

BEFORE THE STATE ENGINEER OF OREGON

Malheur County

IN THE MATTER OF THE APPLICATION)
OF G. L. AND THELMA DAHLE FOR THE)
APPROVAL OF A CHANGE IN POINT OF)
DIVERSION AND PLACE OF USE OF WATER)
FROM BULLY CREEK AND AN ADDITIONAL)
POINT OF DIVERSION OF WATER FROM)
CLOVER CREEK)

ORDER APPROVING
TRANSFER NO. D-118

On January 28, 1966, water right transfer application numbered D-118 was filed in the name of G. L. and Thelma Dahle for the approval of an additional point of diversion of water from Clover Creek and a change in point of diversion and place of use of water from Bully Creek, pursuant to the provisions of ORS 540.510 to 540.530.

On February 28, 1966, a protest by Grady Romans, Martha Romans and Grady Romans and Son, on grounds that allowance of the proposed transfer would injure the protestants existing water rights, was filed in the office of the State Engineer. On April 4, 1966, a protest in the name of Val Dice on grounds that allowance of the proposed transfer would injure his existing water right, was filed in the office of the State Engineer, also on April 4, 1966, a protest in the name of James Corrigan, on the grounds that allowance of the proposed transfer would injure his existing rights, was filed in the office of the State Engineer.

Transfer Application No. D-118 and the protests against approval of it was brought to a hearing before James W. Carver, Jr., Deputy State Engineer, at the Malheur County Courthouse in Vale, Oregon, on April 14, 1966. In a pre-hearing conference held immediately before commencement of the hearing, it was determined that the issues of concern to the protestants are confined to that part of the transfer application which proposes the use of additional points of diversion from Clover Creek for those rights described in

paragraphs 6 and 7.

At the hearing, protestants James Corrigan, Val Dice and Grady Romans appeared and were represented by counsel, Mr. W. F. Schroeder, Attorney at Law of Vale, Oregon. The applicant, Mr. Gilbert L. Dahle, appeared without counsel. In the course of the hearing it became apparent that the issues might be resolved by stipulation between parties. Therefore, the hearing was recessed for the purpose of developing a possible stipulation.

After the recess the hearing was reconvened and a stipulation signed by protestants James W. Corrigan, Grady Romans and Val Gene Dice, and by the applicant Gilbert L. Dahle, on April 14, 1966, at Vale, Oregon, was submitted and read into the record. There being no further testimony or evidence to be presented, the hearing was adjourned.

By Decree of the Circuit Court of Malheur County, entered May 13, 1925, In the Matter of the Determination of the Relative Rights to the Use of the Waters of Malheur River and its Tributaries, water rights were established in the name of Warren Jordan for the irrigation of 40.0 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$, and 37.0 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, with a date of priority of 1886, and 16.0 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$, with a date of priority of 1898, all being within Section 21, Township 18 South, Range 41 East, W.M., confirmed by certificate recorded at page 6950, Volume 7, State Record of Water Right Certificates; in the name of Ben F. Jordan for the irrigation of, among other lands, 40.0 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$, 40.0 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$, and 40.0 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 22, and 5.0 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 27, Township 18 South, Range 41 East, W.M., with a date of priority of 1886, confirmed by certificate recorded at page 6948, Volume 7, State Record of Water Right Certificates; and in the name of Pacific Livestock Company for the irrigation of, among other lands, 7.5 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, 40.0 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, 40.0 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, 22.0 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, 40.0 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, 7.5 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, and 20.0 acres

in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 22, Township 18 South, Range 41 East, W.M., with a date of priority of 1884, confirmed by certificate recorded at page 6989, Volume 7, State Record of Water Right Certificates. These lands are all irrigated from a point of diversion located 95 feet north and 2870 feet east from the W $\frac{1}{4}$ corner of Section 16, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 16, Township 18 South, Range 41 East, W.M.

The applicant herein, owner of the lands above described, proposes to establish additional points of diversion to be located: a) south 89° 20' east, 1157 feet from the N $\frac{1}{4}$ corner of Section 21, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, and b) south 1° 09' east, 2579 feet from the E $\frac{1}{4}$ corner of Section 21, being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22, both points being within Township 18 South, Range 41 East, W.M.

In the same proceedings, a water right was established in the name of Emma Zimmerman for the irrigation of 30.0 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, and 29.5 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 30, Township 18 South, Range 42 East, W.M., with a date of priority of 1883, confirmed by certificate recorded at page 7054, Volume 7, State Record of Water Right Certificates. These lands are irrigated through the Osborn Ditch, the point of diversion being located 650 feet south and 1900 feet west from the E $\frac{1}{4}$ corner of Section 26, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 26, Township 18 South, Range 41 East, W.M.

