

file

BEFORE THE
DEPARTMENT OF ECOLOGY
STATE OF WASHINGTON

IN THE MATTER OF APPLICATION FOR CHANGE)
TO CHANGE A PORTION OF THE PLACE OF USE)
AND ADD A POINT OF DIVERSION TO CERTIFI-))
CATE NUMBER 60 OF THE WENAS CREEK)
ADJUDICATION)

FINDINGS OF FACT
AND
ORDER

Upon review of the Examiner's report, I find that all facts relevant and material to the subject application have been thoroughly investigated. Furthermore, in accordance with the Examiner's conclusions and recommendations, I find that said change will not impair existing rights or be detrimental to the public welfare.

IT IS ORDERED that a change of a portion of the place of use and add a point of diversion be made under the aforesaid application authorizing appropriation of public waters in the amount, and for the use, and subject to the provisions set forth in the Examiner's report.

Any person feeling aggrieved by this order may obtain review thereof by application, within thirty (30) days of receipt of this order, to the Washington Pollution Control Hearings Board, Olympia, Washington 98504, with a copy to the Director, Department of Ecology, Olympia, Washington 98504, pursuant to the provisions of Chapter 43.21B RCW and the rules and regulations adopted thereunder.

Signed at Yakima, Washington this 31st day of October, 1985.

Russell K. Taylor

Russell K. Taylor, P.E., Regional Manager

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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
YAKIMA, WASHINGTON

IN THE MATTER OF APPLICATION FOR CHANGE)
TO CHANGE A PORTION OF THE PLACE OF USE) Findings of Fact
AND ADD A POINT OF DIVERSION TO CERTIFI-) and
CATE NUMBER 60 OF THE WENAS CREEK) Decision
ADJUDICATION)

Background

On August 13, 1985, John and Ricki Turner and Don Williams filed an application to change a portion of the place of use and add a point of diversion to Certificate No. 60 of the Wenas Creek Adjudication, Decree No. 12935. The application was accepted and public notice was made. A letter of protest was received from Miles Yates during the 30 day protest period. His concerns shall be addressed later in this report.

Investigation

A field inspection was conducted by the writer and Linda Anyan on October 18, 1985. The following information was obtained from this inspection, conversations with Mrs. Turner, Ray Fulks, leasee of some of Mr. Williams land, and Miles Yates, and review of office records.

The application for change was filed by John and Ricki Turner and Don Williams. The Turners are purchasing a 7.85 acre parcel of land from Mr. Williams. Mr. Williams also owns the original place of use on Certificate No. 60. Certificate No. 60 issued as a result of the Wenas Creek Adjudication, Decree No. 12935, and is a Class Two water right. It authorized the diversion of 0.58 cubic feet per second (cfs) from Wenas Creek for the irrigation of 29.2 acres. The authorized place of use is the SW1/4NW1/4 of Section 10, T. 14 N., R. 18 E.W.M. The authorized point of diversion location is within the NE1/4NE1/4 of Section 9 T. 14 N., R. 18 E.W.M.

The point of diversion that has been used in the recent past is located approximately 500 feet east and 1,000 feet north of the west quarter corner, being within the SW1/4NW1/4 of Section 10. This diversion is not authorized for use and Mr. Williams needs to file an application for change to change the point of diversion for the remaining property he owns and intends to irrigate from the creek. The Turners propose to add a point of diversion for a portion of the right amounting to 0.16 cfs for the irrigation of seven acres. The proposed new point of diversion would be approximately 150 feet east and 950 feet north of the west quarter corner of Section 10, being within the SW1/4NW1/4 of Section 10.

The applicants also wish to change the place of use for seven acres from the SW1/4NW1/4 Section 10 to Lot 1 of Short Plat recorded in Book 84, Page 209, records of Yakima County, which is a portion of Parcel A of Short Plat recorded in Volume D, Page 24. The remaining 22.2 acres will continue to be irrigated within the SW1/4NW1/4 of Section 10. Said Lot 1 lies within the W1/2SW1/4NW1/4 of Section 10 and the E1/2SE1/4NE1/4 of Section 9 and consists of 7.85 acres. The portion of Lot 1 within Section 10 had not historically been irrigated under this right. There is currently pasture on the land.

The water duty identified in Decree No. 12935 is 0.02 cfs per acre or 0.14 cfs for seven acres. The change can only be approved for that quantity.

There is already a Class 17 water right appurtenant to the lands in the SE1/4NE1/4 of Section 9. However, Class 17 rights rarely are delivered water during the latter half of the irrigation season. Ground Water Certificate No. G4-23127C also issued to a previous owner of the Turner and Williams property. It authorized the withdrawal of 400 gallons per minute, 210 acre-feet per year from a well for supplemental irrigation of 40 acres. The place of use includes lands within the E1/2E1/2NE1/4 of Section 9 and the SW1/4NW1/4 of Section 10. The well is only authorized for use when water is not available from Wenas Creek. The Class 17 right is being relinquished by the property owners to better reflect actual irrigation practices and to simplify the water right records.

Consideration of Objections

Miles Yates owns and farms land approximately a quarter mile southeast of the Turner property. His letter of protest asks that we investigate whether Certificate No. 60 has been relinquished due to five or more years of nonuse. Section 90.04.160 Revised Code of Washington does provide that a water right may be relinquished if the water goes unused for five or more consecutive years. Ray Fulks has leased the land described on Certificate No. 60 for several years and for a portion of that time it was irrigated. In 1980 water from Wenas Creek was used to irrigate the land. In 1981 the well that was developed under Certificate No. G4-23127C was developed and a pump placed in it. Mr. Fulks elected to use the well to irrigate the remainder of that irrigation season and, therefore, perfected the water right for the well.

Section 90.14.140 Revised Code of Washington provides sufficient causes for allowing five or more years to pass without using water which would prevent relinquishment of the water right. One of the sufficient causes is having a determined future use, to begin within 15 years, for the water at the time of the most recent beneficial use of the water. In this case, at the time of the most recent use of the water, the owner of the land and his leasee were in the process of developing a well to be used as a backup water supply for the Wenas Creek water rights and obtained a certificate to use the well for supplemental supply. There obviously was an intent to once again use water under Certificate No. 60, since Certificate No. G4-23172C is supplemental to that right.

Conclusions

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

Because of an intended future use for the water at the time of the most recent beneficial use of water under Certificate No. 60, the right has not relinquished for nonuse. There are no diversions between the authorized diversion and the proposed point of diversion, so the proposed change will not impair existing rights.

Recommendations

It is recommended that the requested change be approved adding a point of diversion for 0.14 cfs located 150 feet east and 950 feet north of the west quarter corner of Section 10 being within the SW1/4NW1/4 of Section 10 T. 14 N., R. 18 E.W.M. The place of use shall be amended to include Lot 1 of Short Plat recorded in Book 84, Page 209.

Construction on the new diversion shall begin by October 1, 1987, be complete by October 1, 1988, and the water shall be put to full use by October 1, 1989.

After the applicant's have put the water to the full authorized use, Certificate No. 60 shall be split, with a portion of it issuing to the Turners and Mr. Williams retaining the remainder.

REPORT BY: Becky Johnson DATE: 10/28/85
Becky Johnson

APPROVED BY: Doug Clausing DATE: 10/28/85
Doug Clausing, Regional Supervisor