not required on an application for a change in place of use of water only or an application for a change in point of diversion of water of less than one-fourth mile where there are no intervening diversions.

Mr. David C. Hendrix, Watermaster of District No. 15, has filed a statement 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 of water from Bon Miller Creek may be made without injury to existing rights, the application should be approved.

NOW, THEREFORE, it hereby is ORDERED that the proposed change in place of use of water from Bon Miller Creek be and the same is approved and that the water right hereinbefore described as appurtenant to 5 acres in the SW $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 35, Township 38 South, Range 1 East, W. M., and 5 acres in the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 2, Township 39 South, Range 1 East, W. M., with a date of priority of April 19, 1913, be severed therefrom and simultaneously and without loss of priority transferred to 5 acres in the NW $\frac{1}{4}$  SW $\frac{1}{4}$  and 5 acres in the NW $\frac{1}{4}$  SW $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 35, Township 38 South, Range 1 East, W. M.

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

From a point located north 42 degrees east 1116 feet from the west quarter corner of Section 35, and being within the SW $\frac{1}{4}$  NW $\frac{1}{4}$ , said Section 35, Township 38 South, Range 1 East, W. M.,

To a point to be located south 50 degrees east 550 feet from the west quarter corner of Section 35, and being within the NW $\frac{1}{4}$  SW $\frac{1}{4}$ , said Section 35, Township 38 South, Range 1 East, W. M.,

for the irrigation of 5 acres in the NW $\frac{1}{4}$  SW $\frac{1}{4}$  and 5 acres in the NW $\frac{1}{4}$  SW $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 35, Township 38 South, Range 1 East, W. M., with a date of priority of April 19, 1913, be and the same is approved.

It is FURTHER ORDERED that the construction work shall be completed and the change in place of use and point of diversion of water made on or before October 1, 1959 or within such extension of time as may be granted by the State Engineer for good cause shown.

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.

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

That the pumping plant and related 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 of Jackson County, Oregon, before the beginning of construction work and that the weir or measuring device be installed under the general supervision of said watermaster.

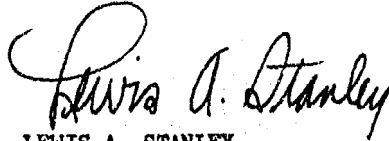
It is FURTHER ORDERED that certificate of water right heretofore issued to George C. Spencer and J. M. Spencer and recorded at page 1966, Volume 3, State Record of Water Right Certificates, which certificate covers the lands from which the water is being transferred, be and the same hereby is canceled, and that upon receipt of proof satisfactory to the State Engineer of application of water to beneficial use on the lands to which it is transferred herein, a certificate of water right shall be issued to Marion E. Nichols or his successor in interest, covering the lands involved in this proceeding,

to the extent to which the water has been applied beneficially.

Dated at Salem, Oregon this 5th day of June 1958.

Noted on Cert. #1966  
and App. #2893

Superseded by Cert. #26673  
which confirms this Order.



LEWIS A. STANLEY  
State Engineer