Certificate of water right issued to John Zimmerman and recorded at page 960, Volume 2, State Record of Water Right Certificates, confirms a right to the use of the waters of Bully Creek for the irrigation of 7.0 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$, and 7.0 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 25, Township 18 South, Range 41 East, W.M., with a date of priority of February 7, 1912. These lands are irrigated through the Reeves Ditch, the point of diversion being located 70 feet south and 350 feet east from the NW corner of Section 27, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, Township 18 South, Range 41 East, W.M.

In the Malheur River adjudication proceedings, a water right was established in the name of John Zimmerman for the irrigation of, among other lands, 18.0 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 26, Township 18 South, Range 41 East, W.M., with a date of priority of 1876, irrigated from a point of diversion located 70 feet south and 350 feet east from the NW corner of Section 27, being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, Township 18 South, Range 41 East, W.M.; 19.5 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$, 15.0 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, 3.5 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, and 11.0 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 25, Township 18 South, Range 41 East, W.M., with a date of priority of 1883, confirmed by certificate recorded at page 7055, Volume 7, State Record of Water Right Certificates, these lands being irrigated from a point of diversion located 650 feet south and 1900 feet west from the E $\frac{1}{4}$ corner of Section 26, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 26, Township 18 South, Range 41 East, W.M.

The applicant herein proposes to transfer the water right from the irrigation of 18.0 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 26, with a date of priority of 1876, 3.5 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, and 11.0 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 25, Township 18 South, Range 41 East, W.M., with a date of priority of 1883, as confirmed by certificate recorded at page 7055, without loss of priority, to 18.0 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$, and 14.5 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 25, Township 18 South, Range 41 East, W.M., and to irrigate these lands together with 7.0 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$, and 7.0 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 25, with a date of priority of February 7, 1912, as confirmed by certificate recorded at page 960; 19.5 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$, and 15.0 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 25, Township 18 South, Range 41 East, W.M., with a date of priority of 1883, as confirmed by certificate recorded at page 7055; and 30.0 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, and 29.5 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 30, Township 18 South, Range 42 East, W.M., as confirmed by certificate recorded at page 7054, with a date of priority of 1883,

from a point of diversion to be located north 16° 27' west, 693 feet from the E $\frac{1}{4}$ corner of Section 25, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 25, Township 18 South, Range 41 East, W.M.

Notice of the filing of the application was given by publication setting forth a time and place certain for hearing objections to the proposed additional point of diversion and change in place of use and point of diversion of water, if any there were, namely: at the county courthouse in Vale, Oregon, on April 12, 1966, at 9:30 a.m. The notice was published in the Malheur Enterprise, a newspaper printed and having general circulation in Malheur County, Oregon for a period of three weeks in the issues of February 16, 23, and March 2, 1966. The date set for hearing in said notice was not less than thirty days after the last publication of the notice.

Mr. Frank Elfering, Watermaster of District No. 9, has filed a report to the effect that the proposed changes may be made without injury to existing rights.

NOW, THEREFORE, it hereby is ORDERED that the change in place of use of water is approved and the water right hereinbefore described as appurtenant to 18.0 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 26, with a date of priority of 1876, and 3.5 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, and 11.0 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 25, Township 18 South, Range 41 East, W.M., with a date of priority of 1883, be severed therefrom and simultaneously and without loss of priority transferred to 18.0 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$, with a date of priority of 1876, and 14.5 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$, with a date of priority of 1883, Section 25, Township 18 South, Range 41 East, W.M.

It is FURTHER ORDERED that the applicant may maintain the following point of diversion from Clover Creek:

95 feet north and 2870 feet east from the W $\frac{1}{4}$ corner of Section 16, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 16, Township 18 South, Range 41 East, W.M.

and may establish and maintain the additional points of diversion to be located as follows:

South 89° 20' east, 1157 feet from the NW¹/₄ corner of Section 21, being within the NW¹/₄ NE¹/₄ of Section 21, and

South 1° 09' east, 2579 feet from the E¹/₄ corner of Section 21, being within the SW¹/₄ SW¹/₄ of Section 22, Township 18 South, Range 41 East, W.M.

for the irrigation of 40.0 acres in NE¹/₄ NE¹/₄, and 37.0 acres in SE¹/₄ NE¹/₄, Section 21; 40.0 acres in the NW¹/₄ SW¹/₄, 40.0 acres in the SW¹/₄ SW¹/₄, and 40.0 acres in the SE¹/₄ SW¹/₄, Section 22; and 5.0 acres in the NW¹/₄ NW¹/₄, Section 27, with a date of priority of 1886; 7.5 acres in NE¹/₄ NW¹/₄, 40.0 acres in NW¹/₄ NW¹/₄, 40.0 acres in SW¹/₄ NW¹/₄, 22.0 acres in SE¹/₄ NW¹/₄, 40.0 acres in NE¹/₄ SW¹/₄, 7.5 acres in NW¹/₄ SE¹/₄, 20.0 acres in SW¹/₄ SE¹/₄, Section 22, Township 18 South, Range 41 East, W.M., with a date of priority of 1884; and 16.0 acres in NW¹/₄ NE¹/₄, Section 21, Township 18 South, Range 41 East, W.M., with a date of priority of 1898.

