

BEFORE THE STATE ENGINEER OF OREGON

Wasco County

IN THE MATTER OF THE APPLICATION )  
OF HALBERT GERKING FOR THE APPRO- )  
VAL OF A CHANGE IN PLACE OF USE )  
AND POINTS OF DIVERSION OF WATER )  
FROM EIGHTMILE CREEK. )  
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O R D E R  
APPROVING APPLICATION

1.

On August 26, 1960, Halbert Gerking of The Dalles, 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 Eightmile Creek, pursuant to the provisions of ORS 540.510 to 540.530.

2.

Certificate of water right issued to M. Longren, D. S. Doyle and J. N. and Amanda Williams and recorded at page 2839, Volume 4, State Record of Water Right Certificates, confirms a right under permit No. 2715 for the irrigation of, among other lands, 15 1/8 acres in the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 11, Township 1 South, Range 13 East, W. M., with a date of priority of November 15, 1915, through the Doyle and Company ditch from Eightmile Creek, the point of diversion of said ditch being located 1883 feet north and 1092 feet east from the southwest corner of Section 11 and being within the NW $\frac{1}{4}$  SW $\frac{1}{4}$ , said Section 11, Township 1 South, Range 13 East, W. M.

3.

Halbert Gerking, owner of 7.5 acres of the land above described, proposes to irrigate said land by means of a pumping plant, the point of diversion of said pumping plant to be located 1320 feet south and 1300 feet west from the northeast corner of Section 11 and being within the NE $\frac{1}{4}$  NE $\frac{1}{4}$ , said Section 11, Township 1 South, Range 13 East, W. M.

4.

By decree of the Circuit Court, entered March 19, 1924, in the matter of the determination of the relative rights to the use of the waters

of Fifteen Mile Creek and its tributaries, a water right was established in the name of the Estate of Milton C. Walston for the irrigation of 4.82 acres in the NE $\frac{1}{4}$  NE $\frac{1}{4}$ , 1.03 acres in the NW $\frac{1}{4}$  NE $\frac{1}{4}$ , 3.0 acres in the SW $\frac{1}{4}$  NE $\frac{1}{4}$  and 0.25 acre in the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 26, Township 1 South, Range 12 East, W. M., with a date of priority of 1896. Certificate of water right issued to the Estate of Milton C. Walston and recorded at page 10092, Volume 9, State Record of Water Right Certificates, confirms a right under permit No. 4338 for the irrigation of 1.5 acres in the SW $\frac{1}{4}$  NE $\frac{1}{4}$ , said Section 26, with a date of priority of December 11, 1919. All of the lands described in this paragraph are irrigated through the Milton C. Walston ditch from Eightmile Creek, the point of diversion of said ditch being located 1498 feet south and 160 feet west from the N $\frac{1}{4}$  corner of Section 26, and being within the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , said Section 26, Township 1 South, Range 12 East, W. M.

5.

Halbert Gerking, owner of the lands described in paragraph 4 above, proposes to transfer the water right therefrom, without loss of priority, to 4.1 acres in the NE $\frac{1}{4}$  NE $\frac{1}{4}$  and 6.5 acres in the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 11, Township 1 South, Range 13 East, W. M., and to irrigate said lands by means of a pumping plant, the point of diversion of said pumping plant being described under paragraph 3 hereof.

6.

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 points of diversion of water, if any there were, namely: at the county courthouse in The Dalles, Oregon, on November 2, 1960, beginning at 9:30 o'clock a. m. The notice was published in The Dalles Optimist, a newspaper printed and having general circulation in Wasco County, Oregon, for a period of three weeks in the issues of September 8, 15 and 22, 1960. The date set for hearing in said notice was not less than thirty days after the last publication of said notice.

7.

Mr. William A. Johnson, Watermaster of District No. 23, has filed a report to the effect that the proposed change in place of use and points of diversion of water may be made without injury to existing rights.

8.

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

9.

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 4.82 acres in the NE $\frac{1}{4}$  NE $\frac{1}{4}$ , 1.03 acres in the NW $\frac{1}{4}$  NE $\frac{1}{4}$ , 3.0 acres in the SW $\frac{1}{4}$  NE $\frac{1}{4}$  and 0.25 acre in the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 26, with a date of priority of 1896, and 1.5 acres in the SW $\frac{1}{4}$  NE $\frac{1}{4}$ , said Section 26, Township 1 South, Range 12 East, W. M., with a date of priority of December 11, 1919, be severed therefrom and simultaneously and without loss of priority transferred to 4.1 acres in the NE $\frac{1}{4}$  NE $\frac{1}{4}$  and 5.0 acres in the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 11, Township 1 South, Range 13 East, W. M., with a date of priority of 1896 and 1.5 acres in the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , said Section 11, with a date of priority of December 11, 1919.

10.

It is FURTHER ORDERED that the proposed changes in points of diversion of water from Eightmile Creek. to-wit:

From a point located 1883 feet north and 1092 feet east from the southwest corner of Section 11 and being within the NW $\frac{1}{4}$  SW $\frac{1}{4}$ , said Section 11, Township 1 South, Range 13 East, W. M., and

From a point located 1498 feet south and 160 feet west from the N $\frac{1}{2}$  corner of Section 26 and being within the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , said Section 26, Township 1 South, Range 12 East, W. M.

To a point to be located 1320 feet south and 1300 feet west from the northeast corner of Section 11 and being within the NE $\frac{1}{4}$  NE $\frac{1}{4}$ , said Section 11, Township 1 South, Range 13 East, W. M.,

for the irrigation of 7.5 acres in the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 11, Township 1 South, Range 13 East, W. M., with a date of priority of November 15, 1915, and 4.1 acres in the NE $\frac{1}{4}$  NE $\frac{1}{4}$  and 5.0 acres in the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 11, Township 1 South, Range 13 East, W. M., with a date of priority of 1896 and 1.5 acres in the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , said Section 11, with a date of priority of December 11, 1919, be and the same hereby is approved.

11.

It is FURTHER ORDERED that the change in place of use and points 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.

12.

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.

13.

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

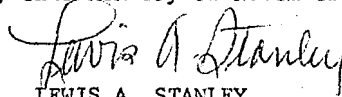
14.

It is FURTHER ORDERED that certificate of water right heretofore issued to M. Longren, D. S. Doyle and J. N. and Amanda Williams and recorded at page 2839, Volume 4; certificate issued to the Estate of Milton C. Walston and recorded at page 10092, Volume 9, and certificate issued to the Estate of Milton C. Walston and recorded at page 5675, Volume 6, be and the same hereby are canceled. A new certificate shall be issued to M. Longren, D. S.

Doyle and J. N. and Amanda Williams covering the 7 5/8 acres in the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 11, Township 1 South, Range 13 East, W. M., not involved in this proceeding, and upon receipt of proof satisfactory to the State Engineer of application of water to beneficial use, certificates of water right shall be issued to Halbert Gerking, or his successor in interest, to the extent to which the water has been applied beneficially.

Dated at Salem, Oregon, this 7th day of November, 1960.

*Noted on Decree*  
*Vol. 7, p. 432*  
*Cert. # 5675*

  
LEWIS A. STANLEY  
State Engineer

*Trsf. "G-50"*

*Also App # 4629 and 6931*  
*and Cert. # 2839 and 10092*