

BEFORE THE STATE ENGINEER OF OREGON

Lake County

IN THE MATTER OF APPLICATION)
NO. 33839 IN THE NAME OF)
R. H. RADFORD -----)

FINDINGS, CONCLUSIONS AND
ORDER
APPROVING APPLICATION

FINDINGS

- 1 -

The application of R. H. Radford, designated as application No. 33839, was filed in the office of the State Engineer on April 4, 1960. It describes an appropriation of 1.0 cubic foot per second of water from a "drain ditch" within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 18, Township 39 South, Range 20 East, W.M. for irrigation of 39 acres of land within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 18.

- 2 -

A protest against the approval of application No. 33839 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 2, 1960. The protestant was represented by its attorney, Mr. Theodore R. Conn, of Lakeview, Oregon, and the applicant was represented by attorneys at law, Mr. Forrest E. Cooper and Mr. Robert F. Nichols, also of Lakeview, Oregon.

- 4 -

The drain ditch identified in application No. 33839 as the source of the proposed appropriation is a man made excavated channel which comes down through the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, Township 39 South, Range 19 East, W.M. toward the quarter corner common to said Section 13 and to Section 18,

Township 39 South, Range 20 East, W.M. From this point the drain ditch continues on toward the east and south carrying waters which tend to flow, eventually, into Goose Lake. The said drain ditch follows, generally, the bottom of a shallow swale.

- 5 -

The point of diversion for the proposed appropriation from the drainage ditch is described in the application as "at west quarter section corner of Section 18, Township 39 South, Range 20 East, W.M."

- 6 -

There is no visible evidence of well defined bed and banks having existed prior to the improvements by man and no evidence has been presented to establish the existence of a natural water course.

- 7 -

The flow in the said drain ditch originates from uncontrolled surface runoff and seepage from upland irrigated areas.

CONCLUSIONS

- 1 -

The drain ditch identified as the source of the proposed appropriation is not a natural water course and does not replace a natural water course.

- 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 -

Application No. 33839 cannot be approved until the applicant has filed with the State Engineer, in compliance with the provisions of ORS 537.160 (2), an agreement between the applicant and the owner or owners of the said drainage ditch authorizing its use by the applicant to carry the water he seeks to appropriate. The application should be returned to the applicant endorsed so as to allow him 60 days from the date of endorsement to complete the application by attaching thereto the agreement, as required by ORS 537.160 (2), and to return the completed application to the State Engineer.

- 4 -

The approval of application No. 33839, after compliance with the provisions of ORS 537.160 (2), will not result in conflict with existing rights and will not predjudicially affect the public interest.

- 5 -

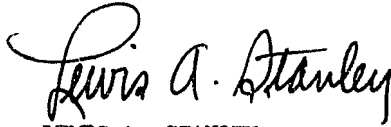
A permit issued in approval of application No. 33839 would not convey to the applicant the right to appropriate, for use on the lands described in the application, runoff or waste waters that may be intercepted by the transmission ditch between the proposed point of diversion and the proposed place of use.

ORDER

It is ORDERED that application No. 33839 in the name of R. H. Radford be approved upon compliance by the applicant with the provisions of ORS 537.160 (2). The permit issued as provided by this order shall contain the limitation that the right granted 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 waste water from lands which drain into the drainage ditch.

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



LEWIS A. STANLEY
State Engineer