It is FURTHER ORDERED that the proposed change in points of diversion of water from Bully Creek, to-wit:

From a point located 70 feet south and 350 feet east from the NW corner of Section 27, being within the NW¹/₄ NW¹/₄ of Section 27, and

From a point located 650 feet south and 1900 feet west from the E¹/₄ corner of Section 26, being within the NW¹/₄ SE¹/₄ of Section 26, Township 18 South, Range 41 East, W.M.

To a point to be located north 16° 27' west, 693 feet from the E¹/₄ corner of Section 25, being within the SE¹/₄ NE¹/₄ of Section 25, Township 18 South, Range 41 East, W.M.

for the irrigation of 7.0 acres in NE¹/₄ NE¹/₄, and 7.0 acres in NW¹/₄ NE¹/₄, Section 25, with a date of priority of February 7, 1912; 19.5 acres in SW¹/₄ NE¹/₄, 15.0 acres in SE¹/₄ NE¹/₄, Section 25, Township 18 South, Range 41 East, W.M., with a date of priority of 1883; and 30.0 acres in SW¹/₄ NW¹/₄, and 29.5 acres in SE¹/₄ NW¹/₄,

Section 30, Township 18 South, Range 42 East, W.M., with a date of priority of 1883; 18.0 acres in NE¹/₄ NE¹/₄, Section 25, with a date of priority of 1876; and 14.5 acres in the NW¹/₄ NE¹/₄, Section 25, Township 18 South, Range 41 East, W.M., with a date of priority of 1883, is approved.

It is FURTHER ORDERED that said water so transferred shall be applied to beneficial use and the changes in points of diversion made on or before October 1, 1967.

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 points of diversion.

It is FURTHER ORDERED that the following provisions shall be carried out prior to the diverting of water at the new point of diversion as herein confirmed:

That the diversion 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 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 Pacific Livestock Company and recorded at page 6989, Volume 7, State Record of Water Right Certificates, is canceled, and in lieu thereof, a certificate shall be issued covering the balance of the lands not involved in this proceeding and confirming prior changes, and upon receipt of proof satisfactory to the State Engineer of completion of the authorized additional point of diversion, certificate of water right shall be issued to G. L. and Thelma Dahle confirming the authorized point of diversion.

It is FURTHER ORDERED that certificate of water right heretofore issued to Steve Woodward, Successor in interest to Warren Jordan, and recorded at page 6950, Volume 7, State Record of Water Right Certificates, is canceled,

and upon receipt of proof satisfactory to the State Engineer of completion of the authorized additional point of diversion, a certificate of water right shall be issued to G. L. and Thelma Dahle confirming the additional point of diversion of water.

It is FURTHER ORDERED that certificate of water right heretofore issued to Dan Jordan, Successor in interest to Ben F. Jordan, and recorded at page 6948, Volume 7, State Record of Water Right Certificates, is canceled, and upon receipt of proof satisfactory to the State Engineer of completion of the authorized additional point of diversion, a certificate of water right shall be issued to G. L. and Thelma Dahle confirming the additional point of diversion and covering the balance of the lands not involved in this proceeding.

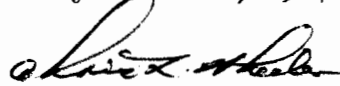
It is FURTHER ORDERED that certificate of water right heretofore issued to Emma Zimmerman and recorded at page 7054, Volume 7, State Record of Water Right Certificates, is canceled, and upon receipt of proof satisfactory to the State Engineer of completion of the authorized change in point of diversion, a certificate of water right shall be issued to G. L. and Thelma Dahle confirming said change in point of diversion.

It is FURTHER ORDERED that certificate of water right heretofore issued to John Zimmerman and recorded at page 960, Volume 2, 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 G. L. and Thelma Dahle confirming said change in point of diversion of water.

It is FURTHER ORDERED that certificate of water right heretofore issued to John Zimmerman and recorded at page 7055, Volume 7, 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 and place of use of water, a certificate of water right shall be

issued to G. L. and Thelma Dahle confirming the change in point of diversion and the extent to which the water has been applied beneficially, and covering the balance of the lands not involved in this proceeding.

Dated at Salem, Oregon, this 9th day of March, 1967.



CHRIS L. WHEELER
State Engineer