

Linn County

IN THE MATTER OF THE APPLICATION )  
 OF WALTER R. MILLER FOR THE APPROVAL )  
 OF A CHANGE IN PLACE OF USE AND POINT )  
 OF DIVERSION OF WATER FROM SMALLMAN )  
 CREEK )

ORDER APPROVING  
TRANSFER NO. 3516

On February 8, 1977, Walter R. Miller filed an application in the office of the Water Resources Director for the approval of a change in place of use and an additional point of diversion of water from Smallman Creek pursuant to the provisions of ORS 540.510 to 540.530.

Certificate of water right recorded at Page 36947, Volume 28, State Record of Water Right Certificates, in the name of Walter D. and Patricia R. Miller describes an existing right of record for the use of not to exceed 2.10 cubic feet per second from Smallman Creek for irrigation of 0.8 acre in SW $\frac{1}{4}$  NE $\frac{1}{4}$ , 3.3 acres in SE $\frac{1}{4}$  NE $\frac{1}{4}$ , 4.5 acres in NE $\frac{1}{4}$  SE $\frac{1}{4}$ , 2.7 acres in NW $\frac{1}{4}$  SE $\frac{1}{4}$ , 0.7 acre in SW $\frac{1}{4}$  SE $\frac{1}{4}$ , and 8.6 acres in SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 35; 17.4 acres in SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 36, Township 9 South, Range 2 West, W.M.; 5.8 acres in NE $\frac{1}{4}$  NW $\frac{1}{4}$ , 42.2 acres in NW $\frac{1}{4}$  NW $\frac{1}{4}$ , 29.5 acres in SW $\frac{1}{4}$  NW $\frac{1}{4}$ , 5.7 acres in SE $\frac{1}{4}$  NW $\frac{1}{4}$ , and 0.3 acre in NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 1; 32.7 acres in NE $\frac{1}{4}$  NE $\frac{1}{4}$ , and 9.1 acres in SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 2, Township 10 South, Range 2 West, W.M.; and supplemental irrigation of 0.6 acre in SW $\frac{1}{4}$  NE $\frac{1}{4}$ , 3.8 acres in SE $\frac{1}{4}$  NE $\frac{1}{4}$ , and 0.1 acre in NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 35, Township 9 South, Range 2 West, W.M., all with a date of priority of May 25, 1966.

Water for the said right is diverted at a point located 7.0 chains North and 9.5 chains East from the most Westerly Northwest corner of the McDonald DLC No. 61, being within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 35, Township 9 South, Range 2 West, W.M.

The applicant herein, owner of the lands above described, proposes to sever the right from a certain 5.8 acres in NE $\frac{1}{4}$  NW $\frac{1}{4}$ , 30.0 acres in NW $\frac{1}{4}$  NW $\frac{1}{4}$ , 29.5 acres in SW $\frac{1}{4}$  NW $\frac{1}{4}$ , 5.7 acres in SE $\frac{1}{4}$  NW $\frac{1}{4}$  and 0.3 acre in NW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 1; 4.4 acres in NE $\frac{1}{4}$  NE $\frac{1}{4}$  and 9.1 acres in SE $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 2, Township 10 South, Range 2 West, W.M., of the said lands and, without loss of priority, in lieu thereof irrigate a certain 2.6 acres in SW $\frac{1}{4}$  NE $\frac{1}{4}$ , 9.7 acres in SE $\frac{1}{4}$  NE $\frac{1}{4}$ , 23.2 acres in NE $\frac{1}{4}$  SE $\frac{1}{4}$ , 7.3 acres in NW $\frac{1}{4}$  SE $\frac{1}{4}$ , 10.8 acres in SW $\frac{1}{4}$  SE $\frac{1}{4}$  and 26.6 acres in SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 35; 2.3 acres in NW $\frac{1}{4}$  SW $\frac{1}{4}$  and 1.2 acres in SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 36, Township 9 South, Range 2 West, W.M.; 1.0 acre in NE $\frac{1}{4}$  NE $\frac{1}{4}$  and 0.1 acre in NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 2, Township 10 South, Range 2 West, W.M.

The applicant herein also proposes to establish an additional point of diversion from Smallman Creek at a point located 0.5 chains North and 0.6 chains East from the most Westerly Northwest corner of the McDonald DLC No. 61, being within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 35, Township 9 South, Range 2 West, W.M., for irrigation of all of the lands under the subject right, being irrigation of 3.4 acres in SW $\frac{1}{4}$  NE $\frac{1}{4}$ , 13.0 acres in SE $\frac{1}{4}$  NE $\frac{1}{4}$ , 27.7 acres in NE $\frac{1}{4}$  SE $\frac{1}{4}$ , 10.0 acres in NW $\frac{1}{4}$  SE $\frac{1}{4}$ , 11.5 acres in SW $\frac{1}{4}$  SE $\frac{1}{4}$  and 35.2 acres in SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 35; 2.3 acres in NW $\frac{1}{4}$  SW $\frac{1}{4}$ , and 18.6 acres in SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 36, Township 9 South, Range 2 West, W.M.; 12.2 acres in NW $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 1; and 29.3 acres in NE $\frac{1}{4}$  NE $\frac{1}{4}$  and 0.1 acre in NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 2, Township 10 South, Range 2 West, W.M.; and supplemental irrigation of 0.6 acre in SW $\frac{1}{4}$  NE $\frac{1}{4}$ , 3.8 acres in SE $\frac{1}{4}$  NE $\frac{1}{4}$  and 0.1 acre in NE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 35, Township 9 South, Range 2 West, W.M.

Mr. Keith Palmer, Watermaster, has filed a statement to the effect that the proposed changes in place of use and point of diversion may be made without injury to existing rights.

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

NOW, THEREFORE, it hereby is ORDERED that the requested change in place of use and additional point of diversion from Smallman Creek, described herein, without loss of priority, are approved.

It is FURTHER ORDERED that the quantity of water diverted at the new point of diversion, together with that diverted at the old point of diversion, shall not exceed the quantity of water available at the old point of diversion, and shall not exceed 2.10 cubic feet per second.

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:

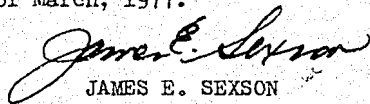
That the diversion works shall include an in line flow meter, a weir, or other suitable device for measuring the water to which the applicant is entitled;

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 the construction work shall be completed and the change in point of diversion of water made and said water so transferred applied to beneficial use on or before October 1, 1978.

It is FURTHER ORDERED that the certificate of water right heretofore issued to Walter D. and Patricia R. Miller and recorded at Page 36947, Volume 28, State Record of Water Right Certificates, is canceled, and upon proof satisfactory to the Water Resources Director of completion of works and beneficial use of water to the extent intended under the provisions of this order, a confirming certificate of water right shall be issued to the applicant herein.

Dated at Salem, Oregon, this 22nd day of March, 1977.

  
JAMES E. SEXSON  
Director