BEFORE THE STATE ENGINEER OF OREGON

Malheur County

IN THE MATTER OF APPLICATION NOS. R-33535 AND 33536 IN THE NAME OF JOHN STRINGER.

FINDINGS OF FACT, CONCLUSIONS AND ORDER

FINDINGS OF FACT

On January 12, 1960, John Stringer filed in the office of the State Engineer an application for a permit to construct a reservoir in Section 22, T. 20 S., R. 35 E., W.M., and store therein 1172 acre-feet of water from Stinking Water Creek for irrigation, and an application for a permit to appropriate 6 cubic feet per second of water from Stinking Water Creek and Stinking Water Reservoir for irrigation and supplemental irrigation of 482.7 acres of land in Sections 9, 16, 17 and 20, T. 22 S., R. 35 E., W.M. The applications were identified in the records of the State Engineer as Nos. R-33535 and 33536, respectively.

On March 17, 1960, a joint protest against the approval of these applications was filed by the Warmsprings Irrigation District and the Vale Oregon Irrigation District. In the protest it is alleged that the protestant districts are duly organized and existing under the laws of the State of Oregon for the purpose of providing irrigation water for about 18,000 acres of land in the Warmsprings Irrigation District and 32,000 acres of land in the Vale Oregon Irrigation District, and that in the course of providing said irrigation water, the districts are the owners and operators of the Warmsprings Reservoir with a right to store therein 190,000 acre-feet of water from Middle Fork of Malheur River, (sometimes called Upper Malheur River), as well as certain other rights from the Malheur River and its tributaries. It is further alleged that (1) the impounding of any water of the Middle Fork Malheur River and its

tributaries above the Warmsprings Reservoir, except on occasional years, would deprive the protestants of water to which they are entitled; (2) the water of the Malheur River and its tributaries above said Warmsprings Reservoir is appropriated, and the granting of further permits would be injurious to public welfare, and against the public policy; (3) that the purpose of the applicant is to store in his proposed reservoir the direct flow to which the lands included in the above described application may have a right and to store in said reservoir the flood waters of Stinking Water Creek before the prior rights of the protestants have been fulfilled.

After due notice given, a hearing was held by Chris L. Wheeler, assistant State Engineer, in the court house of Malheur County in Vale, Oregon, on December 21, 1960, beginning at 9:30 A.M. At the hearing, the applicant appeared represented by his attorney, William D. Cramer of Burns, Oregon, and the protestants, Warmsprings and Vale Oregon Irrigation Districts, appeared represented by their attorney, Robert D. Lytle of Vale, Oregon. At the beginning of said hearing, it was stipulated that any and all records on file in the office of the State Engineer pertaining to the respective rights of the protestant districts, the applicant or other users of the waters of the Malheur River and its tributaries, together with records of stream flow of said Malheur River and its tributaries, may be utilized in this proceeding, and are specifically included herein by reference.

Stinking Water Creek is a perennial stream rising in the low hills forming a portion of the watershed of the Upper Malheur River. It has a drainage area above the proposed reservoir of 29 1/2 square miles, composed principally of bare hills covered with grass and sage brush common to the range lands of the area.

There are no actual records of flow of Stinking Water Creek at the proposed dam site or at its confluence with the Malheur River in the northwest quarter of Section 27, T. 20 S., R. 35 E., W.M. Considerable testimony was presented to show the general character of the stream and the losses in the stream channel that occurred during periods of low flow. Clarence Young of Burns, Oregon, watermaster for the area for about 20 years, testified that he had never made any actual measurements or study of the stream; that it was his opinion, from general observation, that flows of Stinking Water Creek, after its junction with Little Stinking Water Creek about 2½ miles below the dam site, less than 25 cubic feet per second, would not reach the Malheur River; that Stinking Water Creek does contribute to the supply for storage in the Warmsprings Reservoir.

The rights of record in the office of the State Engineer in the name of either the Warmsprings Irrigation District or the United States Bureau of Reclamation for the Vale Oregon Irrigation District for the storage or use of the waters of the Middle Fork of the Malheur River are as follows:

A certificate of water right issued to the Warmsprings Irrigation District on April 13, 1921, and recorded on page 3279, State Record of Water Right Certificates, confirmed the right to store 200,000 acre-feet of the waters of the Middle Fork of the Malheur River under a date of priority of April 8, 1914 for irrigation purposes;

The accompanying secondary permit No. 4303, issued by the State Engineer, grants the right to appropriate 540 cubic feet per second from the Malheur River and Warmsprings Reservoir for domestic use and irrigation of 37,503 acres in the Warmsprings Irrigation District under a date of priority of February 14, 1916;

Under terms of a contract, one-half of the capacity in Warmsprings Reservoir was transferred to the United States Bureau of Reclamation,

and the right to the use of this stored water, for irrigation of 32,000 acres in the Vale Oregon Irrigation District under a date of priority of January 11, 1927, confirmed by certificate of water right issued on June 30, 1949 and recorded on page 15719, State Record of Water Right Certificates.

