

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

UMATILLA COUNTY

IN THE MATTER OF APPLICATION 62173            )  
IN THE NAME OF DON J. BROWN FOR A        )  
PERMIT TO APPROPRIATE WATER FROM        )  
UMATILLA RIVER                                )  
  
ORDER APPROVING  
APPLICATION

Application 62173 was filed in the office of the Water Resources Director on August 10, 1981, and is for a permit to appropriate 50.0 cubic feet per second of water from the Umatilla River at a point of diversion located South 55 degrees 48 minutes West, a distance of 3237.3 feet from the Northeast Corner of Section 21, being within the SW 1/4 NE 1/4 of Section 21, Township 3 North, Range 29 East, WM, for primary irrigation of a certain 2089.04 acres of land within Sections 29, 32 and 33 of Township 3 North, Range 28 East, WM; and Sections 4 and 8 of Township 2 North, Range 28 East, WM; and for supplemental irrigation of a certain 354.04 acres of land within Section 30 of Township 3 North, Range 29 East, WM. An "Irrigation Plan" document in support of the application states, in part: "This project will be irrigated on an off season basis. From examination of river flow records irrigation could commence in late November or December and continue whenever weather conditions permit until late May or early June. It is anticipated that approximately 1 to 1 1/2 acre-feet per acre would be applied in this period."

On September 23, 1981, acting through its attorney, Robert E. O'Rourke, the West Extension Irrigation District filed a protest against approval of Application 62173, alleging that the flow of the Umatilla River is not at all times sufficient to provide the water sought to be appropriated and that approval of the pending application would place an additional burden on the watermaster to distribute the available water in accordance with the relative entitlements of the District and the applicant and others.

By letter dated January 16, 1984, in reference to the subject application and to a similar application (Application 62038 in the name of Chester J. Prior), Robert E. O'Rourke, acting for protestant, West Extension Irrigation District, advised the Water Resources Department, ". . . the West Extension Irrigation District continues in its objection to the granting of Permits on the above Applications. However, the District does not intend to be present at any hearing scheduled on the matter and the District will not be presenting any facts or argument in opposition to the Applications."

No purpose would be served by a contested case hearing on the subject application and the protest against it, pursuant to notice served on the applicant and protestant.

The issuance of a permit provides no assurance of available water for the permittee. Under the provisions of Oregon Water Law, ORS chapters 537 and 540, which is founded upon the Appropriation Doctrine, the water right permit authorizes diversion of water only to the extent that water is available beyond the requirements for statutory and administrative minimum stream flow withdrawals and the needs of the holders of prior water rights to that source. That the approval of an application by issuance of a permit to appropriate water, subject to prior existing rights, might add to the workload of the watermaster is not just cause to reject an application to appropriate.

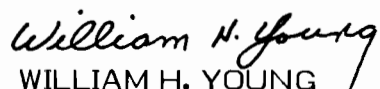
The subject Application 62173 is in conformity with the existing policy program for the Umatilla River Basin, adopted by the Water Policy Review Board on April 4, 1981.

The applicant has agreed to the Application 62173 being considered for approval with the condition that the permit would contain the limitation: "The use of water authorized herein shall not establish priority of right as against future appropriations of surface water for beneficial uses or storage for such beneficial uses, other than similar rights for irrigation from November 1, to February 28."

Therefore, the pending Application 62173 should be approved subject to the said limitation, pursuant to ORS 537.110 to 537.230.

NOW, THEREFORE, the Water Resources Director ORDERS, as his administrative final order, that Application 62173 be and the same hereby is approved by issuance of Permit 48968.

Dated at Salem, Oregon, this 28th day of November, 1984.

  
WILLIAM H. YOUNG  
Director

Note: 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 service of this order. Judicial review is pursuant to the provisions of ORS 183.482.

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