

IN THE MATTER OF THE APPLICATION )  
 OF THE UNITED STATES RECLAMATION )  
 SERVICE FOR A CHANGE IN PLACE OF )  
 USE AND POINT OF DIVERSION OF )  
 WATER FROM NORTH FORK OF MALHEUR )  
 RIVER, AND WARMSPRINGS CREEK, A )  
 TRIBUTARY THEREOF. )

O R D E R

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On the 28th day of June, 1954, the Bureau of Reclamation representing the United States of America filed an application with the State Engineer to change the place of use and the point of diversion of certain decreed water rights appurtenant to lands owned by the Pacific Livestock Company et al. The description of the lands and the points of diversion were definitely set out in the application and notice of filing said application was duly published as provided by Section 47-712 Oregon Code 1950.

Subsequently numerous protests were filed opposing the approval of the application, and the matter was set for hearing at Vale, Oregon, on the 8th day of November, 1954. By consent of the parties the date of hearing was set over until the 19th day of December, 1954, at which time the following appearances on behalf of the protestants were noted.

Robert D. Lytle, Attorney, for J. N. Jones, John A. Hoffman, A. F. Masterson, Deane Goodman, Roderick McArthur, Samuel Lloma, Louis P. Delsole, W. A. Robertson, Ralph J. Hunter, and the heirs and devisees of Adam Murray, deceased.

Robert M. Duncan, Attorney for Juntura Investment Company

Robert E. Lees, Attorney for J. F. Murphy

The bureau of reclamation was represented by E. E. Stoutemyer.

In settlement of the issues raised by the protest the following stipulation was entered into and filed at the time of hearing.

STIPULATION

It is hereby stipulated and agreed by and between the applicants and protestants represented by the attorneys signing this stipulation that the application for transfer of water rights shall be granted subject to the following conditions to be inserted in the order to be made and filed by the State Engineer.

Time Ext.  
 to 10-1-43,  
 89 2/24/44  
 8.192

That the applicant, United States of America and its successors in control of the Agency Reservoir will release and by-pass through the said reservoir each year for each of the protestants the full three acre feet per acre of water, at the point of diversion, decreed to the said protestants as the maximum amount of decreed rights provided for in the adjudication of the water rights of the Malheur River and its tributaries. The said water to be released for the protestants at the time when it would have been available out of the natural flow of the river if the Agency Reservoir had not been built and the rights decreed to the lands in the Agency Reservoir were used on the said lands on which such water rights are now being used.

IT IS FURTHER AGREED and shall be provided in the said order of the State Engineer that during the years when the said Agency Reservoir fails to fill to full capacity and there is surplus unused storage capacity available in the reservoir which can be used for the purpose of holding back water for the protestants, the protestants, represented by the attorneys signing this stipulation, shall have the privilege of having such part of their decreed three acre feet that they may desire, not exceeding 50% thereof, held back for their use in such surplus capacity in said reservoir, and delivered and turned out for their use at such times as they may desire not later than October 1st of that year, upon their giving at least three days advance notice of the time that they desire to have such water released for their use, subject to a deduction of 10%, which is agreed upon as an allowance to cover seepage and evaporation losses in holding the water back in the reservoir, and computed only as to the amount held in storage.

It is understood that this stipulation does not waive and does not include any of the rights to stock and domestic water provided for in the decree.

B. E. Stoutemyer  
Attorney for Applicants.

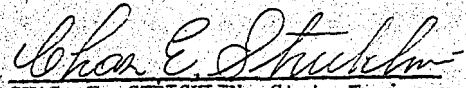
Robt. D. Lytle  
Attorney for Certain Protestants.

Robt. M. Duncan  
Attorney for Juntura Investment Co.

It appearing that the stipulation was signed by the attorneys for all the objectors other than J. F. Murphy and that the rights of said J. F. Murphy would not be disturbed or injured by the approval of the application hereunder consideration, IT IS ORDERED that said application be and the same is hereby approved, subject to the terms of said stipulation, and provided that the waters transferred shall be applied to the place of use within five

years from the date of this order or such further extension of time as may be allowed by the state engineer. Be it further provided that the applicant may apply the quantity of water transferred to a smaller area of land than contained within the district, but in no event shall the quantity of water per acre exceed the amount allowed by the court's decree entered in the determination of the relative rights to the use of the water of Malheur river and its tributaries.

Dated at Salem, Oregon, this 6th day of March, 1935.

  
CHAS. E. STRICKLIN, State Engineer.

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*Noted on Decree, Vol. 8 pages  
261, 300, 301, 309 and 313.  
and Cert's. Nos. 6866, 6989  
7008 and 7027.*