

BEFORE THE WATER RESOURCES DEPARTMENT OF OREGON

IN THE MATTER OF TRANSFER APPLICATION )  
5912 IN THE NAMES OF ERNEST AND ROSA )  
SMITH FOR CHANGES IN PLACE OF USE AND )  
POINT OF DIVERSION OF WATER FROM WEST )  
FORK OF WILLIAMS CREEK )  
----- )

STATEMENT, FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER APPROVING APPLICATION

STATEMENT

On March 4, 1987, an application was filed with the Water Resources Department by Ernest and Rosa Smith for approval of a change in place of use and point of diversion of water from the West Fork of Williams Creek. Application was made pursuant to ORS 540.510 to 540.530.

The water right which is the subject of Transfer Application 5912 is for the appropriation of not to exceed 0.017 cubic foot per second of water from the West Fork of Williams Creek for irrigation of a certain 1.0 acre within the SW 1/4 NW 1/4 of Section 3, Township 39 South, Range 5 West, WM, under a date of priority of 1875. The place of use is also described as Tax Lot 600. The right is a portion of the right allowed by decree of the court in the Rogue River adjudication proceeding in the name of E.E. Blanchard and described by the Certificate recorded at page 49703, Volume 43, State Record of Water Rights Certificates.

The authorized point of diversion is described as being located 440 feet south and 1200 feet west from the East Quarter Corner of Section 4, being within the NE 1/4 SE 1/4 of Section 4, Township 39 South, Range 5 West, WM, being the head of the Chapman Ditch.

The applicants propose to sever the water right from the above described place of use and to irrigate in lieu thereof a certain other 1.0 acre located within Tax Lot 622, also within the said SW 1/4 NW 1/4 of Section 3.

The proposed point of diversion for pumping directly from the Creek channel is described as being 100 feet north and 650 feet east from the West Quarter Corner of said Section 3, being within the SW 1/4 NW 1/4 of Section 3.

Notice of the application, pursuant to ORS 540.520(2), was published in the Grants Pass Daily Courier, a newspaper of general circulation in the area in which the water right is located, for a period of three weeks in the issues of April 21, 28, and May 5, 1987.

On May 18, 1987, a protest against approval of the subject application was filed in the name of LaVerne Hemphill. In the protest it was alleged that protestants now had trouble getting irrigation water and did not wish to add another problem, and that the proposed recipient did not seem to need any more water.

On May 26, 1987, a protest against approval of the subject application was filed in the name of Mr. and Mrs. Carl Davis, Mr. and Mrs. Lynn Levitt and Bertha Ann Lucas by Carl Davis. In protest, it was alleged that the natural flow of the irrigation system would be altered, which would reflect a decrease in irrigation flow in its natural path, and further that the erratic flow was already having negative effects and that there was no way to regulate the flow.

Requests for clarification of the protests were sent to LaVerne Hemphill on May 18, 1987 and to Carl Davis on May 29, 1987. Clarifications were received from LaVerne Hemphill on May 29, 1987 and from Carl Davis June 5, 1987. Both responses alleged that the water right which applicant seeks to transfer is part of a system used by several water rights holders, that the system was designed for the use of the volume of water represented by the combined rights, and that all other rights would be damaged by removal of applicants' rights from the system. The Davis response additionally alleged that to reduce the diversion into Chapman Ditch by the amount proposed in the transfer application (0.017 gpm) would not be possible without a sophisticated metering device installed at the headgate. The Hemphill response additionally alleged that the system would be difficult or impossible to operate with the proposed reduction in the total volume in the system.

Pursuant to the Notice of Hearing dated August 20, 1987, the matter of the pending Transfer Application 5912 and the protests against approval of the application was brought to a contested case hearing in Grants Pass, Oregon on October 6, 1987, before James W. Carver, an employee of the Water Resources Department, authorized to preside in behalf of the Director as a finder of fact.

Applicant Ernest Smith was present at the hearing and appeared pro se. Protestant LaVerne Hemphill was present at the hearing and appeared pro se. Protestant Carl Davis, representing himself, Mr. and Mrs. Lynn Levitt (not present) and Bertha Ann Lucas (not present) was present at the hearing and appeared pro se.

The question before the Department in this matter is whether the change in place of use and point of diversion under an existing water right of record, from irrigation of a certain one acre, Tax Lot 600 to irrigation of another one acre, Tax Lot 622, in the same quarter quarter section, together with the proposed change in point of diversion of the water for the one acre, as proposed by the subject application, would result in injury to the existing water rights of the protestants and/or others.

A proposed order was served on the parties by the Water Resources Director on November 27, 1987. The parties were allowed 30 days from date of service to file exceptions and objections to the proposed order with the Water Resources Commission. No exceptions or objections have been filed.

