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State of Washington
Department of Ecology
Yakima, Washington

IN THE MATTER OF APPLICATIONS BY SCOTT AND DEBRA BOWMAN, GLEN HOWARD, KENNETH MYERS, KIRK WHEELER, MARION HILL AND GARY ZIMMERMAN TO CHANGE THE PLACE OF USE AND/OR POINT OF DIVERSION FOR A PORTION OF CERTIFICATE NO. 1 OF SQUILCHUCK CREEK DECREE, AS PREVIOUSLY AMENDED BY CERTIFICATE OF CHANGE RECORDED IN VOLUME 3 PAGE 1024	)	Findings of Fact and Decision

Background

Applications for change were submitted by Scott and Debra Bowman, Glen Howard, Kenneth Myers, Kirk Wheeler, Marion Hill and Gary Zimmerman between May 7, 1981, and November 20, 1985. The applications were accepted and public notice made with no protests being received during the 30 day protest period following each notice.

Investigation

Numerous field inspections were conducted to the area during 1984, 1985 and 1986 by the writer and other Ecology staff. The following information was obtained from these inspections, conversations with Janet Hill of the Squilchuck-Miller Water Users Association, review of association records, and review of Ecology office records.

Certificate No. 1 of the Squilchuck Creek Adjudication, Decree No. 7647, issued to the Millerdale Irrigation District and Millerdale Water Users Association and authorized the diversion of 4.52 cubic feet per second (cfs) from Squilchuck Creek for the irrigation of 543 acres. The authorized place of use was specified for individual landowners along lower Squilchuck Creek. In the mid-1960's these landowners formed the Lower Squilchuck Creek Irrigation District and obtained a water right that allowed them to pump water from the nearby Columbia River. When they obtained this water right and developed the system, Certificate No. 1 was sold and transferred to individual landowners higher up on Squilchuck Creek, who primarily had lower class water rights to divert water from Squilchuck Creek. Approximately 70 applications for change were filed seeking authorization to change the place of use and point of diversion for portions of Certificate No. 1.

On April 22, 1969, Certificate of Change recorded in Volume 3, Page 1024 issued to Cecil and Lorena Ray. It authorized changing the place of use and point of diversion for a portion of Certificate No. 1 of the Squilchuck Creek Decree, No. 7647, in the amount of 0.20 cfs. The point of diversion was authorized to be changed from a point in the SW¼NW¼ of Section 27, T. 22 N., R. 20 E.W.M. to a point several miles upstream located approximately 1,000 feet south and 175 feet west from the north quarter corner of Section 4, being within Government Lot 3 of Section 4, T. 21 N., R. 20 E.W.M. The place of use for the water was changed from lands within the Millerdale Irrigation District to the SE¼SW¼ of Section 33, T. 22 N., R. 20 E.W.M.

Certificate No. 1 allowed for the use of 0.0083241 cfs per acre irrigated. The 0.20 cfs that Cecil Ray purchased and transferred to his property allowed for the irrigation of 24 acres. At the time Mr. Ray purchased this water right, besides the SE¼SW¼ of Section 33, he also owned the W½SE¼ of Section 33. He did not develop 24 acres of irrigated land in the SE¼SW¼ of Section 33. Instead he developed approximately 3 acres of irrigated land in the SE¼SW¼ of Section 33 and approximately 21 acres of irrigated land in the W½SE¼ of Section 33. An orchard was planted there, in the valley floor along Squilchuck Creek. Review of a 1973 aerial photo confirms this development.

In the late 1970's Mr. Ray began selling his land that was east of the county road and it was subdivided for building sites. As homes were built, some of the irrigated land became driveways and building sites. As people

bought the land and building sites, Mr. Ray assigned, through the Squilchuck-Miller Water Users, proportionate shares of his water right. It appears that the shares were assigned based on the number of irrigated acres each person acquired. In the mid-1980's it was discovered that the place of use described in Certificate of Change No. 1024 did not include the land in the W½SE¼ of Section 33. Applications for change were provided the Squilchuck-Miller Water Users Association, who distributed them to the effected landowners. Applications for change have been submitted by three of the five effected landowners. Additionally, approximately 5 acres of irrigated land was taken out as the homes and driveways were built. Mr. Ray sold the water right associated with the 5 acres to three landowners along Squilchuck Creek who own property outside of the area that had historically been irrigated under the water right. These three have also filed applications for change to change the place of use and in some cases the point of diversion for the share of water they purchased.

