

BEFORE THE STATE WATER BOARD OF OREGON

IN THE MATTER OF THE ALLOTMENT OF THE )  
WATERS OF THE DESCHUTES RIVER HERETOFORE )  
WITHDRAWN FROM APPROPRIATION UNDER THE ) ORDER  
PROVISIONS OF CHAPTER 87, LAWS OF 1913. )

Now at this time this matter coming on for consideration by the State Water Board, full hearing having been had before said Board on the 17th day of October, 1921, after due notice to all parties known or presumed to be interested in the waters of the Deschutes River withdrawn from appropriation in connection with the cooperative investigation by the State of Oregon and the U. S. Reclamation Service, pursuant to the provisions of Chapter 87, General Laws of Oregon for 1913, and the Board having given careful consideration to all evidence and data before it, and being now fully advised in the premises, and it appearing:

1. That on the 28th day of February, 1913, the State Engineer withdrew and has since withheld from appropriation 900,000 acre feet of the waters of Deschutes River for storage in Benham Falls reservoir, under the provisions of said law, and on the same date withdrew such water and any other unappropriated water of the Deschutes River for the purpose of irrigating lands in projects under investigation or to be investigated, and on the 29th day of October, 1913, withdrew and has since withheld from appropriation 187,000 acre feet of the waters of West Fork of Deschutes River to be stored in Crane Prairie reservoir.

2. That an investigation was made by the State and United States acting in cooperation, in accordance with which it was proposed to irrigate approximately 194,000 acres of land in addition to the lands then irrigated from the Deschutes River. That expenditures were made in connection with this investigation aggregating \$46,903.64, which amount and such other amounts as have been expended by the said cooperating parties, must be repaid to said cooperating parties before any water rights or rights of way may be granted or approved in connection with the Deschutes Project.

3. That since said investigation it has developed that there is

not available the quantity of water then supposed to be available for the reclamation of the lands in said Project. That a report has been prepared by a board of engineers composed of D. C. Henny, Col. J. B. Cavanaugh and Fred F. Henshaw, representing the Federal Power Commission (and hereinafter referred to as the Deschutes River Board), by which board a careful study has been made of the available water supply and its uses, with a view of determining its relative value for power development and irrigation purposes, as well as the most practicable plan for utilizing the water in the interests of all concerned.

4. That certain of the lands covered by the cooperative investigation are in private ownership, and more or less improved, while others still remain in their raw, untilled and unimproved condition. That wherever practicable, entered, occupied or improved lands will be given preference over unoccupied, unentered and unimproved lands. That it is the policy of the State Water Board to allot no water for any lands that are not in a position to proceed in the near future to apply the water to a beneficial use, and to allot no water except to those who own or control the land upon which the water is to be used.

5. That in order to fully utilize the available waters of Deschutes River it is necessary that the Benham Falls reservoir be constructed, as no other reservoir or reservoirs have the combined requirements or sufficient capacity and inflow for this purpose, and it is essential that sufficient water be reserved for storage in Benham Falls reservoir in order that the same may be feasible and practicable; otherwise a great loss will result to the State of Oregon.

6. That the withdrawal of the waters of Deschutes River under date of Feb. 28, 1913 for storage in Benham Falls reservoir included all unappropriated water available for storage, so that the withdrawal of Oct. 29, 1913 must be disregarded, no unappropriated water being available therefor.

7. That the cooperative report of the State and United States, as well as the report of the Deschutes River Board, contemplates the acquisition of certain rights under which water is utilized for power development. That such rights, when acquired, should inure to the benefit of the entire

Deschutes Project, and should be paid for by each and every project or unit utilizing the waters covered by the withdrawals above referred to, whether such rights are acquired in connection with the development of the first unit of said Deschutes Project, or any subsequent unit thereof.

8. That on Nov. 17, 1920 there was allotted to the Tumalo Irrigation District out of the waters of Deschutes River withdrawn Feb. 28, 1913, 30,000 acre feet of water to be stored in Benham Falls reservoir or in Odell Lake. That it now appears that said District may be able to secure a more satisfactory water supply through storage in Crescent Lake, and a contract to purchase certain rights in said lake from the Walker Basin Irrigation Company has been submitted to the Desert Land Board. That if said rights are acquired the District desires the former allotment cancelled and a new allotment made allowing the District to store water in Crescent Lake.

