

BEFORE THE STATE ENGINEER OF OREGON

Baker County

IN THE MATTER OF THE APPLICATION)
OF HAROLD (CON) ROWEN FOR THE)
APPROVAL OF A CHANGE IN POINT OF)
DIVERSION OF WATER FROM EAST PINE)
CREEK)

ORDER APPROVING
TRANSFER NO. R-100

On January 9, 1968, an application was filed in the office of the State Engineer in the name of Harold (Con) Rowen for a change in point of diversion of water from East Pine Creek with a date of priority of 1877 for irrigation of 20.0 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and 9.0 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 4, Township 8 South, Range 46 East, W.M., being a part of the right established by decree of the Circuit Court in adjudication of the relative rights to the waters of Pine Creek and its tributaries in the name of Ola A. Sturgill, confirmed by the water right certificate recorded at page 10485, Volume 10, State Record of Water Right Certificates.

The application states that the legal point of diversion for these lands is at a point 940 feet south and 1056 feet west from the NE corner of Section 32, Township 7 South, Range 46 East, W.M., being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 32.

The applicant proposes to change the point of diversion to a point 1320 feet south and 1320 feet east from the NW corner of Section 4, Township 8 South, Range 46 East, W.M., being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 4.

The said application has been designated in the records of the State Engineer as water right transfer application number R-100.

Notice of the subject application was published in the Record-Courier, a newspaper of general circulation, published in

Baker, Oregon, in the issues of August 1, 8, and 15, 1968, and fixed the time and place for hearing, being 9:30 a.m., September 24, 1968, at the County Courthouse at Baker, Oregon.

On September 4, 1968, a protest in the name of James E. Walter was filed in the office of the State Engineer alleging that the proposed change in point of diversion would result in injury to the water rights of the protestant. Also on September 4, 1968, a protest in the name of Neil Gentry was filed in the office of the State Engineer alleging that the proposed change in point of diversion would result in injury to the water rights of the protestant.

Pursuant to the published notice, the matter of the subject application and the protests against approval of it were brought to a hearing at the appointed time and place before Mr. James W. Carver, Jr., Deputy State Engineer. The applicant, Mr. Harold (Con) Rowen, appeared and was represented by Mr. William Jackson, Attorney at Law, Baker, Oregon. The protestants, Mr. James E. Walter and Mr. Neil Gentry, appeared and were represented by Mr. David Silven, Attorney at Law, Baker, Oregon.

Called as witnesses for the applicant were Mr. Harold S. Crow, Mr. Albert James Crow, Mrs. Harold (Beth) Rowen, and Mr. George Ward, District Watermaster.

Testimony for the protestants was given by Mr. Neil Gentry.

During the course of the hearing, the application was amended to delete reference to the 9.0 acres of land within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 4, Township 8 South, Range 46 East, W.M.

Also, during the course of the hearing, it was disclosed that the objections of the protestant, Mr. James E. Walter, were not based on opposition to the proposed change in point of diversion, but,

instead, upon the basis that the applicant had constructed a fill across Spring Creek Branch to serve as part of the irrigation distribution works on the applicant's lands which would effect the diversion of flood flows of Spring Creek Branch into nearby Bear Wallow Slough to the detriment of the protestant. The protest of James E. Walter was disposed of by stipulation between the protestant and the applicant to the effect that the applicant will so modify the structure across Spring Creek Branch so as not to divert flood flows of Spring Creek Branch into Bear Wallow Slough and not to interfere with the source of supply of the protestant's irrigation water.

FINDINGS OF FACT

Testimony was in agreement that water for the irrigation of the 20.0 acres of land within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 4, Township 8 South, Range 46 East, has, in fact, been diverted at the proposed point of diversion for the past 20 and more years.

The protestant, Mr. Neil Gentry, testified that the basis of his objection to the proposed change in point of diversion is that there is no public access to the proposed point of diversion and ditch to the subject 20.0 acres so that he could personally maintain surveillance of the amount and the use made of the water diverted under the subject right.

CONCLUSIONS

The responsibility for regulation of the diversion of water under the respective priorities of the several rights to the flow of East Pine Creek rests upon the watermaster and not upon the protestant. With proper distribution of water according to entitlement, the proposed change in point of diversion would not result in injury to other existing water rights.

ORDER

NOW, THEREFORE, it hereby is ORDERED that the change in point of diversion of water from East Pine Creek, to-wit:

From a point located 940 feet south and 1056 feet west from the NE corner of Section 32 being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 32, Township 7 South, Range 46 East, W.M.

To a point to be located 1320 feet south and 1320 feet east from the NW corner of Section 4 being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 9, Township 8 South, Range 46 East, W.M.

for the irrigation of 20.0 acres in Sw $\frac{1}{4}$ NE $\frac{1}{4}$, Section 4, Township 8 South, Range 46 East, W.M., with a date of priority of 1877, is approved.

It is FURTHER ORDERED that the construction work shall be completed and the change in point of diversion of water made on or before October 1, 1969.

It is FURTHER ORDERED that the quantity of water diverted at the new point of diversion shall not exceed the quantity of water available at the old point of diversion, and shall not exceed one-fortieth of a cubic foot per second per acre, measured at the point of diversion, and a total limitation of one acre-foot per acre during July, one acre-foot per acre during August, and one-half acre-foot per acre during September of each year.

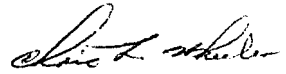
It is FURTHER ORDERED that the following provisions shall be carried out prior to the diverting of water at the new point of diversion as herein confirmed.

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 certificate of water right heretofore issued to Ola A. Sturgill and recorded at page 10485, Volume 10, State Record of Water Right Certificates, is canceled, and in lieu thereof a new certificate be issued covering the balance of the lands not involved in this proceeding, and upon receipt of proof satisfactory to the State Engineer of completion of the authorized change in point of diversion, a certificate of water right shall be issued to Harold (Con) Rowen confirming said change in point of diversion.

Dated at Salem, Oregon, this 21st day of October, 1968.



CHRIS L. WHEELER
State Engineer