The following table of storage in Warmsprings Reservoir is taken from the records on file in the office of the State Engineer.

Year	Maximum storage acre-feet	Date maximum occurred	Minimum storage acre-feet	Date minimum occurred
1930	86,400	May 2	0	September 18-30
1931	34,140	April 27	26	September 30
1932	130,200	June 12	26	October 1-2
1933	130,300	June 18	62,460	October 12
1934	83,580	March 19	11	September 30
1935	53,850	May 5-6	0	August 16-Sept. 30
1936	91,500	May 8	0	October 11
1937	50,650	May 3	290	September 30
1938	194,300	May 19-21	290	October 1-2
1939	187,000	April 14	66,200	September 30
1940	193,800	April 22	65,460	October 5-10
1941	194,400	April 6	88,580	October 1-2
1942	196,000	April 7	102,300	September 30
1943*	191,600	May 5	97,260	October 19-21
1944	150,200	May 1	15,710	September 23-26
1945	153,700	June 12	18,820	October 1-12
1946	193,800	May 2-3	57,900	October 1-4
1947	145,300	April 17	11,400	September 30
1948	82,700	June 18	1,240	September 28
1949	99,310	May 5	70	September 28-30
1950	82,550	May 3	0	September 18-30
1951	121,400	April 26	0	October 1-11
1952	194,000	May 14	4,350	October 3
1953	194,900	May 1	89,380	October 15
1954	147,500	April 20	14,240	September 30
1955	53,480	May 10	20	September 17
1956	190,300	May 31	55	October 1
1957	194,900	April 13	75,790	September 30
1958	196,100	April 16 & May 13	74,050	October 8-10
1959	143,700	April 14-15	15,560	September 21
1960	132,400	April 22	13,580	September 30

*Note: In 1943 the capacity table was revised to show a maximum storage of 191,000 acre-feet at elevation 3406 m.s.l. in place of the 190,000 capacity previously used for the same elevation.

The attached table entitled "Net Inflow to Warmsprings Reservoir" was compiled from the records on file in the office of the State Engineer.

STATE ENGINEER
STATE OF OREGON

Sheet 1 of 3

LOCATION: Near Riverside, Oregon
SE¼ Section 8, T. 23 S., R. 37 E.

RECORD FROM: U.S.G.S. & State Engineer
DATE: 2/1/62
COMPILED BY: A. M. Petska

Net Inflow means the measured outflow for each month plus any increase in storage or minus any decrease in storage during that month.

RUNOFF OF Net Inflow To Warmsprings Reservoir UNIT 1,000 ac.ft. DRAINAGE AREA 1,100 SQ MILES.

Year	October	November	December	January	February	March	April	May	June	July	August	September	Total
1920-21	2.5	4.8	6.5	13.3	19.8	73.5	70.9	57.3	17.9	-3.7	-5.3	-3.1	254.4
1921-22	2.1	4.5	6.5	4.2	5.9	14.5	78.1	58.6	11.1	-5.4	-5.9	-0.7	173.5
1922-23	1.2	3.1	4.3	6.2	5.5	15.8	31.0	13.8	6.7	-0.5	-2.6	-0.1	84.4
1923-24	2.9	3.0	3.2	3.2	18.5	5.9	6.4	-0.3	-2.4	-2.5	-1.7	-0.3	35.9
1924-25	1.4	3.3	3.0	21.1	52.4	27.3	47.0	19.8	2.6	-2.5	-3.7	1.6	173.3
1925-26	1.5	2.9	3.9	3.3	22.6	21.6	20.8	1.9	-4.6	-2.0	-2.5	-2.6	66.8
1926-27	1.4	4.1	7.4	7.1	22.9	31.1	46.9	32.6	20.2	-1.5	-4.1	-0.7	167.4
1927-28	2.3	5.1	4.8	7.8	6.6	62.6	40.0	27.2	-1.0	-5.4	-1.3	-2.9	145.8
1928-29	1.8	3.7	3.0	3.4	3.6	16.1	14.6	8.8	3.8	-3.3	1.0	-0.4	56.1
1929-30	0.1	* 4.0	4.0	3.0	10.6	9.7	4.2	1.6	-0.2	-1.4	-1.1	-0.1	34.4
1930-31	1.3	2.5	2.3	3.0	4.2	9.7	11.5	2.2	0.2	-1.4	0.7	0.1	36.3
1931-32	1.1	2.0	2.7	2.9	3.4	42.9	46.8	28.6	2.2	-4.5	-2.7	-3.0	122.4
1932-33	0.2	2.9	2.6	2.9	3.0	10.1	28.5	21.9	10.1	-4.1	-1.3	-2.1	74.7
1933-34	0.5	2.8	3.8	5.2	4.3	3.6	0.9	-0.8	-1.8	-0.4	-1.0	0	17.1
1934-35	0.3	2.6	3.9	3.5	3.6	7.7	31.2	5.7	0.6	-2.1	-0.2	0	56.8
1935-36	0	2.7	2.4	3.6	10.8	22.7	46.7	13.3	0.2	-1.1	-1.3	-0.5	99.5
1936-37	0.4	2.2	2.6	1.9	2.9	10.0	24.3	10.3	2.9	-1.2	-1.3	0	55.0
1937-38	1.6	4.6	15.9	9.0	13.1	50.5	76.3	34.7	6.2	-1.9	-1.6	-2.1	206.3
1938-39	0.2	2.9	3.6	3.8	4.4	28.7	24.7	2.0	-2.1	-4.2	-2.5	-1.8	59.7
1939-40	0	1.6	3.2	4.8	30.2	51.9	48.7	8.0	-0.8	-3.6	-2.5	-0.3	141.2
Total													
No.Years													
Mean													
%-Yearly													