NOW, THEREFORE, it is hereby ORDERED:

1. That the State Water Board hereby adopts as a basis for future development on the Deschutes River, under the withdrawals of land and water made in accordance with Chapter 87, Laws of Oregon for 1913, and the contracts executed pursuant thereto, the plan set forth in the report of the Deschutes River Board to the Federal Power Commission dated August 31, 1921; and hereby declares that all allotments of water now or hereafter made under the withdrawal of February 28, 1913 shall not aggregate a greater amount of water than is found by said report to be available for storage and use; Provided, that the State Water Board hereby reserves for such disposition as future observations and developments render proper and desirable, the 200 second feet of the continuous flow of Deschutes River past Bend, and the 18,000 acre feet of water as set apart in the said report to be used during the non-irrigation season for domestic and other uses; Provided further, that if the future operations of the reservoir facilities on the Deschutes River demonstrate that an annual draft of more than 505,000 acre feet can be made without causing shortages of a greater percentage than that set forth in said report of the Deschutes River Board for the critical 7-year period

considered, then the allotment of such additional water may be made by the State Water Board; Provided, that the State Water Board reserves for future disposition all water found by said board to be available for storage and use which is not disposed of by this order; And provided further, that the State Water Board shall not be deemed to have recognized the validity or extent of any water rights on Deschutes River or its tributaries initiated prior to said withdrawal of Feb. 28, 1913.

✓ 2. That all allotments of water now or hereafter made under the withdrawal of Feb. 28, 1913 shall have a date of priority of Feb. 28, 1913, and all units now or hereafter allotted water under such withdrawal shall share proportionately in any shortage of water which may occur, without regard to the time the allotments were made; Provided, that after the water is rightfully stored in any reservoir it shall belong exclusively to the unit or units of the Deschutes Project which have constructed said reservoir and are dependent thereon for a water supply, in whole or in part; Provided further, that in case in any year the waters of Deschutes River are not sufficient to supply the allotments herein made, each reservoir shall be entitled to store its proportionate share of the waters flowing in said stream, such proportion to be based upon the average annual drafts on said reservoirs, without regard to any waters held over in any of said reservoirs from storage made in previous years.

3. That any unit or units constructing storage works at Benham Falls or Crane Prairie shall submit plans thereof to the State Engineer and secure his approval thereof before beginning the construction of any such works, and shall provide for the enlargement or extension of such works to accommodate any additional storage which may be deemed practicable in said reservoirs, and shall upon the approval of the State Engineer permit the joint use of such works, rights of way and other property and rights incident to the enjoyment of said reservoirs by anyone seeking to store additional water therein, upon such terms and conditions as may be agreed upon, and in case the parties interested cannot agree, then upon such terms and conditions as may be prescribed by the State Water Board after full hearing

4. That any water covered by rights, the acquisition of which was contemplated by the Deschutes River Board in the complete development of the Deschutes Project, shall be deemed to be a part of the waters withdrawn Feb. 28, 1913, and anyone acquiring such rights and securing an allotment hereunder shall be deemed to have acquired the same for the use and benefit of the entire Deschutes Project, and upon compensation for a proportionate part of the cost of such rights, shall turn over to any other unit or units of the Deschutes Project, a proportionate interest in such right or rights so acquired. And each unit of the Deschutes Project shall bear its proportionate part of the cost of acquiring said rights, whenever it becomes necessary in the development of any unit of the Deschutes Project that said rights or any of them, be acquired.

5. That there is hereby allotted to the North Unit Irrigation District out of the waters of Deschutes River withdrawn Feb. 28, 1913, the amount of water which may be beneficially applied to the irrigable lands in said District, not to exceed 317,500 acre feet per year, with right of storage in Benham Falls reservoir, together with such additional amount as may be necessary to compensate for seepage and evaporation in said reservoir and between said reservoir and the point of diversion from Deschutes River; Provided, that in no event shall the amount so stored for the use of said North Unit Irrigation District exceed ~~400,000~~ 400,000 acre feet per year.

6. That there is hereby allotted to the North Canal Company out of the waters of Deschutes River withdrawn Feb. 28, 1913, for storage in Crane Prairie reservoir site, the amount of water which can be beneficially used on the irrigable lands in Carey Act Segregation lists 6, 19 and 29, or so much thereof for which contracts for reclamation shall hereafter be executed between the Desert Land Board and said North Canal Company, not in any event to exceed 20,000 acres; Provided, that said amount of water shall not exceed 4.17 acre feet per acre at the diversion point on Deschutes River, together with such additional amount as may be necessary to compensate for seepage in Crane Prairie reservoir and between said reservoir and the point of diversion, and in no event shall the storage in Crane Prairie reservoir under this allotment exceed 90,000 acre feet per year; Provided further,

that such allotment shall be decreased by such amount of water as said Company may have or acquire through any other rights for the irrigation of said lands; and that this allotment is contingent, and only becomes operative, upon the filing by said North Canal Company of a relinquishment of all other claims now or hereafter acquired (except by allotment from the State Water Board) to storage rights to the waters of Deschutes River and its tributaries.

