

BEFORE THE STATE ENGINEER OF OREGON

BAKER COUNTY

IN THE MATTER OF APPLICATION OF )  
LOUIS HARTLEY FOR CHANGE IN POINT )  
OF DIVERSION AND PLACE OF USE OF )  
WATER FROM EAGLE CREEK )  
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O R D E R

On August 2, 1934 Louis Hartley filed an application with the State Engineer for the approval of a change in point of diversion and place of use of water from Eagle Creek. It is proposed by the applicant to change the place of use of water from 12 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 19, Township 9 South, Range 46 East, W. M. and 8 acres in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ , Section 30 to 10 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$  and 10 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 19, same township and range, and to change the point of diversion for the irrigation of 8 acres from the head of the Kay Young Ditch which is located approximately 400 feet south and 100 feet west from the northeast corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ , Section 10, Township 9 South, Range 45 East, W. M. to the head of the Newt Young Ditch, the point of diversion of said ditch being approximately two miles upstream.

Subsequent to the filing and publication of the application herein under consideration, a protest was filed by several water users from the Newt Young ditch.

The matter was set for hearing at Baker, Oregon October 9, 1934, at which time evidence was received and testimony taken for and against the approval of the application. The only matter before the State Engineer for determination is as to whether or not the approval of the application would constitute an injury to the rights of the protestants.

It was contended by one of the protestants that if the change in point of diversion were allowed, it would be necessary to enlarge the Newt Young Ditch and consequently damage the property of the protestant. Evidence

submitted indicated the ditch had ample capacity and no enlargement would be necessary. It also appeared that the protestants were of the opinion that if the application were approved, it would result in an increase in the quantity of water the applicant was entitled to and allow him an earlier priority over certain users from the Newt Young Ditch.

The water rights of the applicant were definitely determined by the courts and as so determined define his rights; consequently, the quantity of water and priority of right cannot be increased beyond what the court allowed.


The protestants were further of the opinion that the applicant intended to change the point of diversion from the Kay Young Ditch to the Newt Young Ditch for 20 acres when in fact only 8 acres were involved.

Testimony given by the water master having charge of the distribution of the water indicated that the approval of the application would not prove injurious to the water users from either the Kay Young nor Newt Young Ditches. Judging from the other evidence submitted, the testimony of the water master appears to have been substantiated.

In view of the foregoing and taking all matters under careful consideration, it is HEREBY ORDERED that the application be approved, but nothing herein shall be construed so as to give the applicant a ditch right in the Newt Young Ditch as such involves a property right over which the State Engineer has no jurisdiction.

Dated this 14th day of January, 1955.

*Noted on Decree,  
Vol. 6 p 474; also  
Cert. # 4664*

  
CHAS. E. STRICKLIN,  
State Engineer.