years that Warmsprings Reservoir filled and spilled, water was available that could have been stored by junior rights without injury to the rights

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STATE ENGINEER
STATE OF OREGON

LOCATION: Near Riverside, Oregon
SE¼ Section 8, T. 23 S., R. 37 E.

RECORD FROM: U.S.G.S. & State Engineer
DATE: 2/1/62
COMPILED BY: A. M. Petska

Net Inflow means the measured outflow for each month plus any increase in storage or minus any decrease in storage during that month.

RUNOFF OF Net Inflow To Warmsprings Reservoir UNIT 1,000 ac.ft. DRAINAGE AREA 1,100 SQ MILES.

Year	October	November	December	January	February	March	April	May	June	July	August	September	Total
1940-41	3.7	5.5	8.9	7.5	18.9	86.7	48.9	23.4	8.8	-1.0	-1.6	-0.1	209.6
1941-42	2.3	4.2	6.6	4.9	8.1	27.6	71.4	17.4	8.2	-3.1	-4.8	-1.8	141.0
1942-43	0.2	4.1	13.9	27.0	21.4	55.4	90.8	34.3	14.0	0.6	-4.8	-1.5	255.4
1943-44	1.4	4.3	3.9	3.4	6.8	15.5	16.6	2.3	4.4	-4.6	-4.3	-0.8	48.9
1944-45	0.5	3.9	3.6	12.3	31.0	23.3	32.4	35.8	11.5	-3.4	-4.3	-1.3	145.3
1945-46	2.0	4.0	9.4	8.6	9.6	50.3	54.0	22.6	4.6	-1.6	-3.3	-3.0	157.2
1946-47	2.4	4.8	7.1	3.7	23.4	17.0	19.6	7.3	3.1	-3.7	-3.7	-1.4	79.6
1947-48	1.7	3.5	4.3	7.7	8.8	8.5	28.7	31.0	21.3	-3.7	-1.6	-1.3	108.9
1948-49	3.4	4.3	4.3	1.3	20.7	29.3	43.2	23.2	0	-4.6	-3.2	-0.3	121.6
1949-50	2.3	3.9	3.3	3.6	8.2	24.3	39.8	14.8	7.3	-2.9	-1.8	-1.2	101.6
1950-51	3.4	4.6	8.4	6.4	33.2	27.7	52.5	14.0	0.5	-5.7	-4.5	-2.5	138.0
1951-52	2.6	3.6	7.2	3.6	10.1	61.7	143.1	42.1	8.0	-2.1	-3.5	-1.3	275.1
1952-53	0.8	2.6	3.8	31.3	18.4	17.7	46.9	35.1	27.8	-1.0	-2.4	-1.2	179.8
1953-54	1.9	4.6	5.5	8.0	12.0	18.1	26.0	8.4	5.2	-4.3	-2.4	-1.0	82.0
1954-55	1.1	3.6	3.5	3.8	4.4	6.2	12.7	17.6	2.6	-1.1	-1.2	0.3	53.5
1955-56	2.4	4.1	15.8	20.5	15.5	56.9	67.1	33.0	5.7	-3.3	-3.1	-3.3	211.3
1956-57	3.0	5.4	6.2	3.5	54.1	44.5	48.2	33.0	3.9	-5.0	-4.4	-3.5	188.9
1957-58	3.1	3.6	5.5	8.1	47.9	39.1	94.4	71.6	13.8	-2.5	-1.9	-1.7	281.0
1958-59	1.8	4.4	5.8	7.3	6.4	7.8	19.0	4.6	0.1	-5.3	-5.3	-0.5	46.1
1959-60	3.6	3.9	3.6	4.2	8.5	50.0	50.7	11.4	3.0	-3.5	-3.9	-1.3	130.2
Total													
no.Years													
Mean													
% Yearly													

years that Warmsprings Reservoir filled and spilled, water was available that could have been stored by junior rights without injury to the rights

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STATE OF OREGON

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RUNOFF OF Net Inflow To Warmsprings Reservoir UNIT 1,000 ac.ft. DRAINAGE AREA 1,100 SQ MILES.

