

Deschutes County

IN THE MATTER OF THE APPLICATION OF)
 S. O. JOHNSON FOR THE APPROVAL OF A)
 CHANGE IN POINT OF DIVERSION AND PLACE)
 OF USE OF WATER FROM SQUAW CREEK, TRIB-)
 UTARY OF DESCHUTES RIVER, PURSUANT TO)
 THE PROVISIONS OF SECTION 116-606,)
 O. C. L. A.)
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O R D E R

APPROVING APPLICATION

On March 12, 1945, S. O. Johnson filed an application for the approval of a change in point of diversion and place of use of water from Squaw Creek, tributary of Deschutes River.

In the application as originally filed the land from which the water is to be transferred was described as 10 acres within the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 4, Township 15 South, Range 10 East, W. M., which was an error. Later the description of the land from which the water is to be transferred was corrected to read the N $\frac{1}{2}$ of N $\frac{1}{2}$ of SW $\frac{1}{4}$ of NW $\frac{1}{4}$, Section 4, Township 15 South, Range 10 East, W. M.

By decree of the Circuit Court for Crook County, Oregon, dated May 1, 1911, in the matter of the determination of the relative rights to the waters of Squaw Creek, tributary of Deschutes River, a right was allowed in the name of P. B. Davis and F. M. Baldwin for the use of 2.4 cubic feet per second of water through the Smith Ditch from Squaw Creek for the irrigation of 120 acres of land, with a date of priority of 1885, of which 30 acres were made appurtenant to the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 4, Township 15 South, Range 10 East, W. M., said right being confirmed by certificate of water right recorded at page 271, Volume 1, State Record of Water Right Certificates. By decree of said Court dated September 19, 1914, an additional right was allowed in the name of P. B. Davis and T. M. Baldwin for the irrigation of 40 acres through the Smith Ditch from Squaw Creek, with a date of priority of 1885, of which 10 acres were made

appurtenant to said SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 4, said right being confirmed by certificate recorded at page 12306, Volume 11, State Record of Water Right Certificates.

The applicant herein, owner of the N $\frac{1}{2}$ of N $\frac{1}{2}$ of SW $\frac{1}{4}$ of NW $\frac{1}{4}$, Section 4, Township 15 South, Range 10 East, W. M., proposes to transfer the 10 acre water right appurtenant thereto to 10 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 9, Township 15 South, Range 11 East, W. M. It is also proposed to change the point of diversion from the ditch known as "Smith Ditch", diverting from Squaw Creek at a point approximately 410 feet south of the quarter corner common to Sections 8 and 9, Township 15 South, Range 10 East, W. M., to the main canal of the Squaw Creek Irrigation District, diverting from Squaw Creek at a point located approximately 220 feet south and 900 feet east of the quarter corner common to Sections 20 and 21, Township 15 South, Range 10 East, W. M.

Notice as provided by Section 116-606, O. C. L. A., was published in three issues of the Redmond Spokesman, a newspaper printed and published weekly at Redmond, Deschutes County, Oregon, and of general circulation in said county, said three issues being those of March 22, 29 and April 5, 1945, the date of the last publication being more than thirty days prior to the date of a hearing as set forth in the notice.

On April 27, 1945, the Sisters Irrigation District filed a protest with the State Engineer against the approval of the application which, omitting the title and acknowledgment, reads as follows:

"Comes now the Sisters Irrigation District and protest to the application of S. O. Johnson to change the point of diversion and place of use of water from Squaw Creek upon the ground and for the reason as follows:

-I-

"That S. O. Johnson is not the owner of the land from which the water is sought to be transferred.

-II-

"That the land from which the water is to be transferred is located within the Sisters Irrigation District and the lands to which the

water is to be transferred is located within the Squaw Creek Irrigation District.

-III-

"That if the transfer is approved, such transfer would result in an injury to the Sisters Irrigation District for the reason that said district's water rights are of different priority and the priority of the water right sought to be transferred is of an earlier date and if transferred out of the district would deplete the district's right to such early priority.

-IV-

"That if such transfer in place of use of said water is approved it would deplete the revenue received by the district for authorization and maintenance and also result in elimination of such lands for assessment purposes.

"WHEREFORE, your protestant prays that the application for change in point of diversion and place of use be not approved and the same be denied.

SISTERS IRRIGATION DISTRICT

By (sgd) Ellis H. Edgington
Chairman, Board of Directors
By (sgd) J. J. Wilt
Secretary"

The applicant and protestant through their attorneys agreed to dispense with the hearing and that the State Engineer, in acting upon the application, consider the matter set forth in the application, the objections filed by the Sisters Irrigation District and the answer of the applicant.

The answer of the applicant admitted that the description of the land as set forth in the original application from which it is proposed to transfer the water was in error and sets forth the correct description. Subsequently, by letter dated May 31, 1945, signed by Geo. H. Brewster, attorney for the applicant, it was admitted that the protestant, Sisters Irrigation District, did in 1933 and 1934 levy an assessment to raise money in order to secure advantage of the Civilian Works Act in cleaning ditches within the district.

It appears that the Sisters Irrigation District has not acquired any right to the use of water for the irrigation of land within the district and has not constructed or acquired any irrigation system, or levied any assessment

for the maintenance of the canals, with the exception of the two years, the landowners operated and maintained their own ditches.

It appears that the land from which it is proposed to transfer the water has become unfit for agricultural purposes and if the water is not transferred the water right will be lost and the land will not be subject to assessment. It further appears that the Squaw Creek Irrigation District, through whose system it is proposed to transmit the water, has submitted their approval of the proposed change in point of diversion and place of use of water.

It further appears that the proposed change in place of use and point of diversion of water from Squaw Creek may be made without injury to existing rights and that the application should be approved.

NOW, THEREFORE, it hereby is ORDERED that the proposed change in point of diversion and place of use of water be and the same hereby is approved and that the water right hereinbefore described as appurtenant to 10 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 4, Township 15 South, Range 10 East, W. M., with a date of priority of 1885, be severed therefrom and simultaneously and without loss of priority transferred to 10 acres in the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 9, Township 15 South, Range 11 East, W. M., and to convey the water for the irrigation of said land through the Squaw Creek District's canal, the point of diversion of said canal being located approximately 220 feet south and 900 feet east of the quarter corner common to Sections 20 and 21, Township 15 South, Range 10 East, W. M.

It is FURTHER ORDERED that complete application of water to beneficial use on the land to which the water is transferred hereby shall be made on or before October 1, 1946, or such further extension of time as may be granted by the State Engineer for good cause shown.

It is FURTHER ORDERED that upon receipt of proof satisfactory to the State Engineer of the complete application of water to beneficial use upon the land to which the water hereby is transferred a certificate of water right shall be issued to S. O. Johnson or his successors in interest to the extent to which the water has been applied beneficially, and certificate of water right recorded at page 12306, Volume 11, State Record of Water Right Certificates, shall be cancelled.

Dated at Salem, Oregon, this 28th day of June, 1945.



CHAS. E. STRICKLIN
State Engineer

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