Now, therefore, the Director by authority delegated from the Commission, makes the following:

#### FINDINGS OF FACT

Water from the West Fork of Williams Creek for use by the applicants, the protestants, and certain other water users is diverted from the West Fork into Chapman Ditch through a gravity diversion. Water runs through a pipeline for some distance to a parshall flume at the SW corner of Tax Lot 602, back into a pipeline for approximately 120' and then out into an open ditch on the east side of Tax Lot 602. The water then travels primarily in an open ditch through both applicant's and protestants' properties and beyond. The entire course of the ditch is relatively flat and has no noticeable changes in elevation.

Testimony by applicant, applicant's witnesses, and protestants established that from time to time the several parties served with water from the West Fork of Williams Creek by means of the above-described delivery system have all experienced shortages of water through ineffective or inadequate delivery. Applicant stated that his attempt at pumping from the ditch would deplete the ditch in relatively short order and that he had therefore constructed a well from which he now irrigates his property.

The irrigation water rights on Chapman Ditch under the subject Certificate 49703 total .60 cubic foot per second (cfs), or 269 gallons per minute (gpm). The Assistant Watermaster for Josephine County testified that he took a farmers method of measurement at the parshall flume at the beginning of the 1986 distribution season, expecting to measure .60 cfs but recording only .30 cfs. He noted that the water in the ditch and flume was so backed up and slow moving it was nearly impossible to determine the velocity. The parshall flume cannot measure the flow under such conditions.

The Hearings Officer noted for the record that the evening prior to the hearing, he accompanied the Assistant Watermaster and walked most of the ditch from the parshall flume to the applicants' property. He noted that from approximately 120' downstream of the parshall flume and beyond, where the ditch is open, there was a great deal of grass and weeds growing in the ditch, which have a tendency to reduce the capacity of the ditch and impede flow.

The Hearings Officer also noted that between pipe sections the ditch was partially filled with dirt and leaves, that the ditch below the flume had, in one section, sloughed in with the result that the water was backed up through the flume, and that the flume showed no movement of water.

Protestant Hemphill testified without contradiction that there was no organization of users on Chapman Ditch for maintenance of the ditch, and that each property owner was responsible for upkeep of that portion of the ditch crossing that users property.

The thrust of the testimony is that the users of Chapman Ditch have for some time been experiencing erratic and generally inadequate flows, and that this problem is quite unrelated to the amount of water coming in at the headgate or to the application for transfer. These problems are, rather, a function of inadequate ditch maintenance.

The elimination of 0.017 cfs, or 7 gpm, from a total combined right of .60 cfs, or 269.3 gpm, will not have any impact on the water flowing -- or not flowing -- through Chapman Ditch. Robert B. Steimer, Watermaster, has filed a statement to the effect that the proposed changes in place of use and point of diversion may be made without injury to existing rights. We agree with this conclusion. There is nothing in the record to support protestants' allegations that the proposed change in place of diversion or use will have any adverse impact on protestants' or others' water rights.

#### CONCLUSIONS OF LAW

The changes in point of diversion and place of use of water as proposed by Transfer Application 5912 can be effected without injury to existing water rights. Therefore, the application should be approved pursuant to the provisions of ORS 540.530.

#### ORDER

NOW THEREFORE, it is hereby ORDERED that the proposed changes in place of use and point of diversion are approved, without loss of priority.

It is FURTHER ORDERED that the quantity of water transferred shall not exceed 0.017 cubic foot per second, and shall be used only during the irrigation season of each year, in accordance with the terms of the original certificate.

It is FURTHER ORDERED that the following provisions shall be effective when in the judgment of the Watermaster the same shall become necessary:


That the diversion works shall include an in-line flow meter, a weir, or other suitable device for measuring the water to which the applicant is entitled.

That the type and plans of the measuring device be approved by the Watermaster before the beginning of construction work and that the weir or measuring device be installed under the general supervision of said Watermaster.

It is FURTHER-ORDERED that construction of all works necessary to the changes in point of diversion and place of use of water as authorized herein be completed on or before October 1, 1988, and that the water be fully applied to beneficial use on the proposed place of use prior to October 1, 1989.

It is FURTHER ORDERED that the certificate recorded at page 49703, Volume 43, State Record of Water Right Certificates, is canceled; and in lieu thereof a new certificate be issued covering the balance of the right NOT involved in this proceeding; and upon proof satisfactory to the Water Resources Director of completion of works and beneficial use of water to the extent intended under the provisions of this order, a confirming certificate of water right shall be issued to the owner of the land to which the subject water right is transferred.

Dated at Salem, Oregon this 8<sup>th</sup> day of January, 1988.

  
WILLIAM H. YOUNG  
Director

NOTICE You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service (date of mailing) of this order. Judicial review is pursuant to the provisions of ORS 536.075 and 183.482.

2282E