Within the land that has historically been irrigated, applications for change have been filed by the following landowners:

Glen Howard - 0.02 cfs for 2.5 acres. He owns Parcel B of Short Plat 447, being a portion of the S½S½NW¼SE¼ of Section 33, T. 22 N., R. 20 E.W.M. lying between the county road and Squilchuck Creek. This property has since been sold to Richard Nieman.

Kenneth Myers - 0.02 cfs for 2.5 acres. He owns Lot 2 of Myers Squilchuck Acres, being a portion of the SW¼SE¼ of Section 33, lying east of Squilchuck Creek. Mr. Myers also requested authorization to change the point of diversion for his portion of the right to a point located at the northwest corner of his property, which would be approximately 500 feet east and 1,100 feet north of the south quarter corner of Section 33, being within the SW¼SE¼ of Section 33.

Scott and Debra Bowman - 0.02 cfs for 2.5 acres. They own Parcel No. 2 of Michael L. Wolfe Short Plat, No. 548, which has a corner in the SE¼SW¼ of Section 33, and most of the land being in the SW¼SE¼ of Section 33.

The applications for change filed for the above people primarily represent a change on paper and not a change in fact. Their land has been irrigated since Cecil Ray acquired the right via the certificate of change. The change in point of diversion for Kenneth Myers does represent a change in physical operation.

Rick Coggins and Malcolm Hutson also own a portion of the land in the SW¼SE¼ of Section 33 that is being irrigated under Certificate of Change No. 1024 and need to file applications for change. They each have 0.02 cfs for the irrigation of 2.5 acres.

Applications for change have been filed by the following individuals for the 5 acres of land that has been taken out of irrigation during the past ten years.

Marion Hill - He purchased 0.02 cfs for the irrigation of 2.5 acres and has filed an application to change the point of diversion to a point located approximately 800 feet north and 100 feet east of the southwest corner of Section 27, T. 22 N., R. 20 E.W.M. He has also requested authorization to change the place of use to the following described parcel: That part of the SW¼SW¼ of Section 27 described as follows: Beginning at the southwest corner of Section 27; and thence running northerly on the west line of said Section 27, 618.3 feet to the point of beginning; thence continuing northerly along said west line 290.5 feet; thence turning 90° to the right, running easterly 150 feet; thence turning 90° to the right and running southerly 290.5 feet; thence turning 90° to the right and running westerly 250 feet to the point of beginning. This parcel consists of approximately 1.5 acres. Although the portion of the right they purchased could be used to irrigate up to 2.5 acres, they have requested a transfer to a 1.5 acre parcel of land. The 0.02 cfs is a very light water duty for 2.5 acres and would provide a better supply of water for a smaller parcel,

such as the 1.5 acres Mr. Hill irrigates with it. Mr. Hill has other Class 1 water rights that he acquired in 1969 for other parcels of land that he owns.

Gary Zimmerman - He purchased 0.01 cfs for the irrigation of 1.25 acres. He has filed an application to change the point of diversion to a point located approximately 1,300 feet south and 40 feet east of the north quarter corner of Section 4, being within Government Lot 2 of Section 4. This point is approximately 300 feet upstream from the point of diversion authorized in Certificate of Change No. 1024. He has also sought authorization to change the place of use to Government Lot 2 of Section 4, T. 21 N., R. 20 E.W.M. Mr. Zimmerman irrigates approximately 13 acres within Government Lot 2 of Section 4. Adjudicated Certificate No. 8 and Certificate of Change No. 1032 are also appurtenant to Government Lot 2 and allow for the use of up to 0.14 cfs for the irrigation of up to 14.5 acres. Mr. Zimmerman uses the 0.01 cfs he purchased from Mr. Ray to irrigate his existing orchard. This allows him to apply a greater quantity of water to the orchard than would be allowed by his other Class 1 certificates.

Kirk Wheeler - He purchased 0.01 cfs, which would be adequate for the irrigation of 1.25 acres. He has filed an application for change to change the place of use to the following described parcel within the W½SE¼ of Section 33: That part of the W½SE¼ of Section 33 lying north of a line, said line beginning 400 feet south of the north line thereof in the center of Squilchuck Creek and running east to the east line of said subdivision to a point 350 feet distant south of the northeast corner of the following described parcel and the end of said line description: That portion of the south 1,650 feet of even width of the W½SE¼ lying east of the thread of Squilchuck Creek; EXCEPT that portion thereof conveyed by Corrected Warranty Deed in Volume 713, Page 999, recorded March 14, 1973 in Auditor's File No. 728151 and conveyed to Herbert Allen Cockrum.

