

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

UMATILLA COUNTY

IN THE MATTER OF THE APPLICATION OF)
HUDSON BAY DISTRICT IMPROVEMENT CO.)
INC., FOR APPROVAL OF AN ADDITIONAL)
POINT OF DIVERSION OF WATER)

ORDER APPROVING
TRANSFER 5517

On August 13, 1984, an application was filed in the office of the Water Resources Director by Hudson Bay District Improvement Co., Inc., for approval of an additional point of diversion of water from Walla Walla River, pursuant to the provisions of ORS 540.510 to 540.530.

By Decree of the Circuit Court for Umatilla County, Oregon, entered May 16, 1932, In the Matter of the Determination of the Relative Rights to the Use of the Waters of Walla Walla River and Its Tributaries, a water right was established in the name of Milton-Freewater and Hudson Bay Irrigation Company, tabulated in Volume 12, page 209, Order Record of the Water Resources Director, for use of not to exceed 1 1/2 Miners inches per acre from Tumulum or Little Walla Walla River for irrigation of those lands within the boundaries of Hudson Bay District Improvement Co., Inc., as evidenced by the Certificates of Water Right recorded at pages 52575 and 52576, Volume 47, State Record of Water Right Certificates, with a date of priority of February 16, 1903.

Water for the said right is diverted, through the Hudson Bay Ditch, from a point located 880 feet South and 740 feet West from the North Quarter Corner of Section 1, being within the NE 1/4 NW 1/4 of Section 1, Township 5 North, Range 35 East, WM. Said diversion point is known as the "Nursery Bridge" diversion point.

The applicant herein, distributor of water to lands described by said certificates, proposes to deliver water through aforesaid "Nursery Bridge" diversion point and through an additional point known as the "Cemetery Bridge" diversion point, located 990 feet North and 890 feet East from the Center Corner of Section 12, being within the SW 1/4 NE 1/4 of Section 12, Township 5 North, Range 35 East, WM. The additional point of diversion is reported to be completed.

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 22, 29 and September 5, 1984.

Objections to the proposed additional point of diversion were filed on September 10, 1984 by the Walla Walla River Cooperative Irrigation Union, on September 19, 1984 by Eastside Irrigation Company. On October 24, 1984, the City of Milton-Freewater joined in the proceeding as an intervenor with full party status.

On December 31, 1984, Hudson Bay District Improvement Co., Inc., and the Walla Walla River Cooperative Irrigation Union, together with Pleasantview Irrigation Company and Powell Ditch Company, entered into the following agreement concerning use and rights to Little Walla Walla River, the Nursery Bridge diversion point from Walla Walla River and the Cemetery Bridge diversion point from Walla Walla River:

AGREEMENT

Whereas the Hudson Bay District Improvement Company, Inc., has filed transfer application 5517 which proposes to establish an additional point of diversion regarding the Little Walla Walla River located 990' North and 980' East from the center corner of Section 12, Township 5N, Range 35E, EWM (Cemetery Bridge).

Whereas in response to notice of the transfer application, The Walla Walla River Cooperative Irrigation Union has filed a formal protest with the Department of Water Resources.

Whereas all parties have a vital interest in:

- (1) Permanently insuring fair and complete access to all decreed and surplus water to which users associated with all parties are legally entitled.
- (2) Transporting said water in the most efficient manner possible.
- (3) Avoiding flooding along any portion of the Little Walla Walla River, and
- (4) Fostering a pattern of increased cooperation and communication.

In consideration for the mutual exchange of covenants set forth below, it is hereby agreed by and between the parties as follows:

- (1) The Walla Walla River Cooperative Irrigation Union shall withdraw the protest filed regarding transfer application 5517.
- (2) At any time in which the flow of water down the Little Walla Walla River threatens to exceed its actual carrying capacity, the Hudson Bay District Improvement Company, Inc., shall divert sufficient portions of its water through the Nursery Bridge point of diversion so as to avert any and all threat of overcapacity and resultant flooding. This procedure shall be followed even if it results in the displacement from the Little Walla Walla River of higher priority Hudson Bay District Improvement Company, Inc., water in favor of any and all waters appropriated for use by any user associated with The Walla Walla River Cooperative Irrigation Union, Pleasantview Irrigation Company, and Powell Ditch Company.

