

BEFORE THE STATE ENGINEER OF OREGON

Lake County

IN THE MATTER OF APPLICATION )  
NO. 33840 IN THE NAMES OF )  
R. H. KERR AND R. H. RADFORD )

FINDINGS, CONCLUSIONS AND  
ORDER  
APPROVING APPLICATION

FINDINGS

- 1 -

Application No. 33840 in the names of R. H. Kerr and R. H. Radford was filed in the office of the State Engineer on April 4, 1960. It describes an appropriation of 9.0 cubic feet per second of water from an unnamed slough within the SW¼ NW¼ of Section 6, Township 39 South, Range 20 East, W.M. for the supplemental irrigation of 345 acres of land within the SW¼ NW¼ and the S½ of said Section 6, having a partial water right from another source.

- 2 -

A protest against the approval of application No. 33840 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 in Lakeview, Oregon, on November 2, 1960. The protestant was represented by its attorney, Mr. Theodore Conn, of Lakeview, Oregon, and the applicants were represented by attorneys at law, Mr. Forrest Cooper and Mr. Robert Nichols, also of Lakeview, Oregon.

- 4 -

The unnamed slough, identified in application No. 33840 as the source of the proposed appropriation, enters Section 1, Township 38 South, Range 19 East, W.M. approximately 48 chains west of the northeast corner of the section and flows in a meandering channel principally

East by Southeast to the west line of the NE<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub> of said Section 1.

An excavated ditch has been constructed from this point along the west and south sides of said NE<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub> to carry the flow to the east side of the section where it is conducted under the road, which follows the line between said Section 1 and Section 6 of Township 38 South, Range 20 East, W.M., and into the borrow pit ditch along the east side of the road. Flow in the borrow pit ditch is toward the southwest corner of said Section 6 where it enters a drain ditch which empties into an old channel of Thomas Creek about one-third of a mile to the east.

- 5 -

Prior to improvement and relocation by man-made works below the point where it reaches the west line of said Section 1, the natural channel continued on in an East by Southeast direction to a confluence with the old channel of Thomas Creek.

- 6 -

The source of flow in the unnamed slough during the irrigation season is seepage and surface runoff from irrigated upland areas and water that has escaped from the system of Lakeview Water Users, Inc.

#### CONCLUSIONS

- 1 -

The unnamed slough identified in application No. 33840 as the source of the proposed appropriation is a natural stream channel which has been improved and relocated by man-made works, and waters that occur therein are available for appropriation subject to prior rights.

- 2 -

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.

- 3 -

The proposed point of diversion is on a portion of the improved and relocated stream channel that is maintained by Lake County upon county land. However, the matter of any easement that may be necessary to carry out the proposed appropriation is not under the jurisdiction of the State Engineer.

- 4 -

Testimony shows that the applicant, Mr. R. H. Kerr, owns an upland area which receives water for irrigation by contract with the Lakeview Water Users, Inc. Under the provisions of the water rights held by the Lakeview Water Users, Inc., water may be appropriated for the said upland area only to the extent that it is beneficially used on the said area. Further, any waste or return flow which occurs from beneficial irrigation of said upland area and which accrues to the flow of the unnamed slough, identified as the proposed source in application No. 33840, is subject to appropriation under the general laws of the state. Lavish use of water on the upland area for the purpose of increasing runoff for use by the applicants on downstream lands can be controlled by the protestant by refusing to deliver to the upland more water than can be and is beneficially used on said upland.

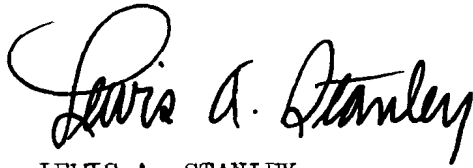
- 5 -

The approval of application No. 33840 in the names of R. H. Kerr and R. H. Radford will not result in injury to existing rights and will not prejudicially affect the public interest.

ORDER

It is hereby ORDERED that application No. 33840 in the names of R. H. Kerr and R. H. Radford be approved.

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

A handwritten signature in cursive script that reads "Lewis A. Stanley". The signature is written in black ink and is positioned above the typed name and title.

LEWIS A. STANLEY  
State Engineer