

BEFORE THE STATE ENGINEER OF OREGON

Josephine County

IN THE MATTER OF THE APPLICATION)
OF ERNEST A. KINKLE FOR THE APPRO-)
VAL OF A CHANGE IN POINT OF DIVER-)
SION OF WATER FROM WILLIAMS CREEK.)

O R D E R
APPROVING APPLICATION

On June 16, 1958, Ernest A. Kinkle of Route 4, Box 361, Grants Pass, Oregon, filed an application in the office of the State Engineer for the approval of a change in point of diversion of water from Williams Creek pursuant to the provisions of ORS 540.510 to 540.530.

By decree of the circuit court for Jackson County, Oregon, in the matter of the determination of the relative rights to the waters of Rogue River and its tributaries, entered April 26, 1919, a water right was established in the name of Minerva Topping for the irrigation of 33 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 35, Township 37 South, Range 5 West, W. M., from Williams Creek with a date of priority of 1858. These lands are irrigated through the Watts and Topping ditch, the point of diversion of said ditch being located 460 feet north and 90 feet east from the southwest corner of Section 12, and being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$, said Section 12, Township 38 South, Range 5 West, W. M.

The applicant herein, owner of 5 acres of the land above described, proposes to irrigate said 5 acres through the Laurel Hill ditch, the water to be diverted into said ditch from Williams Creek at the confluence of Williams Creek and Laurel Hill ditch within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, said Section 1, Township 38 South, Range 5 West, 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 point of diversion of water, if any there were, namely: at the county

courthouse in Grants Pass, Oregon, on August 19, 1958, beginning at 9:30 o'clock a.m. The notice was published in the Grants Pass Daily Courier, a newspaper printed and having general circulation in Josephine County, Oregon, for a period of three weeks in the issues of June 26 and July 3 and 10, 1958. The date set for hearing in the notice was not less than thirty days after the last publication of said notice.

On August 7, 1958, Ralph Planalp, Wallace D. Palmer and Vernon A. Richardson, through their attorneys, Johnson and Telfer, filed protests against the approval of the application.

Prior to the date set for hearing in this matter, negotiations were begun to settle said matter by stipulation, and the hearing was not held.

On December 30, 1958, a stipulation was entered into by Ernest A. Kinkle, applicant, and Ralph Planalp, Wallace D. Palmer and Vernon A. Richardson, protestants, which stipulation was filed in the office of the State Engineer. Omitting the title and heading, the stipulation reads as follows:

WHEREAS Ernest A. Kinkle, also known as E. A. Kinkle, is the owner of certain water rights being 0.55 second feet for the irrigation of certain lands in the Southeast Quarter of the Southwest Quarter of Section 35, Township 37 South, Range 5 West of the Willamette Meridian in Josephine County, Oregon, with the point of diversion for said right being the Watts and Topping Ditch for the removal of said water from Williams Creek and which said water right has a relative priority of 1858.

AND WHEREAS the said Ernest A. Kinkle has made application to the State Engineer of Oregon for the right to change the point of diversion of said water right from the Watts and Topping Ditch to the Laurel Hill Ditch, and the oldest relative priority on the Laurel Hill Ditch is 1892.

AND WHEREAS objections have been filed to the said application by Ralph Planalp, Wallace D. Palmer and Vernon A. Richardson to the change of the point of diversion as aforesaid.

AND WHEREAS the parties hereto have agreed between themselves that the objection to the change of the point of diversion would be waived and consent would be given by the objectors to the change of the point of diversion provided the relative priority of the water right upon change at the point of diversion would be reduced from 1858 priority to an 1892 priority, and the said Ernest A. Kinkle is agreeable to the reduction in such priority.

NOW, THEREFORE IT IS STIPULATED AND AGREED by and between the said Ernest A. Kinkle, Ralph Planalp, Wallace D. Palmer and Vernon A. Richardson that the objections heretofore filed by the said Ralph Planalp, Wallace D. Palmer and Vernon A. Richardson be withdrawn and the said parties do hereby specifically consent to the granting by the State Engineer of Oregon of permission for the change in the point of diversion of said water right from the Watts & Topping Ditch to the Laurel Hill Ditch, and it is further stipulated and agreed by the parties hereto and the said Ernest A. Kinkle does hereby consent and agree that the relative priority of the water right herein mentioned and described shall have a relative priority of the year 1892 to the same extent as the oldest water right on the Laurel Hill Ditch and that the State Engineer of Oregon may enter his findings and order in accordance herewith.

DATED this 30 day of December 1958.

WITNESS:

/s/ Louise Wise
/s/ L. V. Richardson
/s/ L. V. Richardson
/s/ L. V. Richardson

/s/ Ernest A. Kinkle
/s/ Ralph Planalp
/s/ Wallace D. Palmer
/s/ Vernon A. Richardson

APPROVED:

/s/ Samuel M. Bowe
Attorney for Ernest A. Kinkle

/s/ William F. Johnson
Attorney for Ralph Planalp,
Wallace D. Palmer and Vernon
A. Richardson

It appearing that the proposed change in point of diversion of water from Williams Creek may be made without injury to existing rights, the application should be approved, subject to the above stipulation.

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

From a point located 460 feet north and 90 feet east from the southwest corner of Section 12, and being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$, said Section 12, Township 38 South, Range 5 West, W. M.,

To the confluence of the Laurel Hill ditch and Williams Creek within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 1, Township 38 South, Range 5 West, W. M.,

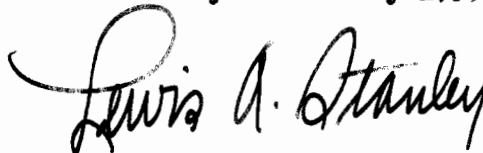
for the irrigation of 5 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 35, Township 37 South, Range 5 West, W. M., be and the same is approved, subject to the terms and conditions of the stipulation herein described.

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, 1959 or within such extension of time as may be granted by the State Engineer for good cause shown.

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 point of diversion.

Dated at Salem, Oregon this 27th day of January 1959.

W. A. Stanley
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Jan 27 1959



LEWIS A. STANLEY
State Engineer