

BEFORE THE STATE ENGINEER OF OREGON

Coos County

IN THE MATTER OF THE APPLICATION)
OF J. PAUL WILEY FOR THE APPROVAL)
OF A CHANGE IN POINT OF DIVERSION)
OF WATER FROM SOUTH FORK COQUILLE)
RIVER)
- - - - -)

FINDINGS, CONCLUSIONS
AND ORDER APPROVING
TRANSFER NO. W-108

FINDINGS

On August 3, 1964, J. Paul Wiley filed an application in the office of the State Engineer for approval of a change in point of diversion of water from South Fork Coquille River, pursuant to the provisions of ORS 540.510 to 540.530.

Certificate of water right issued to J. R. Wiley and Herbert S. Berry and recorded at page 14239, Volume 12, State Record of Water Right Certificates, confirms a right that includes the use of not to exceed 0.40 cubic foot per second of the waters of South Fork Coquille River for irrigation of 2.26 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and 29.4 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 28, Township 29 South, Range 12 West, W.M., with a date of priority of June 21, 1939. These lands are irrigated from a point of diversion located north 17 degrees 15 minutes east, 3498 feet from the S $\frac{1}{4}$ corner of Section 28, and being within Lot 8 (SW $\frac{1}{4}$ NE $\frac{1}{4}$), said Section 28, Township 29 South, Range 12 West, W.M.

The applicant herein, owner of the lands above described, proposes to irrigate these lands by means of a point of diversion to be located north 26 degrees 35 minutes west, 1782 feet from the S $\frac{1}{4}$ corner of Section 28, and being within Lot 7 (NE $\frac{1}{4}$ SW $\frac{1}{4}$), said Section 28, Township 29 South, Range 12 West, W.M.

Notice of the filing of the application was given by publication in the Myrtle Point Herald, a newspaper printed and having general circulation in Coos County, Oregon, for a period of three weeks in the issues of August 27, September 3 and 10, 1964.

On October 9, 1964, Oliver Shull filed in the office of the State Engineer a protest against the approval of said application alleging that he,

as owner of real property upon which the proposed point of diversion is to be located and as a user of water from the South Fork Coquille River, would suffer irreparable injury and damage from the proposed change in point of diversion.

A hearing was held before James W. Carver, Jr., Assistant State Engineer, at the County Courthouse at Coquille, Oregon, on October 21, 1964, on the matter of the application for a change in point of diversion and the protest thereto. The applicant, J. Paul Wiley, appeared in his own behalf and the protestant, Oliver Shull, appeared in his own behalf.

The applicant submitted in evidence a photocopy of an easement between Roy L. and Margaret Shull, husband and wife, and Oliver and Daisy Shull, husband and wife, referred to as First Parties, and J. Paul and Gloria A. Wiley, husband and wife, referred to as Second Parties, which was executed on August 30, 1958, and granted the Second Parties a right of way and easement for the purpose of installing, maintaining, repairing, replacing and removing a water pump and pipeline over the lands of the First Parties within a 10 feet wide strip of land beginning at the proposed point of diversion and extending generally easterly to the common boundary line between the applicant's property and the protestant's property. The term of the easement is for a period of 40 years unless terminated by mutual consent of the parties prior to the expiration date. The applicant and protestant agree that the easement is in effect.

From the testimony of the parties at the hearing, it appears that the issue between the parties is not whether allowance of the transfer would cause injury to other water rights, but whether a pipeline extending from the proposed point of diversion within the 10 feet wide easement may remain on top of the ground or if the protestant may require that it be buried below tillage depth.

No evidence or testimony was presented in regard to the alleged injury to existing rights should the application for a change in point of diversion be allowed.

Mr. C. O. Bartels, Watermaster of District No. 15, has filed a report to the effect that the proposed change in 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 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 point of diversion of water from South Fork Coquille River, to-wit:

From a point located north 17 degrees 15 minutes east, 3498 feet from the S $\frac{1}{2}$ corner of Section 28, and being within Lot 8 (SW $\frac{1}{2}$ NE $\frac{1}{2}$), said Section 28, Township 29 South, Range 12 West, W.M.

To a point to be located north 26 degrees 35 minutes west, 1782 feet from the S $\frac{1}{2}$ corner of Section 28, and being within Lot 7 (NE $\frac{1}{2}$ SW $\frac{1}{2}$), said Section 28, Township 29 South, Range 12 West, W.M.

for the irrigation of 2.26 acres in the NE $\frac{1}{2}$ SE $\frac{1}{2}$ and 29.4 acres in the NW $\frac{1}{2}$ SE $\frac{1}{2}$, Section 28, Township 29 South, Range 12 West, W.M., with a date of priority of June 21, 1939, is approved.

It is FURTHER ORDERED that the change in point of diversion of water shall be completed on or before October 1, 1965.

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.

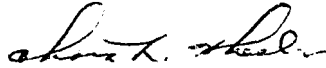
It is FURTHER ORDERED that the following provisions shall be effective when in the judgment of the watermaster it becomes necessary to install headgates and measuring devices.

That the diversion 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 J. R. Wiley and Herbert S. Berry and recorded at page 14239, Volume 12, State Record of Water Right Certificates, is canceled, and upon receipt of proof satisfactory to the State Engineer of completion of the authorized change in point of diversion, a certificate of water right shall be issued to J. Paul Wiley confirming said change in point of diversion.

Dated at Salem, Oregon, this 15th day of April, 1965.



CHRIS L. WHEELER
State Engineer