

BEFORE THE STATE ENGINEER OF OREGON

Umatilla County

IN THE MATTER OF THE APPLICATION)
OF C. R. SMITH FOR THE APPROVAL)
OF A CHANGE IN POINT OF DIVERSION)
AND PLACE OF USE OF WATER FROM)
MCKAY CREEK.)

O R D E R
APPROVING APPLICATION

On March 14, 1955 C. R. Smith of Pendleton, Oregon, filed an application for the approval of a change in point of diversion and place of use of water from McKay Creek, pursuant to the provisions of ORS 540.510 to 540.530.

By Decree of the Circuit Court for Umatilla County, Oregon, entered September 9, 1916, in the Matter of the Determination of the Relative Rights of the Various Claimants to the Waters of Umatilla River and Its Tributaries, a water right was recognized in the name of A. M. Despain for the irrigation of 28 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, 20 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, 20 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, 7 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, 15 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and 10 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 21, Township 2 North, Range 32 East, W. M., from McKay Creek, of which 47 acres have a date of priority of 1894 and 53 acres have a date of priority of 1907. Subsequently, on June 20, 1924, the State Engineer entered an order approving the application of F. W. Johnson for a change in place of use of water wherein the water right appurtenant to 6 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, said Section 21, was transferred to the SW $\frac{1}{4}$ NE $\frac{1}{4}$, said Section 21.

Certificate of Water Right issued to E. W. Barnum and recorded at page 13424, Volume 11, State Record of Water Right Certificates, confirms a right to the use of water of McKay Creek under Permit No. 14294 for the irrigation of 14 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and 12 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 21, Township 2 North, Range 32 East, W. M., with a date of priority of April 13, 1940.

All of the lands above described in paragraphs 2 and 3 hereof are irrigated through either the E B C Brothers ditch or the Kemler-Despain-Umatilla ditch, the point of diversion of the E B C Brothers ditch being located 700 feet north and 1475 feet west from the east quarter corner of Section 28,

and being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, said Section 28, Township 2 North, Range 32 East, W. M., and the point of diversion of the Kemler-Despain-Umatilla ditch being located 600 feet North and 2100 feet west from the southeast corner of Section 21, and being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$, said Section 21, Township 2 North, Range 32 East, W. M.

The applicant herein, owner of 57.49 acres of the land above described, to-wit: 9.65 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, 9.4 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, 5.46 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and 0.85 acre in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 21, Township 2 North, Range 32 East, W. M., with a date of priority of 1894, and 10.88 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, 10.6 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, 6.15 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and 0.94 acre in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, said Section 21, with a date of priority of 1907 and 3.56 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, said Section 21, with a date of priority of April 13, 1940, proposes to transfer the water right appurtenant to 6.2 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ without loss of priority to 6.2 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 21, Township 2 North, Range 32 East, W. M., and to irrigate said 6.2 acres, together with the remaining 51.29 acres, by means of a pumping plant, the point of diversion of said pumping plant to be located 694 feet south and 1929 feet east from the northwest corner of Section 21, and being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$, said Section 21, Township 2 North, Range 32 East, W. M.

Notice by publication as provided by ORS 540.510 to 540.530 was given in the Pendleton Record, a newspaper printed and having general circulation in Umatilla County, Oregon, for a period of three weeks, being the issues of April 28 and May 5 and 12, 1955. The time for hearing as fixed in the notice, namely: June 22, 1955, was not less than thirty days after the last publication of the notice.

Mr. M. J. Belton, Watermaster of District No. 5, has filed a report to the effect that the proposed change in point of diversion of water from McKay Creek may be made without injury to existing rights.

No objections having been filed and it appearing that the proposed change in place of use and point of diversion of water may be made without injury to existing rights, the application should be approved.

NOW, THEREFORE, it hereby is ORDERED that the proposed change in place of use of water be and the same hereby is approved and that the water right hereinbefore described as appurtenant to 2.91 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 21, Township 2 North, Range 32 East, W. M., with a date of priority of 1894 and 3.29 acres in the said NW $\frac{1}{4}$ NW $\frac{1}{4}$ with a date of priority of 1907 be severed therefrom and simultaneously and without loss of priority transferred to 6.2 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 21, Township 2 North, Range 32 East, W. M.

It is FURTHER ORDERED that the proposed change in point of diversion of water from McKay Creek, to-wit:

From a point located 700 feet north and 1475 feet west from the east quarter corner of Section 28, and being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, said Section 28, Township 2 North, Range 32 East, W. M., and

From a point located 600 feet north and 2100 feet west from the southeast corner of Section 21, and being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$, said Section 21, Township 2 North, Range 32 East, W. M.,

To a point to be located 694 feet south and 1929 feet east from the northwest corner of Section 21, and being within the NE $\frac{1}{4}$ NW $\frac{1}{4}$, said Section 21, Township 2 North, Range 32 East, W. M.,

for the irrigation of 12.56 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, 6.49 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ and 5.46 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and 0.85 acre in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 21, Township 2 North, Range 32 East, W. M., with a date of priority of 1894, and 14.17 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$, 7.31 acres in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, 6.15 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and 0.94 acre in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, said Section 21, with a date of priority of 1907 and 3.56 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, said Section 21, with a date of priority of April 13, 1940, be and the same hereby is approved.

It is FURTHER ORDERED that the change in point of diversion of water shall be made and the water applied to beneficial use on the lands to which it is transferred herein on or before October 1, 1956 or within such extension of time as may be granted by the State Engineer for good cause shown.

It is FURTHER ORDERED that the quantity of water that is diverted at the new point of diversion shall not exceed the quantity of water that is available at the old points of diversion.

It is FURTHER ORDERED that upon receipt of proof satisfactory to the State Engineer of the complete application of water to beneficial use on the lands to which the water is transferred hereby, Certificate of Water Right shall be issued to C. R. Smith or his successors in interest, to the extent to which the water has been applied beneficially and Certificate of Water Right heretofore issued to A. M. Despain and recorded at page 2511, Volume 3, State Record of Water Right Certificates, which certificate covers, among other lands, the lands from which the water is being transferred, be canceled and that in lieu thereof, a new certificate be issued covering the balance of the lands not involved in this proceeding.

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 pumping plant and related works shall include a weir or other suitable device for measuring the water to which the applicant is entitled.

That the plans of the weir or other suitable device be approved by the watermaster of Umatilla County, Oregon, before the beginning of construction work and that the weir or measuring device be installed under the general supervision of said watermaster.

Dated at Salem, Oregon this 26th day of July 1955.

Noted on Decree

Vol. 3, p. 201

Cert. 2511

Also Cert. 13424

Lewis A. Stanley

LEWIS A. STANLEY
State Engineer