

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

UMATILLA COUNTY

IN THE MATTER OF THE APPLICATION OF)
HALE BROTHERS FARMS FOR APPROVAL OF)
OF A CHANGE IN POINT OF DIVERSION OF)
WATER FROM BUTTER CREEK)
- - - - -

ORDER APPROVING
TRANSFER NO. 3921

On April 4, 1978, an application was filed in the office of the Water Resources Director by Hale Brothers Farms, by Doug Hale, for approval of an additional point of diversion from Butter Creek, pursuant to the provisions of ORS 540.510 to 540.530.

The certificate recorded at page 38775, Volume 30, State Record of Water Right Certificates, in the name of Joy Anderson, et al, describes a right for the use of not to exceed 8.352 cubic feet per second from Butter Creek for domestic, stock and irrigation of a certain 429.0 acres, being: 40.0 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$, 37.5 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$, 2.5 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 1; 28.0 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$, 40.0 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 2; 40.0 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$, 40.0 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$, 40.0 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$, 40.0 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$, 40.0 in NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 11; and 10.0 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, 40.0 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$, 31.0 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 12, Township 2 North, Range 27 East, W.M., with dates of priority of 1866 for 0.284 cubic foot per second, 1870 for 0.568 cubic foot per second, 1884 for 0.284 cubic foot per second and 1896 for 7.216 cubic feet per second.

Water for said right is diverted from a point located 970 feet North and 450 feet West from the South Quarter Corner of Section 11, being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 11, Township 2 North, Range 27 East, W.M.

The applicant herein, owner of the lands above described, proposes to establish an additional point of diversion, without loss of priority, at a point located 1400 feet South and 300 feet East from the North Quarter Corner of Section 11, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, Township 2 North, Range 27 East, W.M., for irrigation of said 429.0 acres.

Notice of the application, pursuant to ORS 540.520(2), was published in the East Oregonian, a newspaper printed and having general circulation in Umatilla County, Oregon for a period of three weeks in the issues of June 23 and 30, and July 7, 1978.

On August 3, 1978, a protest was filed by John Madison against approval

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of the subject application for an additional point of diversion.

The matter of the application and the protest against it was brought to hearing before Mr. James W. Carver, Jr., Water Resources Department, on February 8, 1979, in Pendleton, Oregon, pursuant to the Water Resources Director's notice of hearing dated December 19, 1978. During the course of the hearing, the protestant stated that it was not his intent to continue the protest to the point of denial of the application, with the understanding that an order of the Water Resources Director that might be entered in approval of the application would carry the requirement that the diversion works at the new point of diversion be equipped with a totalizing meter.

Mr. William I. Porfily, Watermaster, has filed a statement to the effect that the proposed additional point of diversion can be established without injury to existing rights if the diversion works at the new, additional point of diversion include a suitable measuring device prior to diversion of water thereby.

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 additional point of diversion from Butter Creek, 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, together with that diverted at the old point of diversion, shall not exceed the quantity of water available at the old point of diversion under the subject right.

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 or other suitable device for measuring the water to which the applicant is entitled;

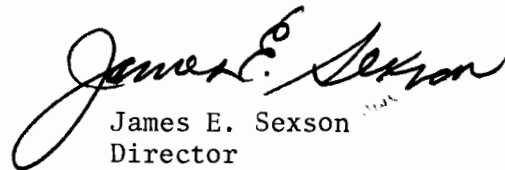
That the type and plans of the measuring device be approved by the watermaster before the beginning of construction work and that the measuring device be installed under the general supervision of said watermaster.

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, 1980.

It is FURTHER ORDERED that the certificate of water right heretofore issued to Joy E. Anderson, et al, and recorded at page 38775, 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 14th day of February, 1979.


James E. Sexson
Director