Mr. Wheeler's land does lie within Cecil Rays original ownership, however, some of it is on a small terrace above the creek. It is not real clear whether the portion of the land that Mr. Wheeler owns along the creek was irrigated when Mr. Ray owned it. However, when Mr. Wheeler bought his property, he obtained with it a share of the water right described in Certificate of Change No. 1024 in the amount of 0.01 cfs, which can be used to irrigate up to 1.25 acres. In his application for change, he identified that up to 6 acres potentially could be irrigated. However, his portion of the right only allows for the irrigation of 1.25 acres.

Section 90.03.280 of the Revised Code of Washington provides that the right to use water is appurtenant to the land or place upon which the same is used; provided, however, that said right may be transferred to another or to others and become appurtenant to any other land or place of use without loss of priority of right if such change can be made without detriment or injury to existing rights.

Conclusions

Based on the foregoing information, the following conclusions are made:

The proposed changes in place of use and point of diversion described above can be made without injury or detriment to existing rights and in most cases have been in place as proposed for a number of years.

Recommendations

It is recommended that superseding certificates issue as follows:

Scott and Debra Bowman - 0.02 cfs, 10 acre-feet per year for the irrigation of 2.5 acres within Parcel No. 2 of the Michael L. Wolfe Short Subdivision No. 548, being the SE¼SE¼SW¼ and the SW¼SW¼SE¼ of Section 33, T. 22 N., R. 20 E.W.M., lying east of Squilchuck Creek. The point of diversion shall remain approximately 1,000 feet south and 175 feet west from the north quarter corner of Section 4, being within Government Lot 3 of Section 4, T. 21 N., R. 20 E.W.M.

Kenneth D. Myers - 0.02 cfs, 10 acre-feet per year for the irrigation of 2.5 acres within Lot 2 of Myers-Squilchuck Acres being within the SW¼SE¼ of Section 33, T. 22 N., R. 20 E.W.M. lying east of Squilchuck Creek. The point of diversion shall be changed to a point located 500 feet east and 1,100 feet north of the south quarter corner of Section 33, being within the SW¼SE¼ of Section 33, T. 22 N., R. 20 E.W.M.

Glen Howard - 0.02 cfs, 10 acre-feet per year for the irrigation of 2.5 acres within Parcel B of Short Plat No. 447 being within the S½S½NW¼SE¼ of Section 33, T. 22 N., R. 20 E.W.M. lying between the Wenatchee Heights County Road and Squilchuck Creek.

The point of diversion shall remain approximately 1,000 feet south and 175 feet west from the north quarter corner of Section 4, being within Government Lot 3 of Section 4, T. 21 N., R. 20 E.W.M.

Marion Hill - 0.02 cfs, 6 acre-feet per year for the irrigation of 1.5 acres within the following described parcel: That part of the SW¼SW¼ of Section 27 described as follows: Beginning at the southwest corner of Section 27; and thence running northerly on the west line of said Section 27, 618.3 feet to the point of beginning; thence continuing northerly along said west line 290.5 feet; thence turning 90° to the right, running easterly 150 feet; thence turning 90° to the right and running southerly 290.5 feet; thence turning 90° to the right and running westerly 250 feet to the point of beginning. The authorized point of diversion shall be moved to a point located approximately 800 feet north and 100 feet east of the southwest corner of Section 27, being within the SW¼SW¼ of Section 27, T. 22 N., R. 20 E.W.M.

Gary Zimmerman - 0.01 cfs, 5 acre-feet per year for the irrigation of 1.25 acres within Government Lot 2 of Section 4, T. 21 N., R. 20 E.W.M. The point of diversion shall be moved to a point located approximately 1,300 feet south and 40 feet east of the north quarter corner of Section 4, being within Government Lot 2, Section 4, T. 22 N., R. 20 E.W.M.

Kirk Wheeler - 0.01 cfs, 5 acre-feet per year for the irrigation of 1.25 acres within the following described parcel: That part of the W½SE¼ of Section 33 lying north of a line, said line beginning 400 feet south of the north line thereof in the center of Squilchuck Creek and running east to the east line of said subdivision to a point 350 feet distant south of the northeast corner of the following described parcel and the end of said line description: That portion of the south 1,650 feet of even width of the W½SE¼ lying east of the thread of Squilchuck Creek; EXCEPT that portion thereof conveyed by Corrected Warranty Deed in Volume 713, Page 999, recorded March 14, 1973 in Auditor's File No. 728151 and conveyed to Herbert Allen Cockrum. The point of diversion shall remain approximately 1,000 feet south and 175 feet west from the north quarter corner of Section 4, being within Government Lot 3 of Section 4, T. 21 N., R. 20 E.W.M.

REPORT BY: Becky Johnson
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DATE: 5/16/90

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Doug Clausing, Section Supervisor
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