

IN THE MATTER OF APPLICATION 69656)
IN THE NAME OF RICHARD NELSON FOR)
USE OF WATER FROM QUARTZ SPRING,)
TRIBUTARY TO QUARTZ CREEK, LAKE CO.)

ORDER

TO: James Lynch, Attorney for
Richard Nelson, Applicant
620 N. First St.
Lakeview, OR 97630-0123

Dan Fullerton for
George Fullerton, Protestant
6901 SE Lake Rd., Suite 21
Milwaukie, OR 97267

STATEMENT

Pursuant to the Notice of Hearing served May 22, 1991, a contested case hearing was commenced on the above-entitled matter at 9:30 on Tuesday, June 25, 1991, at the Lake County Courthouse, 513 Center St., Lakeview, Oregon, before Weisha Mize, Hearings Referee for the Water Resources Department.

The hearing was previously scheduled for April 12, 1991, but was postponed at the request of the protestant to afford the parties an opportunity for negotiation and possible settlement.

Application 69656 was filed by Richard Nelson on July 1, 1988, for a permit to appropriate up to 0.02 cubic feet per second of water from Quartz Spring for domestic use at two residences and 9 recreational vehicle spaces and restroom facilities. The proposed point of diversion is 250 feet north and 640 feet east from the south quarter-corner of Section 27, T37S, R16E, WM. The proposed place of use is located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 34, in said township and range.

A protest against this application was filed by George Fullerton on October 6, 1989. The primary focus of the protest involved past problems with other users on the system for which Quartz Spring is the source, and whether there is sufficient water available to serve both existing use under Certificate 41112 and proposed uses.

Shortly after the hearing was opened, but prior to any testimony being taken, the parties requested the hearing be recessed in order to allow further negotiation and possible settlement. On reconvening, the parties indicated that they had reached agreement, and that a stipulated agreement would be drafted which would include not only the parties but other existing users of Quartz Spring. On completion and signing of the agreement by all users, the protest would be withdrawn, the agreement would be forwarded to the Referee and an Order issued dismissing the protest and directing issuance of a permit on Application 69656.

In August, the Referee was informed that the parties and other spring users had now determined not to sign the agreement. The protestant requested that further opportunity be given for negotiations strictly between the protestant and applicant.

In late October, protestant requested clarification of the prior appropriation doctrine as applied to the existing and proposed uses of Quartz Spring. Based on the seniority of the existing right over the permit that could be issued on Application 69656, and with the now-completed installation of a float-check valve in the Nelson cistern, the protest was withdrawn on December 2, 1991.

FINDINGS OF FACT

1. All facts set forth in the STATEMENT are incorporated as Findings of Fact.
2. The protest filed by George Fullerton on October 6, 1989 is withdrawn.
3. A float-check device to eliminate overflow and waste has been installed in the applicant's cistern.
4. Consideration should be given to modification of the delivery system, based on any recommendations the watermaster may have, to allow for reduction or elimination of alleged occasional shortages experienced by senior users under Certificate 41112.
5. Consideration should be given to turning over control of the system to the watermaster for distribution and regulation purposes.
6. Consideration should be given to installation of individual cisterns with float-check valves by each senior user.
7. To assist in allocation in accordance with the relative priorities of the senior and junior rights on this system, a second pipeline should be installed above the exiting pipeline at the springbox, through which the permit issued on this application would be served.
8. There is sufficient water available to satisfy both senior and junior users.
9. Domestic use at the Nelson A-frame is authorized by Certificate 41112.

CONCLUSIONS OF LAW

Use of water under a permit is subject to the availability of water from the source allowed in that permit, which is determined in part by allocation to pre-existing rights.

One who has filed an application has no expectation under the law that the permit must be granted, that the permit must be granted for the entire amount requested, or that the permit will be granted without conditions.

Pursuant to the provisions of ORS 537.160 to 537.230, Application 69656 may be approved and a permit issued to the extent that the requested domestic use at two residences does not include use at the Nelson A-frame, which is currently using water under Certificate 41112.

ORDER

NOW, THEREFORE, it is ORDERED that Application 69656 in the name of Richard Nelson be approved, to authorize the appropriation of not to exceed 0.02 cubic feet per second of water from Quartz Spring for domestic use at two residences and 9 R.V. spaces and restroom facilities.

It is FURTHER ORDERED that the permit issued in approval of this application shall limit appropriation to not more than 0.02 cfs.

It is FURTHER ORDERED that the permit shall contain such other conditions as deemed appropriate by the Department.

It is FURTHER ORDERED that, the protest in this matter having been withdrawn, the contested case proceeding on Application 69656 is DISMISSED.

DATED this 16th day of December, 1991.



WEISHA MIZE
Hearings Referee

NOTICE: You are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for review within 60 days from the date of service (date of mailing) of this Order. Judicial review is pursuant to the provisions of ORS 536.075.