BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

UMATILLA COUNTY

IN THE MATTER OF THE APPLICATION OF HARVEY L. YOUNG FOR APPROVAL OF A CHANGE IN POINT OF DIVERSION OF WATER FROM SCHWARTZ SPRING BRANCH	ORDER APPROVING TRANSFER NO. 3650

On April 28, 1977, an application was filed in the office of the Water Resources Director by Harvey L. Young for approval of a change in point of diversion from Schwartz Spring Branch, pursuant to the provisions of ORS 540.510 to 540.530.

The certificate recorded at page 5543, Volume 6, State Record of Water Right Certificates, in the name of Mrs. Eva Young, describes a right which includes the use of water from Schwartz Spring Branch for irrigation of 3.0 acres in SW¼ NW¼, 36.0 acres in NE¼ SW¼, 38.6 acres in NW¼ SW¼, 3.4 acres in SW¼ SW¼ and 4.0 acres in SE¼ SW¼ of Section 16, Township 6 North, Range 34 East, W.M., with a date of priority of 1874 (Pine Creek Decree, Volume 7, page 163).

The certificate recorded at page 38870, Volume 30, State Record of Water Right Certificates, in the name of H. A. Baccus and H. L. Young, describes a right for the use of not to exceed 0.47 cubic foot per second from Schwartz Spring Branch for irrigation of 20.6 acres in SW¼ NW¼ and 13.2 acres in SE¼ NW¼ of Section 16, Township 6 North, Range 34 East, W.M., with a date of priority of October 10, 1966.

Water for the said rights has been diverted through the Lowe-Young Ditch from the authorized point of diversion located 1360 feet South and 4070 feet East from the West Quarter Corner of Section 16, being within the NE¼ SE¼ of said Section 16.

The applicant herein, owner of the lands above described, proposes to change the point of diversion therefrom, without loss of priority, to a pumping point located 1480 feet South and 1320 feet East from the West Quarter Corner of Section 16, being within the SE¼ SW¼ of said Section 16.

Notice of the application, pursuant to ORS 540.520(2), was published in The Valley Herald, a newspaper printed and having general circulation in Umatilla County, Oregon, for a period of three weeks in the issues of August 18 and 25; and September 1, 1977.

A protest by Raymond Bevans against approval of said application was filed in the office of the Water Resources Director on September 12, 1977.

Pursuant to the published notice, the matter of the application and the protest against it was brought to a hearing before James W. Carver, Jr., at the Umatilla County Courthouse in Pendleton, Oregon, on October 12, 1977.

The applicant, Mr. Harvey L. Young, appeared at the hearing without legal counsel.

The protestant, Mr. Raymond Bevans, appeared at the hearing without legal counsel.

Schwartz Spring Branch is a perennial stream formed by the discharge issuing from a series of springs located along a line which begins near the Southeast Corner of Section 23 of Township 6 North, Range 34 East, W.M.; extends northwesterly into the NW¼ NW¼ of said Section 23; then turns to the west through the northerly one-fourth of Section 22. The channel of Schwartz Spring Branch continues in a generally westerly direction to a confluence with the channel of Pine Creek, within the NE¼ SE¼ of Section 17 of said township and range, which point is approximately one-half mile upstream from where Pine Creek flows across the State line and into Washington.

Prior to the proposed change in point of diversion, water has been diverted into the Lowe-Young Ditch by means of a concrete divider box in the channel of Schwartz Spring Branch and, comingled with water under other rights, carried north and west in the said ditch for a distance of approximately 3800 feet and rediverted into a pumping sump located at the West One-sixteenth Corner of Section 16, where the water was pumped into a sprinkler irrigation system to be distributed onto the lands. Any water not picked up by the said pump was returned to the channel of Schwartz Spring Branch by means of a waste ditch which continued west for one-fourth mile, where it joined another waste ditch flowing south to the channel of Schwartz Spring Branch.

Testimony was offered in regard to a disagreement between the applicant and the protestant as to their relative responsibilities for maintenance of the Lowe-Young Ditch; however, such is not within the jurisdiction of the Water Resources Director to determine, and is not an issue before the Water Resources Director in this proceeding. The facilities used to convey the water from the authorized point of diversion to the place of use are not a defined element of the water right. The jurisdiction of the Water Resources Director in regard to such facilities extends only to regulation of the appropriation to require the water diverted be conveyed and put to beneficial use without undue waste.

The applicant testified that he has relocated and improved the channel of

Schwartz Spring Branch for a distance of approximately one-half mile between the present authorized and the proposed points of diversion, within the boundaries of his property, eliminating beaver dams, ponds, brush and swamp areas along the old channel, thereby making it possible to use larger and faster mechanical equipment to maintain the condition of the new channel. It is recognized, however, that such channel improvement and relocation work does not guarantee that the improved and relocated channel section will continue to convey water with less in-channel losses than the prior channel section.

The question before the Water Resources Director in this matter is: If the applicant were allowed to divert at the proposed point of diversion the water available to him under his subject water rights at the old point of diversion, would other water users be adversely affected in their ability to obtain the water to which they are entitled under their respective water rights for use of the waters of Schwartz Spring Branch?

With the exception of water rights with authorized points of diversion in the immediate vicinity of the present authorized point of diversion, there is only one right of record with an authorized point of diversion downstream, in the channel of Schwartz Spring Branch. The said right is described by the certificate issued to Raymond R. Bevans, and recorded at page 24512, Volume 17, State Record of Water Right Certificates, and is for use of not to exceed 0.86 cubic foot per second from "seepage and waste from Schwartz Spring Branch" from a point of diversion located within the NE¼ SE¼ of Section 17, Township 6 North, Range 34 East, W.M., for supplemental irrigation of a certain 68.4 acres of land within the E½ SW¼ and the SE¼ of said Section 17. The said right is subject to the limitation, "and shall also be limited to the water available at the point of diversion, and shall not carry with it the right to compel the continuance of waste water", as set forth in said certificate.

Upon careful consideration of the evidence received at the hearing on this matter and the pertinent water right records on file in the office of the Water Resources Director, it appears that the proposed change in point of diversion may be made without injury to other water rights if the diversion of water at the proposed point of diversion were restricted by the amount of water available to the applicant's water rights, described above, at the present authorized point of diversion.

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

NOW, THEREFORE, it hereby is ORDERED that the requested change in point of

diversion of water from Schwartz Spring Branch, as described herein, without loss of priority, is approved.

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 under the subject rights, less naturally occurring in-channel losses resulting from the water to which the applicant is entitled remaining in the channel of Schwartz Spring Branch for the additional distance between the present authorized and the proposed points of diversion.

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 the construction work shall be completed and the change in point of diversion of water made on or before October 1, 1979.

It is FURTHER ORDERED that the certificate of water right heretofore issued to Mrs. Eva Young and recorded at page 5543, Volume 6, State Record of Water Right Certificates, is canceled; and in lieu thereof a new certificate be issued covering the balance of the right NOT involved in this proceeding; and upon proof satisfactory to the Water Resources Director of completion of works and beneficial use of water to the extent intended under the provisions of this order, a confirming certificate of water right shall be issued to the applicant herein.

It is FURTHER ORDERED that the certificate of water right heretofore issued to H. A. Baccus and H. L. Young and recorded at page 38870, Volume 30, State Record of Water Right Certificates, is canceled; and upon proof satisfactory to the Water Resources Director of completion of works and beneficial use of water to the extent intended under the provisions of this order, a confirming certificate of water right shall be issued to the applicant herein.

Dated at Salem, Oregon this 13th day of July, 1978.

James E. Sexson
Director

V 34 P46