

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 DIVER-)
SION OF WATER FROM TUMALO CREEK)
AND A CHANGE IN PLACE OF USE OF)
WATER FROM DESCHUTES RIVER.)
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O R D E R

APPROVING APPLICATION

On December 29, 1958, the City of Bend, Oregon, filed an application in the office of the State Engineer 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 adjudication proceedings determining the relative rights to the use of the waters of Tumalo Creek and its tributaries a water right was established for the irrigation of 12.2 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and 15.3 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 35, Township 16 South, Range 11 East, W. M., with a date of priority of September 1900, and 25 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, said Section 35, of which 12 acres have a date of priority of September 1900, 11 acres have a date of priority of April 28, 1905 and 2 acres have a date of priority of May 27, 1907. These lands are irrigated through either the Tumalo Feed Canal or the Columbia Southern Canal, 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., and 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. The right to the use of water from Tumalo Creek for the irrigation of these 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 a diversion of not to exceed 1.8 acre feet per acre.

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.

The district has made proof of application of water to a beneficial use under Permits Nos. 624 and 19628 for supplemental supply for the irrigation of, among other lands, the lands involved herein. Permit No. 624 is for the use of water stored in Crescent Lake Reservoir and Permit No. 19628 is for the use of water from Tumalo, Crater and Little Crater Creeks and three spring branches.

An agreement dated November 17, 1958 between the City of Bend and Deschutes County Municipal Improvement District provides that the right to the use of water from Tumalo Creek only for the irrigation of 52.5 acres is to be transferred to the City of Bend for municipal purposes. 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 52.5 acres, each acre to be assessed equally as all other lands within the district are assessed.

It is the desire of the district to divest the land from which the water is being transferred of all remaining water rights. That part of the 9.5 cubic feet per second right from Deschutes River appurtenant to the above lands is to be transferred to the remaining lands within the district and that part of the right from Tumalo, Crater and Little Crater Creeks and three spring branches Permit No. 19628 and storage from Crescent

Lake Reservoir under Permit No. 624 for supplemental irrigation of said lands is to be eliminated from the certificates of water right being issued to the district.

The applicant herein, owner of 52.5 acres described in the second paragraph herein, proposes to transfer the Tumalo Creek water right appurtenant thereto for irrigation purposes to that of municipal use within the corporate limits of the City of Bend, Oregon and surrounding territory served by its water supply pipeline and to divert the water at the City of Bend's intake from Tumalo Creek in the $SE\frac{1}{4} NE\frac{1}{4}$, Section 7, Township 18 South, Range 10 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 use, place of use and point of diversion of water, if any there were, namely: at the county courthouse in Bend, Oregon on April 23, 1959, beginning at 9:30 o'clock a.m. The notice was published in the Bend Bulletin, a newspaper printed and having general circulation in Deschutes County, Oregon, for a period of three weeks in the issues of February 27, and March 6 and 13, 1959. The date set for hearing in said notice 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 12.2 acres in the $NE\frac{1}{4} SE\frac{1}{4}$ and 15.3 acres in the $NW\frac{1}{4} SE\frac{1}{4}$, Section 35, Township 16 South, Range 11 East, W. M., with a date of priority of September 1900, and 25 acres in the $SE\frac{1}{4} SE\frac{1}{4}$, said Section 35, of which 12 acres have a date of priority of September 1900, 11 acres have a date of priority of April 28,

Permit No. 1905 - See Order D-54

1905 and 2 acres have a date of priority of May 27, 1907, 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 said water shall be diverted 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.

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, 1965 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 heretofore used for the irrigation of 52.5 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 0.75 cubic foot 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 94.5 acre feet, measured at the existing meters in the city's parallel pipelines.

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 NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 35, Township 16 South, Range 11 East, W. M., 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.

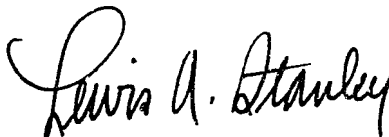
It is FURTHER ORDERED that the right to the use of water from Tumalo Creek, Crater and Little Crater Creeks and three spring branches under Permit No. 19628, and water stored in Crescent Lake Reservoir under

Permit No. 624 for the irrigation of the NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{2}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 35, Township 16 South, Range 11 East, W. M., be eliminated from the certificates of water right in the process of being issued to the Deschutes County Municipal Improvement District, now Tumalo Irrigation District.

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, Oregon, and surrounding territory served by its water supply pipelines, a certificate of water right shall be issued to the City of Bend, Oregon, to the extent to which the water has been used beneficially.

Dated at Salem, Oregon this 13th day of May, 1959.

*These rights transferred
previously : Sp. Or. Vol. 10 p. 1*



LEWIS A. STANLEY
State Engineer