

BEFORE THE STATE ENGINEER OF OREGON

Deschutes County

IN THE MATTER OF THE APPLICATION )  
 OF THE CITY OF BEND, OREGON, FOR )  
 THE APPROVAL OF A CHANGE IN USE, )  
 PLACE OF USE AND POINT OF DIVERSION )  
 OF WATER FROM TUMALO CREEK AND A )  
 CHANGE IN PLACE OF USE OF WATER FROM )  
 DESCHUTES RIVER. )

O R D E R  
APPROVING APPLICATION

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On January 25, 1956, the City of Bend, Oregon, filed an application for the approval of a change in use, place of use and point of diversion of water from Tumalo Creek and a change in place of use of water from Deschutes River pursuant to the provisions of ORS 540.510 to 540.530.

In the Tumalo Creek adjudication proceedings a water right was recognized for the irrigation of 174.5 acres from Tumalo Creek as follows, to-wit:

<i>cert No.</i>	<u>Sub-division</u>	<u>Sec-tion</u>	<u>Twp.</u>	<u>Rge.</u>	<u>Acres Water Right</u>	<u>Date of Priority</u>
	SE $\frac{1}{4}$ SE $\frac{1}{4}$	1	16 S	11 E	30.0 <i>vest. C-104</i>	Sept. 1900
					1.6 <i>vest. C-51</i>	June 1, 1907
	SW $\frac{1}{4}$ SE $\frac{1}{4}$	35	16 S	11 E	28.6 <i>vest. C-81</i>	Sept. 1900
	NW $\frac{1}{4}$ SW $\frac{1}{4}$	6	16 S	12 E	26.0 <i>vest. C-49</i>	Sept. 1900
	SW $\frac{1}{4}$ SW $\frac{1}{4}$	6	16 S	12 E	30.0 <i>vest. C-89</i>	Sept. 1900
	NE $\frac{1}{4}$ NE $\frac{1}{4}$	2	17 S	11 E	22.9 <i>vest. C-84</i>	Sept. 1900
	NW $\frac{1}{4}$ NE $\frac{1}{4}$	2	17 S	11 E	36.0 <i>vest. C-84</i>	Sept. 1900

The right to the use of water from Tumalo Creek for the irrigation of the above described lands is limited to a rate of flow of one-seventieth of one cubic foot per second per acre and the quantity of water diverted during the irrigation season from April 15 to October 15 of each year is limited to not to exceed 1.8 acre feet per acre. These lands are irrigated through either the Columbia Southern Canal or the Tumalo Feed Canal, the point of diversion of the Columbia Southern Canal being within the NW $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 2, Township 18 South, Range 10 East, W. M., and the point of diversion of the Tumalo Feed Canal being within the SW $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 23, Township 17 South, Range 11 East, W. M.

In the Deschutes River adjudication proceedings, the Deschutes County Municipal Improvement District was adjudicated a right to the use of 9.5 cubic feet per second of the waters of Deschutes River with a date of priority of 1905, which right was made appurtenant to all lands within the district.

Permit No. 19628, issued to the Deschutes County Municipal Improvement District, is for a supplemental supply of water from Crater Creek, Little Crater Creek and three springs for the irrigation of, among other lands, those above described.

An agreement between the City of Bend and the Deschutes County Municipal Improvement District dated November 3, 1950 as modified by two subsequent agreements dated November 4, 1950 and April 4, 1954, provides that only the right to the use of the water of Tumalo Creek for the irrigation of the 174.5 acres heretofore described, is to be transferred to the City of Bend for municipal purposes at this time, and all other rights to the use of water from all sources other than Tumalo Creek are to be transferred to all other lands within the district or canceled. The purpose of this provision is to divest the said 174.5 acres of land of all water rights. The agreement further provides that the City of Bend will perpetually pay to the Deschutes County Municipal Improvement District the annual assessments for operation and maintenance, the payment of outstanding indebtedness including outstanding bonds, and for replacements and capital repairs on the basis of 174.5 acres, each acre to be assessed equally as all other lands within the district are assessed.

The applicant herein, owner of the 174.5 acres of land above described, proposes to change the use from irrigation purposes to that of municipal purposes within the corporate limits of the City of Bend and surrounding territory served by its water supply pipelines and to divert the water at

the City of Bend's intake from Tumalo Creek located in the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 7, Township 18 South, Range 10 East, W. M.

Notice by publication as provided by ORS 540.520 was given in the Bend Bulletin, a newspaper printed and having general circulation in Deschutes County, Oregon, for a period of three weeks, being the issues of April 26 and May 3 and 10, 1956. The time for hearing upon such application as stated in the notice, namely: June 21, 1956, was not less than thirty days after the last publication of the notice.