7. That, subject to the conditions herein set forth, there is hereby allotted to the Tumalo Irrigation District out of the waters of Deschutes River withdrawn Feb. 28, 1913, the amount of water which may be beneficially used on the irrigable lands in said District, not to exceed 35,000 acre feet per year, said waters to be stored in Crescent Lake, and not to exceed in any event 4.17 acre feet per acre at the diversion point from Deschutes River, together with such additional amount as may be necessary to compensate for seepage in Crescent Lake and between said Crescent Lake and the point of diversion: Provided, that this allotment shall become effective only at such time as a contract between said District and the Walker Basin Irrigation Company transferring to said District the rights of said Company to store water in Crescent Lake, shall have been approved by the Desert Land Board, and it shall be shown to the satisfaction of the State Water Board that said Tumalo Irrigation District will be unconditionally entitled to store water in said lake if given said allotment, and shall not be required to furnish any water from such storage to irrigate any of the lands of the Walker Basin Irrigation Company or those holding contracts with said Company: Provided further, that this allotment shall become effective only at such time as a relinquishment of all water rights acquired by said District from said Walker Basin Irrigation Company, together with such rights as said District may have by virtue of the allotment made Nov. 17, 1920 for the storage of 30,000 acre feet of water in Benham Falls reservoir or Odell Lake, is filed with the State Water Board by said Tumalo Irrigation District.

6. That no further or other allotments will be made at this time, it being deemed expedient that insofar as practicable a substantial part of the waters available under said withdrawal shall be withheld, and disposed

of from time to time as conditions may warrant or render expedient during the course of the development or construction of any of the units, or at any time thereafter.

9. That any allotment of water hereunder is contingent on the allottee repaying to the State and United States its proportionate part of the cost of the cooperative investigation of the Deschutes Project (or reimbursing any other unit which has already paid such amount), as fixed and determined by the State Water Board and the U. S. Reclamation Service.

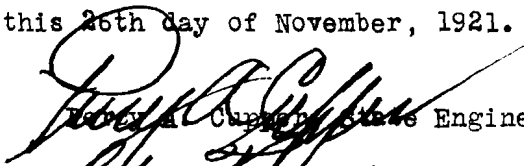
10. That any allottee hereunder shall within 30 days from the date hereof, file with the State Water Board a written acceptance of all the terms and conditions under which said allotment is made, and shall thereafter be bound by the terms of this order, excepting insofar as the same may be later modified by the State Water Board: Provided, that no modification shall be made which will substantially modify the general plan for reclamation as set forth in the report of said Deschutes River Board.

11. That within one year from the date hereof, each allottee named herein shall make and file an application with the State Engineer of Oregon for a permit to appropriate the water allotted to such allottee by this order, and at the time of making said application shall pay to the State and United States such allottee's proportionate part of the cost of the cooperative investigation of the Deschutes Project, as such part now or hereafter may be determined by the State Water Board and the U. S. Reclamation Service. That upon the filing of such application, and the payment of such proportionate part of said cost of said investigation, the State Engineer is hereby authorized and directed to issue a permit to each of said allottees in accordance with the terms of this order and subject to the provisions of Chapter 216, Laws of Oregon for 1909, and acts supplementary thereto and amendatory thereof.

12. That in case any allottee under this order, within the time fixed by this order fails to do any act or comply with any provision or condition which this order provides such allottee shall do or comply with, the water herein allotted to such allottee shall automatically and immediately and without notice revert to the State of Oregon and become subject to re-allotment by the State Water Board under the withdrawal of Feb. 28, 1913; that

in case any allottee hereunder, after having secured a State Engineer's permit for the appropriation of said water, fails to perform any of the provisions or conditions of said State Engineer's permit or fails to carry out or complete the construction work under said permit within the time set by said permit, or fails to apply the water to beneficial use within the time set by said permit, then the water allotted hereunder shall revert to the State of Oregon and become subject to re-allotment under the withdrawal of Feb. 28, 1913; that in case any allottee hereunder only partially applies the water allotted hereunder to a beneficial use under and pursuant to the terms and conditions of this allotment or of any such permit, such allotment shall be proportionately reduced and the balance of said allotment, which is not applied to a beneficial use, shall revert to the State of Oregon and become subject to re-allotment by the State Water Board under said withdrawal of Feb. 28, 1913.

Dated at Salem, Oregon, this 26th day of November, 1921.

  
Roy A. Cupper, State Engineer.

  
Geo. T. Geofran, State Water Superintendent.