

Lake County

IN THE MATTER OF APPLICATION
NO. 33982 IN THE NAME OF
R. F. RICHARDSON

FINDINGS, CONCLUSIONS AND
ORDER
APPROVING APPLICATION

FINDINGS

- 1 -

Application No. 33982 in the name of R. F. Richardson was filed in the office of the State Engineer on May 24, 1960. It describes an appropriation of 1.15 cubic feet per second of water from an unnamed swale and runoff waters from the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6 and the W $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 7, Township 40 South, Range 19 East, W.M. for the irrigation of 46.1 acres within the NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 7.

- 2 -

A protest against the approval of application No. 33982 was filed by the Lakeview Water Users, Inc. In the protest it is alleged that approval of the application would result in conflict with the existing rights of the protestant.

- 3 -

A hearing on the protest was held before the State Engineer in the Memorial Hall at Lakeview, Oregon, on November 1, 1960. The protestant was represented by its attorney, Mr. Theodore Conn, of Lakeview, Oregon, and the applicant was represented by attorneys at law, Mr. Forrest Cooper and Mr. Robert Nichols, also of Lakeview, Oregon.

- 4 -

The north, west and south sides of the N $\frac{1}{2}$ of Section 7, Township 40 South, Range 18 East, W.M. are bounded by county roads.

- 5 -

Application No. 33982 describes as the source of appropriation "unnamed swale" and "runoff waters from SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 6 and W $\frac{1}{2}$ NW $\frac{1}{4}$, Section 7 of Township 40 South, Range 19 East, W.M. The application

describes two points of diversion as follows:

Swale -- at northwest corner of NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 7,
Township 40 South, Range 19 East, W.M.

Sump -- 1350 feet south and 1350 feet east from the
northwest corner of Section 7, Township 40
South, Range 19 East, W.M.

The map filed to accompany the application shows the sump and ditches leading therefrom, but does not indicate any diversion from the swale, marked on the map as "swampy swale".

- 6 -

The "unnamed swale", referred to as the source of appropriation in the application and designated on the map, is a natural depression which crosses the county road in a culvert near the southwest corner of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 7 and extends easterly to a confluence with a larger swale designated on the map as "swampy swale". Between the culvert and the sump described as the diversion point, this "unnamed swale" has the characteristics of a natural watercourse with well-defined bed and banks.

CONCLUSIONS

- 1 -

Any water which enters and flows in the natural swale from which the diversion would be made at the sump near the northwest corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 7 is public water and subject to appropriation. Although the primary source of this water may be runoff from lands irrigated under contract by the protestant, it has lost its identity as such runoff or waste water when it enters the natural watercourse.

- 2 -

The same reasoning applies to runoff water from the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, which in order to cross the county road between sections 6 and 7, must flow in the so-called "swampy swale" which is a natural watercourse. Once this water has entered the swale it has lost its identity as runoff or waste and is a part of the flow of the stream.

It cannot be appropriated for use in Section 7 except by a diversion from the stream.

- 3 -

Runoff or waste water from the $W\frac{1}{2}$ $NW\frac{1}{4}$ of Section 7 which runs easterly to and upon lands of the applicant is subject to appropriation and use by him. He is entitled to a permit to appropriate such water on proper application therefor.

- 4 -

Application No. 33982 is defective in that the source of the proposed appropriation does not include the "swampy swale" which runs southeasterly through the $NW\frac{1}{4}$ $NW\frac{1}{4}$, $E\frac{1}{2}$ $NW\frac{1}{4}$ and $SW\frac{1}{4}$ $NE\frac{1}{4}$ of Section 7, whereas the description of the diversion points would indicate an intended diversion from this swale. No such diversion is shown on the map filed to accompany the application. The application cannot be approved for appropriation of runoff water from the $SW\frac{1}{4}$ $SW\frac{1}{4}$ of Section 6 because that water must enter the swale before it flows on to the applicant's land. It cannot be approved for diversion from the swale because the swale is not described as a source of appropriation. It can and should be approved in part, to cover the appropriation from the "unnamed swale" and runoff water from the $W\frac{1}{2}$ $NW\frac{1}{4}$ of Section 7.

- 5 -

Approval of application No. 33982 as above qualified, and with the usual provision that the permit granted shall give the applicant no right to a continuation of the waste or runoff by the upland owner, cannot conflict with existing rights of the protestant and will not be prejudicial to the public interest.

- 6 -

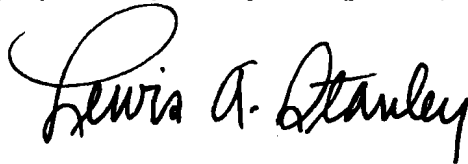
ORS 537.160 (2) provides that no application for permit to appropriate waste or seepage water, which is to be carried through an

existing ditch or canal not owned wholly by the applicant, shall be approved until the applicant has filed with the State Engineer an agreement between the applicant and the owner of the ditch or canal, authorizing its use by the applicant to carry water. The "ditch or canal" as used in this subsection of the statute refers to works conveying waste or seepage water and not to the works through which water is carried from the stream to project lands.

ORDER

NOW, THEREFORE, it is ORDERED that application No. 33982 be approved to grant a right to appropriate not to exceed 1.15 cubic feet per second of water from an unnamed swale and runoff water from the $W\frac{1}{2}$ NW $\frac{1}{4}$ of Section 7, Township 40 South, Range 19 East, W.M., subject to the provision that the right granted for the appropriation from runoff water from the said $W\frac{1}{2}$ NW $\frac{1}{4}$ of Section 7 shall be limited to the water available at the proposed point of diversion, and shall not carry with it the right to compel the continuance of the waste water.

Dated at Salem, Oregon, this 3rd day of April 1961.



LEWIS A. STANLEY
State Engineer