

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

WHEELER COUNTY

IN THE MATTER OF THE APPLICATION OF)
ROBERT W. STRAUB FOR APPROVAL OF) FINAL ORDER APPROVING
CHANGES IN PLACE OF USE AND POINT) TRANSFER 5703
OF DIVERSION OF WATER)

On September 12, 1985, an application was filed in the office of the Water Resources Director by Robert W. Straub for approval of changes in place of use and point of diversion of water from Henry Creek, pursuant to the provisions of ORS 540.510 to 540.530.

By Decree of the Circuit Court for Wheeler 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 Marian Enyart, tabulated in Volume 10, page 499, Order Record of the Water Resources Director, for use of not to exceed one-fortieth cubic foot per second per acre from Henry Creek for irrigation of, among other lands, a certain 17.7 acres in SW 1/4 NW 1/4, 3.0 acres in SE 1/4 NW 1/4 and 3.9 acres in NW 1/4 SW 1/4, Section 33, Township 7 South, Range 25 East, WM, with a date of priority of 1881, as evidenced by the certificate recorded at page 25150, Volume 17, State Record of Water Right Certificates.

Water for the said right is diverted, through the Joseph Robison Ditch, from a point located 260 feet South and 1320 feet East from the Northwest Corner of Section 33, being within the NW 1/4 NW 1/4 of Section 33, Township 7 South, Range 25 East, WM.

The applicant herein, owner of the lands above described, proposes to change the place of use therefrom to irrigation of 5.0 acres in NW 1/4 NW 1/4, 14.6 acres in SE 1/4 NW 1/4 and 5.0 acres in NW 1/4 SW 1/4, Section 4, Township 8 South, Range 25 East, WM; and to change the point of diversion to a point located 2000 feet South and 130 feet East from the Northwest Corner of Section 4, being within the SW 1/4 NW 1/4 of Section 4, Township 8 South, Range 25 East, WM.

Notice of the application, pursuant to ORS 540.520(2), was published in the Times-Journal, a newspaper having general circulation in the area in which the water right is located, for a period of three weeks in the issues of September 19, 26, and October 3, 1985.

Jerry S. Rodgers, Watermaster, has filed a statement to the effect that the proposed changes in place of use and point of diversion may be made without injury to existing rights.

A protest against approval of the application was filed by Robert M. Ordway on December 2, 1985, on grounds that the proposed changes in place of use and point of diversion would result in injury to the protestant's downstream rights for use of water from Kahler Creek. (Certificate page 53418, Volume 48)

Communications between the parties were not successful in resolving the issue by an agreement. The matter of the pending Transfer Application and the protest by Mr. Ordway was brought to hearing before James W. Carver, Jr. an employee of the Water Resources Department, in Prineville, Oregon on June 12, 1986, pursuant to the Director's notice of hearing dated May 27, 1986.

The applicant, Robert W. Straub, appeared without the services of legal counsel.

The protestant, Robert M. Ordway was present and was represented by Jeff Wilson, Attorney at Law, Prineville, Oregon.

Henry Creek is a small, spring fed tributary of Kahler Creek, and joins Kahler Creek within Kahler Basin located approximately three miles north of the town of Spray, Oregon. Kahler Creek is, in turn, tributary to the main stem John Day River, Downstream from the town of Spray.

The Watermaster, Jerry Rodgers, testified that he has not measured the flow of Henry Creek but would estimate the flow, based on his observations, at less than one cubic foot per second during the summer low flow period.

Testimony established that a spring which flows into Henry Creek a short distance upstream from the existing authorized point of diversion makes a substantial contribution to the summer flow in Henry Creek and that flow in the channel of Henry Creek continues throughout the summer season of an average water year.

Testimony failed to establish any significant increase to the flow of water in the channel of Henry Creek between the existing, authorized point of diversion and the proposed point of diversion that might be intercepted at the proposed point of diversion, to the detriment of the protestant in the absence of constant monitoring. Based on the hearing record, it appears that if the amount of water diverted from Henry Creek at the proposed point of diversion in the SW 1/4 NW 1/4 of Section 4, Township 8 South, Range 25 East, WM, were restricted to the amount available at the existing, authorized point of diversion in the NW 1/4 NW 1/4 of Section 4, Township 7 South, Range 25 East, WM, the proposed change of diversion of water from Henry Creek would not result in injury to the existing water rights of the protestant.

NOW, THEREFORE, it hereby is ORDERED that the proposed changes in place of use and point of diversion are approved, without loss of priority.

It is FURTHER ORDERED that the quantity of water diverted at the new 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-fortieth cubic foot per second per acre of land irrigated.

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 an in-line flow meter, a weir, or other suitable device for measuring the water to which the applicant is entitled;

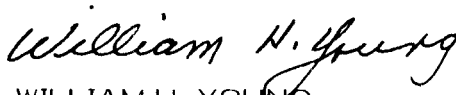
That the type and plans of the measuring device be approved by the Watermaster before the beginning of construction work and that the weir or measuring device be installed under the general supervision of said Watermaster.

It is FURTHER ORDERED that the construction work shall be completed and the change in point of diversion of water made on or before October 1, 1988.

It is FURTHER ORDERED that said water so transferred shall be applied to beneficial use on or before October 1, 1988.

It is FURTHER ORDERED that the certificate recorded at page 25150, Volume 17, 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 28th day of January, 1987.


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.

You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service (date of mailing) of this order. Judicial review is pursuant to the provisions of ORS 536.075 and 183.482.

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