

BEFORE THE STATE ENGINEER OF OREGON

Deschutes County

IN THE MATTER OF THE APPLICATION)
OF THE OREGON STATE HIGHWAY COM-)
MISSION FOR THE APPROVAL OF A)
CHANGE IN POINT OF DIVERSION,)
USE AND PLACE OF USE OF WATER)
FROM THE DESCHUTES RIVER.)
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O R D E R
APPROVING APPLICATION

On December 10, 1959, Oregon State Highway Commission filed an application in the office of the State Engineer for the approval of a change in use, place of use and point of diversion of water from the Deschutes River pursuant to the provisions of ORS 540.510 to 540.530.

On July 28, 1953, the State Engineer entered an order approving an application of the Oregon State Highway Commission for a change in use, place of use and point of diversion of water wherein the right to the use of water from Deschutes River, through the Swalley canal, for the irrigation of 25.5 acres with a date of priority of September 1, 1899, was transferred to Lots 7, 8 and 9, Norwood, First Addition, within the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 20, Township 17 South, Range 12 East, W. M., for use in the maintenance of state highway shop, including domestic, irrigation of lawn and shrubs, fire protection, car and machinery cleaning, and all other uses incidental to the maintenance of said shop. The quantity of water for these purposes was limited to 0.31 cubic foot per second from April 1 to May 1, 0.41 cubic foot per second from May 1 to May 15, 0.76 cubic foot per second from May 15 to September 15, 0.41 cubic foot per second from September 15 to October 1, and 0.31 cubic foot per second from October 1 to November 1, for a total of 244.3 acre feet during said period. Subsequently, the Watermaster of Deschutes County found that the water had been used beneficially.

The applicant herein, owner of the land above described, proposes to transfer a part of the water therefrom, namely: 0.14 cubic foot per second from April 1 to May 1, 0.19 cubic foot per second from May 1 to May 15, 0.34 cubic foot per second from May 15 to September 15, 0.19 cubic foot per second

from September 15 to October 1, and 0.14 cubic foot per second from October 1 to November 1, for a total of 110.2 acre feet during said period, without loss of priority, to the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 6, Township 17 South, Range 12 East, W. M., for use in the maintenance of the Tumalo State Park, including domestic, irrigation of 9.8 acres, cooking buildings, showers, fire protection, and all other uses incidental to the operation and maintenance of said park, and to divert the water for said uses directly from Deschutes River at a point to be located North 27 degrees 1' East 678 feet from the Southwest corner of NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 6, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$, said Section 6, Township 17 South, Range 12 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 change in use, place of use and point of diversion of water, if any there were, namely: at the county courthouse in Bend, Oregon, on March 29, 1960, beginning at 9:00 o'clock a. m. The notice was published in the Bend Bulletin, a newspaper printed and having general circulation in Deschutes County, Oregon, for a period of three weeks in the issues of February 2, 9 and 16, 1960. The date set for hearing in said notice was not less than thirty days after the last publication of the notice.

On March 18, 1960, the State Engineer received objections to the proposed change in use, place of use and point of diversion from the Deschutes Reclamation and Irrigation Company.

Subsequently on April 8, 1960, the Central Oregon Irrigation District filed Motion to Intervene and Objections to the allowance of the application of the Oregon State Highway Commission. On the same date, the State Engineer entered an order granting permission to said district to intervene as a party protestant.

A hearing was held before the State Engineer beginning at 10:00 o'clock a. m., on April 19, 1960, in the county court room of the courthouse at Bend, Oregon, at which hearing the applicant was represented by Ted E. Barbera, Staff Attorney for the Oregon State Highway Commission, Alvin J. Gray, Attorney for

objector, Deschutes Reclamation and Irrigation Company, and George H. Brewster, attorney for intervenor, Central Oregon Irrigation District.

After hearing the arguments of the respective attorneys, it appeared that the difference between the parties could be settled and the State Engineer thereupon adjourned said hearing, reserving his ruling until such time as he was notified that the parties hereto had resolved their differences. George H. Brewster withdrew the objections of the intervenor subject to the applicant agreeing to pay the annual operation and maintenance charges.

On June 13, 1960, a stipulation was filed in settlement of the issues involved, said stipulation, omitting the title, reading as follows:

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys duly authorized, as follows:

1. That pursuant to the provisions of ORS 540.530, a hearing of the application of the Oregon State Highway Commission for the approval of a change in use, place of use and point of diversion of water from the Deschutes River, was held in the Deschutes County Courthouse at Bend, Oregon, at 9:00 a. m., Tuesday, April 19, 1960.

