

BEFORE THE STATE ENGINEER OF OREGON

Lake County

IN THE MATTER OF APPLICATION }
NO. 34019 IN THE NAME OF }
MRS. URCIE LAMB ----- }

FINDINGS, CONCLUSIONS AND
ORDER
APPROVING APPLICATION

FINDINGS

- 1 -

Application No. 34019 in the name of Mrs. Urcie Lamb was filed in the office of the State Engineer on June 14, 1960. It describes an appropriation of 0.30 cubic foot per second of water from "run off from SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, Township 41 South, Range 19 East, W.M." for irrigation of a total of 13.0 acres within the SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 6.

- 2 -

A protest against the approval of application No. 34019 was filed by the Lakeview Water Users, Inc. In the protest it is alleged that the approval of the application would result in conflict with the existing rights of the protestant.

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A hearing on the protest was held in the Memorial Hall in 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 Mr. Forrest Cooper and Mr. Robert Nichols, attorneys at law, also of Lakeview, Oregon.

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The area the applicant proposes to irrigate is that portion of a natural, broad, grassy swale which extends in a northeasterly direction from the east-west center line of Section 6, Township 41 South, Range 19 East, W.M., near the southwest corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$, down toward the northeast corner of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of said section. This portion of the swale is intersected by the county road which follows the north-south

center line of the section. The width of the swale varies in the neighborhood of 150 to 250 feet.

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In the testimony it was established that the source of the water the applicant seeks to appropriate is surface runoff from a 41 acre area within the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 6, Township 41 South, Range 19 East, W.M., which is irrigated with water received through contract with the Lakeview Water Users, Inc.

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Land leveling has removed all evidence of the swale within the southwest quarter of Section 6. However, the existing slope is such that the surface runoff water tends to flow toward the southwesterly or upper end of the swale on the applicant's land.

- 7 -

The swale through the lands of the applicant is not a natural water course in that it does not contain a stream channel with well-defined bed and banks. There is no evidence of the occurrence of prolonged flow of water in the bottom of the swale on the applicant's property and there is no evidence of a watercourse entering the applicant's property from the southwest quarter of Section 6.

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It appears that the only water that reaches the applicant's property during the irrigation season from the SW $\frac{1}{4}$ and from the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 6 is that which occurs from the application of water to said subdivisions at a rate in excess of the infiltration rate of the soil.

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The subject surface runoff water is intercepted by a levee at the upper end of the swale near the south line of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 6, and is conveyed into distribution ditches running along either side of the swale. The two ditches are brought together just above the county road

and the water not used above this point is conducted through a culvert and into distribution ditches on either side of the swale below the road.

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No works, other than those constructed upon the lands of the applicant by the applicant or her predecessors in interest, are used for the collection and distribution of the subject surface runoff (waste) water.

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The collection and use of the surface runoff (waste) water in the manner described in the application No. 34019 in the name of Mrs. Urcie Lamb would not result in injury to the upland owner.

CONCLUSIONS

- 1 -

Any waste water entering the upper end of this swale from the SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, Township 41 South, Range 19 East, W.M. is subject to appropriation under ORS 537.800.

- 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.

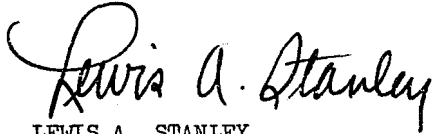
- 3 -

The approval of application No. 34019 in the name of Mrs. Urcie Lamb will not result in injury to existing rights and will not prejudicially affect the public interest.

ORDER

NOW, THEREFORE, it is ORDERED that application No. 34019 in the name of Mrs. Urcie Lamb be approved subject to the provision, which shall be made a part of the permit, that the appropriation 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.

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

LEWIS A. STANLEY
State Engineer