No objections having been filed and it appearing that the proposed change in use, 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 water right from Tumalo Creek hereinbefore described as appurtenant to 174.5 acres as follows:

	<u>Sub-division</u>	<u>Sec-tion</u>	<u>Twp.</u>	<u>Rge.</u>	<u>Acres Water Right</u>	<u>Date of Priority</u>
sect 10	SE $\frac{1}{4}$ SE $\frac{1}{4}$	1	16 S	11 E	30.0 ✓	Sept. 1900
					1.6	June 1, 1907
	SW $\frac{1}{4}$ SE $\frac{1}{4}$	35	16 S	11 E	28.0 ✓	Sept. 1900
	NW $\frac{1}{4}$ SW $\frac{1}{4}$	6	16 S	12 E	26.0	Sept. 1900
29	SW $\frac{1}{4}$ SW $\frac{1}{4}$	6	16 S	12 E	30.0 ✓	Sept. 1900
	NE $\frac{1}{4}$ NE $\frac{1}{4}$	2	17 S	11 E	22.9	Sept. 1900
	NW $\frac{1}{4}$ NE $\frac{1}{4}$	2	17 S	11 E	36.0	Sept. 1900

be severed therefrom and simultaneously and without loss of priority transferred to the City of Bend, Oregon, for municipal use within the corporate limits of the said city and surrounding territory served by its water supply pipelines and to divert the water at the City of Bend's intake from Tumalo Creek, said intake being located within the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , Section 7, Township 18 South, Range 10 East, W. M.

It is FURTHER ORDERED that the water so transferred shall be applied to beneficial use by the City of Bend, Oregon, on or before October 1, 1960 or within such extension of time as may be granted by the State Engineer for good cause shown.

shown on -  
Sect. 32  
T. 17 S. R. 12 E.

It is FURTHER ORDERED that the quantity of water heretofore used for irrigation of the 174.5 acres from Tumalo Creek described in paragraph 2 hereof and by this order transferred to municipal purposes by the City of Bend, Oregon, shall be limited to a maximum diversion of 2.49 cubic feet per second, beginning on April 15 and ending on October 15 of each year, and the total quantity diverted during said period shall not exceed 314.1 acre feet, measured at the meter in the existing pipeline and at the meter to be installed in the parallel pipeline now under construction.

It is FURTHER ORDERED that a meter shall be installed in the parallel pipeline now under construction at a point opposite or near the meter in the existing pipeline, said meter to be approved by the watermaster of Deschutes County, Oregon, before the beginning of construction work and installed under his general supervision.

It is FURTHER ORDERED that that part of the right to the use of 9.5 cubic feet per second of the waters of Deschutes River with a date of priority of 1905, appurtenant to the lands described in paragraph 2 hereof, be severed therefrom and simultaneously and without loss of priority transferred to the remaining lands having water rights within the Deschutes County Municipal Improvement District.

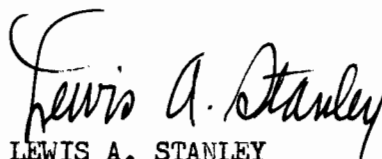
It is FURTHER ORDERED that the lands described in paragraph 2 hereof be eliminated from Permit No. 19628.

It is FURTHER ORDERED that upon receipt of proof satisfactory to the State Engineer of application of water to beneficial use for municipal purposes within the corporate limits of the City of Bend and surrounding territory served by its water supply pipelines, a certificate of water right shall be issued to the City of Bend to the extent to which the water has been used beneficially.

It is FURTHER ORDERED that certificate of water right heretofore issued to R. G. Bowser and recorded at Page 49, Volume 1, State Record of Water Right Certificates, and certificate of water right issued to Wm. E. Sandel and recorded at Page 89, Volume 1, State Record of Water Right Certificates, which certificates cover a part of the lands from which the water is being transferred herein, be and the same hereby are canceled.

It is FURTHER ORDERED that certificate of water right heretofore issued to Columbia Southern Irrigation Company and recorded at Page 104, Volume 1, State Record of Water Right Certificates, which certificate covers, among other lands, a part of the lands from which the water is being transferred herein, be and the same hereby is canceled, and that a new certificate of water right be issued to the Deschutes County Municipal Improvement District successor in interest to the Columbia Southern Irrigation Company, covering the balance of lands not involved in this proceeding.

Dated at Salem, Oregon this 5th day of February 1957.

  
LEWIS A. STANLEY  
State Engineer

*Noted on Decree  
Vol. 1, p. 137, 138, and 139  
Cert. 49, 89, and 104*

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