2. That after hearing the arguments of the applicant, Oregon State Highway Commission; the objector, Deschutes Reclamation and Irrigation Company; and the intervenor, Central Oregon Irrigation District; the State Engineer adjourned said hearing, reserving his ruling until such time as he should be notified that the parties hereto had resolved their differences.

3. That notice is hereby given to said State Engineer that the differences of the parties hereto will be and hereby are resolved in the following manner and under the following conditions:

a. The Oregon State Highway Commission agrees to acquire and maintain the requisite shares of stock of the Deschutes Reclamation and Irrigation Company including a sufficient number of shares of stock to cover the water involved in this proceeding, and to pay assessments levied against said stock, land or water for operation and maintenance charges, and to otherwise abide by the by-laws of said company.

b. In consideration of the above, the Deschutes Reclamation and Irrigation Company agrees to withdraw its objections to the aforesaid application, and hereby joins with the Oregon State Highway Commission in its application for a change in use, place of use and point of diversion of water from the Deschutes River.

4. It is understood that said company, through its Board of Directors, considers said application for a change in place of use and point of diversion to be distinguishable and extraordinary in nature in that it is of special interest and benefit to the public and to

the local area and therefore withdraws its objections to said transfer and join in said application.

5. It is further stipulated that this controversy shall be and the same is hereby submitted for the ruling of the State Engineer, who is requested to enter an order approving the aforesaid application, without further proceedings.

It appearing that the issues raised by the objector and the intervenor have been settled by stipulation, and that the proposed change in use, place of use and point of diversion of water from Deschutes River may be made without injury to existing rights, the application should be approved.

NOW, THEREFORE, it hereby is ORDERED that the proposed change in use and place of use of water from Deschutes River be and the same is approved and that the water right hereinbefore described as appurtenant to Lots 7, 8 and 9, Norwood, First Addition, within the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 20, Township 17 South, Range 12 East, W. M., for use in the maintenance of state highway shop, including domestic, irrigation of lawn and shrubs, fire protection, car and machinery cleaning, and all other uses incidental to the maintenance of said shop, with a date of priority of September 1, 1899, be severed therefrom and simultaneously and without loss of priority transferred to the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 6, Township 17 South, Range 12 East, W. M., for use in the maintenance of the Tumalo State Park, including domestic, irrigation of 9.8 acres, cooking buildings, showers, fire protection, and all other uses incidental to the operation and maintenance of said park.

It is FURTHER ORDERED that the proposed change in point of diversion of water from Deschutes River, to-wit:

From a point located North 36 degrees 45' West 1056 feet from the East quarter corner of Section 29, being within the SE $\frac{1}{4}$ NE $\frac{1}{4}$, said Section 29, Township 17 South, Range 12 East, W. M.,

To a point to be located North 27 degrees 1' East 678 feet from the Southwest corner of NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 6, being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$, said Section 6, Township 17 South, Range 12 East, W. M.,

for use in the maintenance of Tumalo State Park, including domestic, irrigation of 9.8 acres, cooking, buildings, showers, fire protection, and all other uses incidental to the operation and maintenance of said park, with a date of priority of September 1, 1899, be and the same is approved.

It is FURTHER ORDERED that the quantity of water to be diverted for the maintenance of the Tumalo State Park, including domestic, irrigation of 9.8 acres, cooking, buildings, showers, fire protection, and all other uses incidental to the operation and maintenance of said park, shall be limited to 0.14 cubic foot per second from April 1 to May 1, 0.19 cubic foot per second from May 1 to May 15, 0.34 cubic foot per second from May 15 to September 15, 0.19 cubic foot per second from September 15 to October 1, and 0.14 cubic foot per second from October 1 to November 1, for a total of 110.2 acre feet during said period.

It is FURTHER ORDERED that the water so transferred shall be applied to beneficial use by the Oregon State Highway Commission on or before October 1, 1962, or within such extension of time as may be granted by the State Engineer for good cause shown.

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.

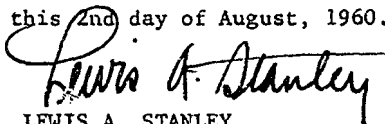
That the pumping plant and related works shall include a weir or other suitable device for measuring the water to which the applicant is entitled.

That the plans of the weir or other suitable device be approved by the watermaster of Deschutes County, Oregon, 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 upon receipt of proof satisfactory to the State Engineer of application of water to beneficial use in the maintenance of the Tumalo State Park, including domestic, irrigation of 9.8 acres, cooking, buildings, showers, fire protection, and all other uses incidental to the operation and maintenance of said park, a certificate of water right shall be issued to the Oregon State Highway Commission to the extent to which the water has been used beneficially.

Dated at Salem, Oregon, this 2nd day of August, 1960.

Notations made on records.


LEWIS A. STANLEY
State Engineer

Trsf. # 0-28