

BEFORE THE STATE ENGINEER

BAKER COUNTY

IN THE MATTER OF THE APPLICATION OF)
WILLIAM R. PEYRON FOR THE APPROVAL)
OF A CHANGE IN PLACE OF USE OF WATER)
FROM POWDER RIVER.)

ORDER
APPROVING APPLICATION

On December 22, 1948, William R. Peyron filed an application for approval of a change in place of use of water from Powder River, pursuant to the provisions of Section 116-606, O. C. L. A.

By decree of the Circuit Court for Baker County, Oregon, dated March 18, 1918, in the matter of the determination of the relative rights to the use of the waters of Powder River and its tributaries, a water right was adjudicated in the name of Francis E. Reynolds for the irrigation of 40.0 acres within the NW $\frac{1}{2}$ NE $\frac{1}{4}$, Section 35, Township 8 South, Range 40 East, W. M., through the Wisdom-Chambers ditch, with a date of priority of 1905 and a water right from Powder River was adjudicated in the name of S. O. Correll for the irrigation of 40.0 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 35, Township 8 South, Range 40 East, W. M., through the Wisdom-Chambers ditch, with a date of priority of April 24, 1885.

The point of diversion of the Wisdom-Chambers ditch from Powder River is 30 feet south and 135 feet east of the quarter corner common to sections 8 and 9, Township 9 South, Range 40 East, W. M.

William R. Peyron, owner of the lands and water rights hereinbefore described in the name of Francis E. Reynolds and S. O. Correll proposes to transfer the water right to following described lands:

- 15.0 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$, 22.2 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 36, Township 8 South, Range 40 East, W. M.,
- 16.1 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, 21.7 acres in the NW $\frac{1}{2}$ NW $\frac{1}{2}$, Section 1 Township 9 South, Range 40 East, W. M.

without loss of date of priority.

Notice of the filing of application for change in place of use is not by law required to be published, but in this proceeding, notice was given by mail to interested parties of the filing of the application, which notice set forth a time and place certain for hearing objections to the proposed change in place of use, if any there were, namely; at the County Court House at Baker, Oregon, on April 8, 1949, at 10:00 o'clock A. M. The date set for the hearing in said notice being 30 days from date of notice.

Objections of James E. Prowell, Florence Prowell, his wife, W. J. Robinson, Leo Schiller, Mary Schiller, George Spencer, A. E. Conklin, H. W. Cooper, John E. Weitz and Joseph Rogers, agent, against the approval of the application of William R. Peyron was filed with the State Engineer on March 23, 1949.

The bases of the protest and objection to the approval of the application is summarized as follows:

That George Spencer, Mary Schiller, Leo Schiller and W. Cooper, own certain lands in Sections 26, 34, and 35, Township 8 South, Range 40 East, W. M., and in Section 2, Township 9 South, Range 40 East, W. M., in the immediate vicinity which derive benefits through seepage and overflow of water carried through the Wisdom-Chambers ditch when water was conveyed through the ditch for the irrigation of the lands which it is proposed to transfer the water from, and the change in place of use would seriously injure and impair the use and enjoyment of this seepage and overflow water.

That the burden upon said Wisdom-Correll-Chambers Ditch, because of all of said actual or claimed water rights aggregates 659 acres, and that said ditch does not and never has possessed a carrying capacity sufficient to accomodate all of said actual or claimed water rights. That heretofore and for a period of many years to and including the date hereof the parties hereto have had much trouble, difficulty and litigation over the burden so imposed upon said ditch, and ditches, and that heretofore, and on the 3rd day of August, 1945, the Circuit Court of the State of Oregon, for Baker County, in a case entitled James E. Prowell, et al., vs. Henry B. Peyron, et al., said defendants including the above named William R. Peyron, made and entered its certain decree which among other things provided:

"That no water shall be employed by the defendants or any of them in the irrigating of any land in the north half of Section 36, Township 8 South, Range 40, East, W. M., through said Prowell Ditch unless and until defendants, or one or more of them shall acquire through purchase from the plaintiffs, James E. Prowell and Florence Prowell, his wife, or through enlargement, pursuant to the provisions of Section 12-130 O.C.L.A. an interest or carrying capacity

therein amply sufficient to accomplish the irrigation of the said lands, and shall have made their final proof to the State Engineer and shall have received certificate of water right therefor."

That no such right was ever acquired by the said Peyrons, either through purchase, enlargement or otherwise, and that no enlargement has been made or accomplished upon said Wisdom-Correll-Chambers Ditch from which the said Prowell Ditch makes its diversion.

That in and by the terms and provisions of said decree, it was and is further recited that the said defendants Peyron, et. al., should construct and install certain gates, boxes and measuring devices before entitled to receive any water through said Prowell Ditch, such work never having been performed by the said Peyrons.

That it was and is further provided by said decree that the said Peyrons should be and they were enjoined and restrained from interfering in any manner with the rights of the said Prowells to the use and enjoyment of said ditches in connection with the irrigation of their said lands under the aforesaid water rights.

That at a time subsequent to the making and entry of said decree the said Peyrons did pretend to enlarge said Wisdom-Correll-Chambers Ditch, but did not in fact increase the carrying capacity thereof.

That by permitting that transfer of water rights to the extent of 75 acres from the west half of the northeast quarter of said Section 35 to the lands proposed to be irrigated through said Prowell Ditch as disclosed by said application will produce a further unjustified, burdensome and damaging burden upon said Prowell Ditch as well as upon said Wisdom-Correll, Chambers Ditch, with injury to the vested rights of these objectors and the other owners of water rights along said Wisdom-Correll-Chambers and Prowell Ditches, and will deprive the said objectors Mary Schiller, Leo Schiller, George Spencer and W. Cooper from the benefit of the aforesaid seepage and overflow waters.

