

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

UMATILLA COUNTY

IN THE MATTER OF THE APPLICATION OF )  
AL AND R.O. CONFORTH FOR APPROVAL ) ORDER APPROVING  
OF CHANGES IN USE HERETOFORE MADE ) TRANSFER 5285  
OF WATER )

On June 10, 1983, an application was filed in the office of the Water Resources Director by Al and R.O. Conforth for approval of changes in place of use and use heretofore made of water from Umatilla River, pursuant to the provisions of ORS 540.510 to 540.530.

By a Supplemental Decree of the Circuit Court for Umatilla County, entered September 1, 1961, in the Matter of the Determination of the Relative Rights to the Use of the Waters of Umatilla River and Its Tributaries, a water right was tabulated at page 426, Volume 15, in the name of R.V. Winchell, for irrigation of, among other lands, a certain 29.7 acres in NE 1/4 NW 1/4 and 3.6 acres in SE 1/4 NW 1/4, Section 16, Township 5 North, Range 28 East, WM, with a date of priority of 1903.

Water for the said right is diverted, through the Brownell Ditch, from a point located 1500 feet North and 290 feet East from the East Quarter Corner of Section 20, being within the NW 1/4 NW 1/4 of Section 21, Township 5 North, Range 28 East, WM.

The applicants herein, owners of the lands above described, propose to transfer 0.361 cubic foot per second of said water right from irrigation of 14.5 acres to the irrigation of:

- 8.0 acres NE 1/4 NE 1/4 (Woodward)
- 0.40 acre NW 1/4 NW 1/4 (Stevens)
- 0.30 acre NW 1/4 NW 1/4 (Inland Bank)
- 0.30 acre NW 1/4 NW 1/4 (Ward)
- 0.20 acre NW 1/4 NW 1/4 (Trainer)
- 0.20 acre NW 1/4 NW 1/4 (Donaldson)
- 0.20 acre NW 1/4 NW 1/4 (Anderson)
- Section 16
- 3.2 acres NE 1/4 NE 1/4 (Veith)
- 1.7 acres SE 1/4 NE 1/4 (Veith)
- Section 17
- Township 5 North, Range 28 East, WM

and to change the balance of said right, being 0.47 cubic foot per second for irrigation of 18.8 acres, to industrial use in a gravel processing plant, in SW 1/4 NW 1/4, Section 17, Township 5 North, Range 28 East, WM.

Notice of the application, pursuant to ORS 540.520(2), was published in the East Oregonian, a newspaper having general circulation in the area in which the water right is located, for a period of three weeks in the issues of August 11, 17 and 23, 1983.

West Extension Irrigation District filed a protest against approval of Transfer Application 5285, by and through their attorney, Rustin A. Brewer, Attorney at Law, Hermiston, Oregon. The protestants alleged that the proposed change in use of 0.47 cubic foot of water from irrigation of a certain 18.8 acres of land to gravel processing "would be harmful to the Irrigation District's withdrawal of water from the river since it would require returning water for sporadic use by the gravel company. This would not be a continuous flow diversion as would be the case of use by an agricultural tract."

The matter of the pending transfer application and the protest against it was brought to a contested case hearing in Hermiston, Oregon on February 18, 1986, before James W. Carver, Jr., an employee of the Water Resources Department, authorized to preside in behalf of the Director as a finder of fact.

The applicants, A.L. and R.O. Conforth, were not present at the hearing and were not represented by legal counsel. By agreement of the parties, Jones-Scott Company, the recipient of that portion of the proposed transfer of water rights that pertains to change in use of water from irrigation to gravel processing, appeared through their attorney, Garry L. Reynolds, Attorney at Law, Hermiston, Oregon. The recipients of the remainder of the proposed transfer of water rights were represented by George L. Anderson, Attorney at Law, Hermiston. The West Extension Irrigation District, protestant, appeared through its attorney, Rustin A. Brewer.

The evidence adduced established the following facts:

1. The Terminal Ditch Company diverts water into its canal by diversion from the Umatilla River at a point approximately two miles downstream from the Threemile Dam.
2. At times of the year, during the irrigation season, West Extension Irrigation District diverts the entire flow of the Umatilla River into their canal system at Threemile Dam.
3. Even though the entire flow of the Umatilla River was diverted at Threemile Dam during nearly all of the past several years, the Terminal Ditch Company has received its full measure of water at its point of diversion as a result of seepage through Threemile Dam, springs discharging into the river channel below the dam, and return flows to the river channel.
4. For the past thirty or more years, Jones-Scott Company has mined and washed gravel at the location intended to benefit from the proposed change in use of water.

5. There are no rights for use of water for mining and/or washing gravel at the location of the Jones-Scott Company operations.
6. For the past thirty or more years, Jones-Scott Company has pumped water from the Terminal Ditch Company's canal at the rate of 540 gallons per minute (1.2 cubic feet per second) for approximately eight hours per working day for gravel washing at the location intended to benefit by the proposed transfer.
7. Terminal Ditch Company's canal holds sufficient water to allow for water being pumped from the canal at a rate substantially in excess of the rate of diversion into the canal, for several hours per day. The level of water in the canal goes down during the time the pump is operating, and recovers during the time the pump is off.

Approval of the pending Transfer Application 5285 would not increase the amount of water diverted from the Umatilla River by the Terminal Ditch Company over the amount that has been diverted for the past thirty or more years.

The result of the proposed transfer would be to provide a water right of record for a use that has been made for the past many years without a water right.

The evidence does not support the allegations of the protestant.

Approval of the pending Water Right Transfer Application 5285 would not result in injury to protestant.

Larry H. Nunn, Watermaster at the time of filing of the application, has filed a statement to the effect that the proposed changes in place of use and use heretofore made may be made without injury to existing rights.

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

It is FURTHER ORDERED that the quantity of water used for the proposed purposes shall not exceed 0.831 cubic foot per second, and shall be used only during the irrigation season of each year.

It is FURTHER ORDERED that the following provisions shall be effective when in the judgment of the Watermaster it becomes necessary to install headgates and measuring devices:

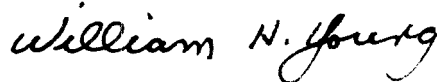
That the diversion works shall include an in-line flow meter, a weir, or other suitable device for measuring the water to which the applicant is entitled;

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 the construction work shall be completed and water used for the proposed purposes on or before October 1, 1987.

It is FURTHER ORDERED that upon proof satisfactory to the Water Resources Director of complete application of water to beneficial use on the lands to which the water is transferred hereby, the changes in use and place of use shall be considered perfected, and at a later date a certificate of water right shall be issued to Terminal Ditch Company confirming this and other changes within Terminal Ditch Company at the time certificates are issued confirming rights allowed in the Umatilla River Adjudication proceedings.

Dated at Salem, Oregon, this 28th day of May, 1986.



WILLIAM H. YOUNG,  
Director

NOTE: The approval of a water right transfer application does not confirm the status of the right in regard to the provisions of ORS 540.610 pertaining to forfeiture or abandonment.

A party may file objections and exceptions to the Proposed Order with the Water Resources Commission. Such objections and exceptions must be filed within 45 days from the date of service (date of mailing) of the Proposed Order on the party. The Commission will provide opportunity for oral argument in support of written objections and exceptions. If no objections and exceptions are filed within the time allowed, the Proposed Order will automatically become the Final Order of the Commission.

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