

BEFORE THE STATE ENGINEER OF OREGON

Jackson County

IN THE MATTER OF THE APPLICATION)
OF CHESTER W. SPENCER FOR THE AP-)
PROVAL OF A CHANGE IN PLACE OF)
USE AND POINT OF DIVERSION OF)
WATER FROM ELK CREEK.)
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O R D E R
APPROVING APPLICATION

On July 11, 1960, Chester W. Spencer of Elk Creek Road, Trail, Oregon, filed an application in the office of the State Engineer for the approval of a change in place of use and point of diversion of water from Elk Creek, pursuant to the provisions of ORS 540.510 to 540.530.

By decree of the Circuit Court for Jackson County, entered April 26, 1919, in the matter of the determination of the relative rights of the various claimants to the waters of Rogue River and its tributaries, a water right was established in the name of J. W. Miller for the irrigation of, among other lands, 1.0 acre in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 17, Township 33 South, Range 1 East, W. M., from Elk Creek, with a date of priority of 1901. This 1.0 acre is irrigated from the Pence ditch; the point of diversion of said ditch being located 1330 feet north and 860 feet west from the southeast corner of Section 8, and being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$, said Section 8, Township 33 South, Range 1 East, W. M.

The applicant herein, owner of the land above described, proposes to transfer the water right from $\frac{1}{2}$ acre in the northwest corner of said SE $\frac{1}{4}$ NE $\frac{1}{4}$, without loss of priority, to a $\frac{1}{2}$ acre tract east of the Pence ditch and east of the remaining $\frac{1}{2}$ acre tract, and being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 17, Township 33 South, Range 1 East, W. M., and to irrigate all of said 1.0 acre by means of a pumping plant, the point of diversion of said pumping plant to be located 1505 feet south and 1440 feet west from the northeast corner of Section 17, and being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, said Section 17, Township 33 South, Range 1 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 place of use and point of diversion of water, if any there were, namely: at the county courthouse in Medford, Oregon, on October 5, 1960. The notice was published in the Medford Mail Tribune, a newspaper printed and having general circulation in Jackson County, Oregon, for a period of three weeks in the issues of August 8, 15 and 22, 1960. The date set for hearing was not less than thirty days after the last publication of the notice.

Mr. David C. Hendrix, Watermaster of District No. 15, has filed a statement to the effect that the proposed change in place of use and point of diversion of water may be made without injury to existing rights.

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

NOW, THEREFORE, it hereby is ORDERED that the proposed change in place of use of water be and the same is approved and that the water right hereinbefore described as appurtenant to $\frac{1}{2}$ acre in the northwest corner of SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 17, Township 33 South, Range 1 East, W. M., with a date of priority of 1901, be severed therefrom and simultaneously and without loss of priority transferred to $\frac{1}{2}$ acre east of the Pence ditch, and east of the remaining $\frac{1}{2}$ acre, and being within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 17, Township 33 South, Range 1 East, W. M.

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

From a point located 1330 feet north and 860 feet west from the southeast corner of Section 8, and being within the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 8, Township 33 South, Range 1 East, W. M.

To a point to be located 1505 feet south and 1440 feet west from the northeast corner of Section 17, and being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, said Section 17, Township 33 South, Range 1 East, W. M.

for the irrigation of $\frac{1}{2}$ acre to which the water is transferred hereby, together with the remaining $\frac{1}{2}$ acre of the 1.0 acre tract in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 17, Township 33 South, Range 1 East, W. M., with a date of priority of 1901, be and the same hereby is approved.

It is FURTHER ORDERED that the change in place of use and point of diversion of water shall be completed on or before October 1, 1961, 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.

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 Jackson County, Oregon before the beginning of construction work and that the weir or measuring device be installed under the general supervision of said watermaster.

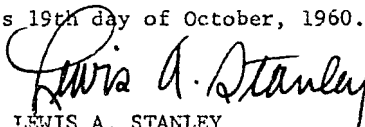
It is FURTHER ORDERED that Certificate of Water Right issued to J. W. Miller and recorded at Page 15848, Volume 13, State Record of Water Right Certificates, be and the same is hereby cancelled, and that a new certificate be issued to J. W. Miller covering the 9.0 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 17, Township 33 South, Range 1 East, W. M., not involved in this transfer.

It is FURTHER ORDERED that upon receipt of proof satisfactory to the State Engineer of the complete application of water to beneficial use on the lands to which the water is transferred hereby, certificate of water right shall be issued to Chester W. Spencer, or his successors in interest, to the extent to which the water has been applied beneficially.

Dated at Salem, Oregon, this 19th day of October, 1960.

*Noted on Deed
Vol. 4 p. 4, col. 2
Cert. # 15848*

Trsf. # 5-128


LEWIS A. STANLEY
State Engineer