On April 7, 1949, accompanied by William R. Peyron, the applicant, James E. Prowell, one of the objectors, Blaine Hallock, legal counsel for objectors, J. W. Maxwell, Watermaster of Baker County, the Wisdom-Chambers ditch was carefully examined from its point of diversion from Powder River to the point where the lateral, known as the Prowell ditch, enters into the lands of James E. Prowell, and on the afternoon of April 8, 1949, the lands from which it is proposed to transfer the water was examined.

A hearing was held by the State Engineer, beginning at 10:00 o'clock A. M., on April 8, 1949, at the watermaster's office in the Court House, at Baker, Oregon, at which hearing the applicant, William R. Peyron, and the objectors represented by legal counsel, Blaine Hallock, appeared and submitted evidence.

It appearing, that the carrying capacity of the Wisdom-Chambers ditch including the Prowell extension in its present condition is essential to a determination of the issue and as no definite evidence was introduced, from which the present carrying capacity could be determined, the State Engineer, advised the parties, at the time of hearing, that no action upon the application would be taken until accurate measurements were obtained by the State Engineer.

On April 29, 1949, George V. Naderman, Assistant State Engineer, made measurements of the water flowing in the Wisdom-Chambers Ditch, including the Prowell extension, at various points, by means of the standard method of measuring water with a current meter, and has submitted a report thereof which report by reference is made a part of this order.

It appears that water for use in irrigating the lands from which it is proposed to transfer the water is conveyed through the Wisdom-Chambers Ditch to the head of the ditch designated in the Circuit Court Decree in the case entitled James E. Prowell, et al., vs. Henry B. Peyron et al. as the Prowell Ditch which head is near the center of Section 2, Township 9 South, Range 40 East, W. M., thence in a ditch extending in a general northerly direction to the applicant's lands.

The proposed change in place of use contemplates the conveyance of the water through the Prowell Ditch to a place about 200 feet east of the west line of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 1, Township 9 South, Range 40 East, W. M., where the water is to be taken out for the irrigation of applicant's lands.

It appeared from the examination of the Wisdom-Chambers Ditch, including the Prowell lateral, that a very substantial amount of work has been done within the last year or so. It also appears from a profile of the Wisdom-Chambers Ditch prepared by Philo Anderson, Registered Professional Engineer, introduced in this proceeding, which represented conditions of the ditch in May, 1943, that the carrying capacity is now considerable greater than in 1943.

The measurements of the flow of water in the Wisdom-Chambers Ditch on April 29, 1949 indicates that the capacity of this ditch from the point of diversion

from Powder River to the center of Section 2, Township 9 South, Range 40 East, W. M. is sufficient to carry one miners inch per acre for all lands with a right to the use of waters from Powder River through this ditch, and that the capacity of the Prowell ditch from its head near the center of said Section 2 is 642 miners inches or in excess of that required to supply one miners inch per acre to the lands with water served through this lateral including the 75 acres which it is proposed to transfer.

In the courts decree defining the relative rights to the use of the waters of Powder River and its tributaries, water rights were allowed for practically all lands in which the owners have objected to the approval of the application on the grounds that they would be deprived of seepage water also part of the lands owned by said objectors are west of Baldock Slough. It is logical to assume that any seepage and waste water from the land from which it is proposed to transfer the water would be collected in Baldock Slough.

An examination of the lands from which it is proposed to transfer the water shows excessive alkali and indications of a ground water table close to the surface. It appears that the water right appurtenant to the $E\frac{1}{2} NE\frac{1}{2}$ of Section 35, Township 8 South, Range 40 East, W. M. which is adjacent to and west of the tract from which it is proposed to transfer the water was transferred in 1919 forreason stated, in the application that the water could be no longer beneficially used in the irrigation of this tract. It appears that the approval of the application would not result in injury to existing rights as contemplated by Section 116-606, O.C.L.A.


NOW THEREFORE, it hereby is ORDERED that the water right appurtenant to 35 acres in the $SW\frac{1}{2} NE\frac{1}{2}$, Section 35, Township 8 South, Range 40 East, W. M., with a date of priority of April 24, 1885 be severed therefrom and simultaneously and without loss of priority transferred to 13.3 acres in the $NE\frac{1}{2} NW\frac{1}{2}$ and 21.7 acres in the $NW\frac{1}{2} NW\frac{1}{2}$, Section 1, Township 9 South, Range 40 East, W. M. and the 40 acre water right appurtenant to the $NW\frac{1}{2} NE\frac{1}{2}$, Section 35, Township 8 South, Range 40 East, W. M., with a date of priority of 1905 be severed therefrom and simultaneously

and without loss of priority, transferred to 2.8 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 1 Township 9 South, Range 40 East, W.M., 15.0 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$, and 22.2 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 36, Township 8 South, Range 40 East, W. M.

It is FURTHER ORDERED that the applicant or his successor in interest shall install a head gate which can be locked and a measuring device at or near the place where the water is to be taken from the Prowell Ditch or should a new ditch be constructed to convey the water from the Wisdom-Chambers Ditch near the center of Section 2, Township 9 South, Range 40 East, W. M. to applicants lands, the head gate and measuring device shall be installed at head of that ditch, said installation to be made under the supervision and direction of the watermaster of Baker County, Oregon.

It is FURTHER ORDERED, that said water so transferred shall be applied beneficially in the irrigation of the lands on or before October 1, 1949, or such extension of time as may be granted by the State Engineer.

Dated at Salem, Oregon, this 6th day of May, 1949.


CHAS. E. STRICKLIN
State Engineer

*Noted on Decree
Vol. 6 p 375 and 437
Certs. 20311, 20312, 20310
confirm this change*