

BEFORE THE STATE ENGINEER OF OREGON

Polk County

IN THE MATTER OF THE APPLICATION)
OF RALPH AND OPAL KESTER FOR THE)
APPROVAL OF A CHANGE IN POINT OF)
DIVERSION OF WATER FROM BERRY)
CREEK)

ORDER APPROVING
TRANSFER NO. 2454

On September 28, 1970, Ralph and Opal Kester filed an application in the office of the State Engineer for the approval of a change in point of diversion of water from Berry Creek, pursuant to the provisions of ORS 540.510 to 540.530.

Certificate of water right issued to Ralph Kester and recorded at page 24194, Volume 17, State Record of Water Right Certificates, confirms a right to the use of not to exceed 0.13 cubic foot per second of water from Berry Creek for the irrigation of 10.9 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 2, Township 10 South, Range 5 West, W.M., with a date of priority of July 28, 1948. These lands are irrigated from a point of diversion located 550 feet south and 100 feet east from the W $\frac{1}{2}$ corner of Section 2 being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, Township 10 South, Range 5 West, W.M.

The applicants herein, owners of the lands above described, propose to irrigate these lands from a point of diversion to be located 915 feet south and 189 feet west from the E $\frac{1}{2}$ corner of Section 3 being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, Township 10 South, Range 5 West, 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 point of diversion of water of less than one-fourth mile where there are no intervening diversions.

Mr. Vestal R. Garner, Watermaster of District No. 2, has filed a report to the effect that the proposed change in point of diversion may be made without injury to existing rights.

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

NOW, THEREFORE, it hereby is ORDERED that the proposed change in point of diversion of water from Berry Creek, to-wit:

From a point located 550 feet south and 100 feet east from the W $\frac{1}{4}$ corner of Section 2 being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 2, Township 10 South, Range 5 West, W.M.

To a point to be located 915 feet south and 189 feet west from the E $\frac{1}{4}$ corner of Section 3 being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 3, Township 10 South, Range 5 West, W.M.

for the irrigation of 10.9 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 2, Township 10 South, Range 5 West, W.M., with a date of priority of July 28, 1948, is approved.

It is FURTHER ORDERED that the construction work shall be completed and the change in point of diversion of water made on or before October 1, 1971.

It is FURTHER ORDERED that the quantity of water diverted at the new point of diversion shall not exceed the quantity of water available at the old point of diversion and shall not exceed 0.13 cubic foot per second.

It is FURTHER ORDERED that the following provisions 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 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 certificate of water right heretofore issued to Ralph Kester and recorded at page 24194, Volume 17, State Record of Water Right Certificates, is canceled and upon receipt of proof satisfactory to the State Engineer of completion of the authorized change in point of diversion, a certificate of water right shall be issued to Ralph and Opal Kester confirming the change in point of diversion.

Dated at Salem, Oregon, this 10th day of March, 1971.


CHRIS L. WHEELER
State Engineer d