Year	October	November	December	January	February	March	April	May	June	July	August	September	Total
1960-61	1.2	4.3	3.6	4.0	14.3	12.4	21.1	4.0	4.5	-3.6	-0.7	-0.8	64.3
Total no. Years	67.6	152.4	223.8	293.9	630.0	1195.9	1726.7	834.1	230.1	-118.1	-107.6	-48.5	5080.3
	41	41	41	41	41	41	41	41	41	41	41	41	41
Mean	1.65	3.72	5.46	7.17	15.36	29.17	42.11	20.34	5.61	-2.88	-2.62	-1.18	123.91
% Yearly	1.33	3.00	4.41	5.79	12.39	23.54	33.98	16.41	4.53	-2.32	-2.11	-0.95	100.00

* Estimated

years that Warmsprings Reservoir filled and spilled, water was available that could have been stored by junior rights without injury to the rights

CONCLUSIONS

The proposed development of John Stringer contemplates the appropriation of direct flow and stored water for irrigation of 242.2 acres of new land and the use of stored water for supplemental irrigation of 240.5 acres. Neither the applicant nor protestant questioned the limited quantity of direct flow available for appropriation or its control by the watermaster. The main point in dispute is the storage of seasonal run-off and its effect on prior storage rights.

The evidence presented or available is not sufficient to show how much water Stinking Water Creek above the proposed reservoir will yield on an average annual basis or what per cent of this total yield is utilized by existing rights, lost by evaporation or lost by seepage into the bed and banks of the stream, nor does the evidence disclose what per cent of the run-off that seeps into the stream bed or banks passes into a ground water reservoir or the portion which makes up the underflow of Stinking Water Creek and returns to the stream to form a part of the waters available for storage in the downstream Warmsprings Reservoir. It is clear that Stinking Water Creek does contribute to the water supply of Warmsprings Reservoir, and that the water which seeps into the bed and banks of the stream during periods of low flow may minimize the seepage losses that would otherwise occur during the period of surface run-off.

The records disclose that the Warmsprings Reservoir has filled and spilled four times in the ten-year period 1951 to and including 1960, and that it has filled and spilled 10 times in the 31-year period 1930 to 1960. The tabulated maximum storage in excess of 191,000 is surcharge storage with uncontrolled discharge over the top of the flashboards. During the years that Warmsprings Reservoir filled and spilled, water was available that could have been stored by junior rights without injury to the rights

of the protestants herein. There is no way of determining when or in what years that the water supply will exceed the rights of the Warmsprings District; however, it is safe to assume that such years will occur. There is substantial question whether or not the supply will be sufficient to make the construction of the proposed reservoir an economical project. The economic feasibility is not within the jurisdiction of the State Engineer, and can be properly determined only by the applicant who must pay for the construction.

It is in the public interest that all of the available water supply be put to the maximum possible beneficial use.

Since there are some years that the water supply of Upper Malheur River and its tributaries exceeds the requirements of the existing rights, it would appear that the applications should be approved, subject to the specific conditions set forth in the following order.

ORDER

NOW, THEREFORE, it is hereby ORDERED that applications Nos. R-33535 and 33536 shall be approved and permits issued subject to the following conditions:

(1) The applicant shall construct and maintain gaging stations with water stage recorders at locations to be determined on the reservoir and on Stinking Water Creek below the reservoir satisfactory to the State Engineer.

(2) No water shall be stored in the proposed reservoir during any year until it is authorized in writing by the watermaster. Such authorization shall be given only after a study is made and a determination by the watermaster that it is probable that Warmsprings Reservoir will fill.

(3) In the event that water is stored pursuant to appropriate authorization by the watermaster and subsequent run-off fails to fulfill

the prior rights of the downstream water users, upon order of the watermaster, the gates of the proposed Stinking Water Creek Reservoir shall be opened immediately and the water stored during the preceding period of authorization released.

(4) The outlet conduit shall be so constructed as to discharge a minimum of 50 second-feet under a 25-foot head.

Dated at Salem, Oregon, this 15th day of February, 1962.

Lewis A. Stanley

LEWIS A. STANLEY
State Engineer