

BEFORE THE STATE ENGINEER OF OREGON

Grant County

IN THE MATTER OF THE APPLICATION )  
OF DONALD M. AND LOLA RIPA FOR )  
THE APPROVAL OF A CHANGE IN PLACE )  
OF USE AND POINT OF DIVERSION OF )  
WATER FROM JOHN DAY RIVER )  
- - - - -

FINDINGS, CONCLUSIONS AND  
ORDER  
APPROVING APPLICATION

FINDINGS

On January 30, 1963, Donald M. and Lola Ripa of Mt. Vernon, Oregon, filed an application in the office of the State Engineer for the approval of a change in place of use and point of diversion of water from John Day River, pursuant to the provisions of ORS 540.510 to 540.530.

By Decree of the Circuit Court for Grant County, Oregon, entered November 16, 1956, In the Matter of the Determination of the Relative Rights to the Use of the Waters of John Day River and its Tributaries, a water right was established in the name of Nellie L. Morris for the use of the waters of John Day River for the irrigation of, among other lands, 20 acres in the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , and 5 acres in the SW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 27, Township 13 South, Range 29 East, W.M., with a date of priority of 1873. This right was confirmed by certificate issued to Nellie L. Morris and recorded at page 25585, Volume 18, State Record of Water Right Certificates. These lands are irrigated through the Old Thomas Ditch, the point of diversion of said ditch being located 700 feet North and 150 feet West from the southeast corner of Section 23, and being within the SE $\frac{1}{4}$  SE $\frac{1}{4}$ , said Section 23, Township 13 South, Range 29 East, W. M.

The applicants herein, owners of the lands above described, propose to transfer the water right appurtenant to 10 acres in the NW $\frac{1}{4}$  NW $\frac{1}{4}$  without loss of priority to 10 acres in the SW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 27, and to irrigate said 10 acres, together with the remaining 15 acres, by means of a pumping plant, the point of diversion of said pumping plant to be located 800 feet South and 960 feet East from the northwest corner of Section 27, and being within the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , said Section 27, Township 13 South, Range 29 East, W. M.

Notice of the filing of the application was given by publication setting forth a time and place certain for hearing objections to the proposed change in place of use and point of diversion of water, if any there were, namely: at the county courthouse in Canyon City, Oregon, on July 2, 1963, at 9:30 o'clock a.m. The notice was published in the Blue Mountain Eagle, a newspaper printed and having general circulation in Grant County, Oregon, for a period of three weeks in the issues of May 9, 16 and 23, 1963. The date set for hearing in said notice was not less than thirty days after the last publication of the notice.

On May 21, 1963, J. R. Campbell of the law firm of Yokom and Campbell filed objections on behalf of John F. Cawrse against the approval of the proposed change in point of diversion of water.

By notice dated May 29, 1963, the State Engineer notified all parties of record, including the Estate of John F. Cawrse, Deceased, of the postponment of the hearing to July 10, 1963. Subsequently, on June 29, 1963, J. R. Campbell filed Notice of Withdrawal as attorney of record for John F. Cawrse.

The hearing was held by George V. Naderman, Assistant State Engineer, at the designated time and place. The protestant, Estate of John F. Cawrse, was represented by Mr. J. R. Campbell, Attorney at Law, John Day, Oregon, who stated that subsequent to his notice of withdrawal as attorney he had been requested to continue as attorney by the United States National Bank of Portland, Adminisrator of the Estate. The applicant was represented by Mr. Roy Kilpatrick, Attorney at Law, Canyon City, Oregon.

Mr. Campbell stated that he had no witnesses to present testimony on behalf of protestant, and that he had not been authorized to withdraw the protest nor to request a continuance.

Mr. Donald M. Ripa, the applicant, stated that even though he understood that the Old Thomas Ditch, through which his lands formerly received their water, was to be continued in use he definitely wished to proceed with his application for change in point of diversion from the intake of the Old Thomas Ditch to a proposed pumping plant on John Day River adjacent to his land.

No evidence or testimony was presented showing injury to existing rights should the application for change in point of diversion and place of use be allowed.

Mr. George M. Ward, Watermaster of District No. 4, has filed a report to the effect that the proposed change in place of use and point of diversion of water may be made without injury to existing rights.

#### CONCLUSIONS

It appearing from the evidence and the statement of the watermaster that the proposed change in place of use and point of diversion may be made without injury to existing rights, the application should be approved.

#### ORDER

NOW, THEREFORE, it hereby is ORDERED that the proposed change in place of use of water is approved and that the water right hereinbefore described as appurtenant to 10 acres in the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 27, Township 13 South, Range 29 East, W. M., with a date of priority of 1873, be severed therefrom and simultaneously and without loss of priority transferred to 10 acres in the SW $\frac{1}{4}$  NW $\frac{1}{4}$ , said Section 27.

It is FURTHER ORDERED that the proposed change in point of diversion of water from John Day River, to-wit:

From a point located 700 feet North and 150 feet West from the southeast corner of Section 23, and being within the SE $\frac{1}{4}$  SE $\frac{1}{4}$ , said Section 23, Township 13 South, Range 29 East, W. M.

To a point to be located 800 feet South and 960 feet East from the northwest corner of Section 27, and being within the NW $\frac{1}{4}$  NW $\frac{1}{4}$ , said Section 27, Township 13 South, Range 29 East, W. M.

for the irrigation of 10 acres in the NW $\frac{1}{4}$  NW $\frac{1}{4}$  and 15 acres in the SW $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 27, Township 13 South, Range 29 East, W. M., with a date of priority of 1873, is approved.

It is FURTHER ORDERED that the change in place of use and point of diversion of water shall be completed on or before October 1, 1964, 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 diverted at the new point of diversion shall not exceed the quantity of water that is available at the old point 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.


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 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 certificate of water right heretofore issued to Nellie L. Morris and recorded at page 25585, Volume 18, State Record of Water Right Certificates, is canceled and that in lieu thereof a new certificate be issued covering the balance of the lands not involved in this proceeding, and upon receipt of proof satisfactory to the State Engineer of application of water to beneficial use, a certificate of water right shall be issued to Donald M. and Lola Ripa to the extent to which the water has been applied beneficially.

Dated at Salem, Oregon, this 16th day of August, 1963.

*Noted on Dec. 10, 1963*  
*Vol. 18, p. 543*  
*Cert. # 25585*

  
CHRIS L. WHEELER  
State Engineer