- (3) Hudson Bay District Improvement Company, Inc., shall be responsible for all normal maintenance of the water transport system associated with the Nursery Bridge point of diversion. The standard of maintenance obligated is such that the water transport system can be utilized upon discovery of need. Only Hudson Bay District Improvement Company, Inc., personnel and the watermaster shall have the right to physically control the water flow through the Nursery Bridge point of diversion.
- (4) The need to divert said water from the Little Walla Walla River shall be determined by personnel from the Hudson Bay District Improvement Company, Inc., or the office of the Umatilla County Watermaster. Only said personnel shall be allowed to perform the physical procedures necessary to accomplish the above described diversion of Hudson Bay District Improvement Company, Inc., water from the Little Walla Walla River.
- (5) Hudson Bay District Improvement Company, Inc., shall hold The Walla Walla River Cooperative Irrigation Union, Pleasantview Irrigation Company, and Powell Ditch Company harmless from any and all liability arising from flooding on the Little Walla Walla River which could have been avoided if diversion procedures had been instituted in a timely manner.
- (6) In the event that the water flow into the Little Walla Walla River at the Cemetery Bridge point of diversion is restricted for any reason but additional water is available at the Nursery Bridge point of diversion, then Hudson Bay District Improvement Company, Inc., shall take sufficient portions of its water through the Nursery Bridge point of diversion so as to allow the other parties to this agreement to fully appropriate by means of the Little Walla Walla River all waters to which they are legally entitled.
- (7) The Walla Walla River Cooperative Irrigation Union, Pleasantview Irrigation Company, and Powell Ditch Company shall reimburse the Hudson Bay District Improvement Company, Inc., for the cost of maintenance of the ditch and other water transport apparatus associated with the Nursery Bridge point of diversion in proportion to cfs of water used by the parties hereto.
- (8) All irrigation related operations and procedures concerning the Little Walla Walla River shall continue in accordance with past practices. However, the following specific operations and procedures are agreed to by and between the parties:
 - (a) Each party shall have permanent, non-exclusive, mutual and equal access to and control of the headgates and all other physical apparatus associated with the Cemetery Bridge point of diversion.

- (b) The cost of all maintenance and improvement to be shared in direct proportion to cfs of water used by the parties hereto.
 - (c) The Walla Walla River Cooperative Irrigation Union and the Hudson Bay District Improvement Company, Inc., shall each designate an individual who shall be given a key which enables him or her to regulate water flow at the Cemetery Bridge point of diversion. Only those two individuals and personnel from the Umatilla County Watermaster's office may regulate the water flow at the Cemetery Bridge point of diversion.
 - (d) Neither party shall take any action which will jeopardize or adversely affect the natural stream status of the Little Walla Walla River.
- (9) It is understood by and between the parties that this agreement affects only the following specific matters:
- (a) The parties' permanent relative rights to transport water by means of the Little Walla Walla River.
 - (b) The parties' permanent relative rights regarding access to and control of all physical apparatus associated with the Cemetery Bridge point of diversion.

This agreement does not change or constitute any grounds for change of existing water rights as opposed to the right to transport water referred to above. Allocation of water between the parties shall be determined by Oregon State Law.

However, Hudson Bay District Improvement Company, Inc., covenants that they shall not use the acquisition of this additional point of diversion at the Cemetery Bridge as a basis for argument, justification, or to in any other way prejudice the rights, including all water rights, possessed by users associated with The Walla Walla River Cooperative Irrigation Union, Powell Ditch Company, and Pleasantview Irrigation Company.

- (10) Hudson Bay District Improvement Company, Inc., shall hold the Walla Walla River Cooperative Irrigation Union, Pleasantview Irrigation Company, and Powell Ditch Company harmless from any and all liability arising from any litigation instituted related to Hudson Bay District Improvement Company, Inc.'s transfer application 5517.

Any dispute regarding the subject matter of this agreement shall be resolved by means of binding arbitration. Each party shall choose one individual. Those chosen shall choose a third and their decision shall be final. Each party covenants to execute such documents necessary to give the arbitrators' decision the full effect of a final court rendered judgement.

This agreement shall inure to all successors and assigns of the parties hereto.

This constitutes the full and complete agreement between the parties.

Original signed by Miles L. Williams, President, Hudson Bay District Improvement Company, Inc., Marvin Sams, President, Pleasantview Irrigation Company, Robert H. Yenny, President, Powell Ditch Company, and Walter Roloff, President, The Walla Walla River Cooperative Irrigation Union.

Subsequently, Eastside Irrigation Company, Walla Walla River Cooperative Irrigation Union, and the City of Milton-Freewater withdrew their objections to approval of Transfer Application 5517.

Larry H. Nunn, Watermaster, has filed a statement to the effect that the proposed additional point of diversion may be made without injury to existing rights.

NOW, THEREFORE, it hereby is ORDERED that the proposed additional point of diversion is approved, without loss of priority.

It is FURTHER ORDERED that aforesaid agreement, in its entirety, be incorporated into and made a part of this order.

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, and shall not exceed one and one-half miner's inches per acre measured at the 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 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 certificates recorded at pages 52575 and 52576, Volume 47, State Record of Water Right Certificates, are canceled, and a single confirming certificate of water right be issued to the applicant herein.

Dated at Salem, Oregon, this 8th day of March, 1985.


WILLIAM H. YOUNG
Director

NOTE: The approval of a water right transfer application does not confirm the status of the right in regard to the provisions of ORS 540.610 pertaining to forfeiture or abandonment.

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