

IN THE MATTER OF THE APPLICATION)
 OF ORIN HUTTON ET AL. FOR A CHANGE)
 OF USE OF WATER.)

O R D E R

APPROVING APPLICATION

The above entitled matter comes duly on for consideration and action upon the objections of Waterbury & Allen Ditch Company, Dry Gulch Ditch Company, David S. Gover and Virgil Weir, to the application of Orin Hutton and others, dealing with the subject hereinafter more particularly referred to, said objectors appearing by their counsel, Geo. T. Cochran, of La Grande, Oregon, and applicants appearing by their counsel, Allan A. Smith of Portland, Oregon, and Hallock, Donald & Banta of Baker, Oregon; and the matter having been duly advertised for hearing as required by law, and the said hearing having come duly on before the State Engineer of the State of Oregon in the Circuit Court Room in the Court House in the city of Baker, in Baker County, Oregon, on the 10th day of September, 1943, at the hour of 10 o'clock A. M., and a general discussion having followed, and the parties having thereupon stated into the record their respective positions, and it appearing therefrom that no real controversy exists as to the disposition to be made of the case, and the State Engineer, being fully advised in the premises, FINDS:

1. That Orin Hutton, Fred A. Phillips and Lulu M. Phillips, husband and wife, Ara Phillips and Wayne Phillips, wife and husband, Ira Staggs and Bernice Staggs, husband and wife, Millie Jackson, a widow, Walter Jackson, Joseph Jackson, Jr., David Jackson and Caroline M. Duby, a widow, are, and for some years past have been, doing business as Phillips & Ingle Ditch Company, hereinafter referred to as the applicants, and that said applicants are the owners of what was formerly known as the Hogum Ditch, now known as the Phillips & Ingle Ditch, making a diversion from West Eagle Creek in the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 9, Township 6 South, Range 43 East, W. M., Baker County, Oregon, and are, and for some time past have been, operating said ditch as Phillips & Ingle Ditch Company.

2. That the applicants, or one or more of them, are the owners of the following described lands, situate in Baker County, Oregon, to wit:

The southwest quarter of the Northeast quarter; Northwest quarter of Southeast quarter; South half of Southeast quarter of Section 23; Southwest quarter of Section 24; West half (situate north of Powder River), Northwest quarter of Southeast quarter, and South half of Southeast quarter of Section 25; Northeast quarter; Southwest quarter, and those portions situate North of Powder River of East half of Northwest quarter; Northwest quarter of Southeast quarter, and East half of Southeast Quarter of Section 26; those portions situate North of Powder River of North half of Northwest quarter; and all of North half of Northeast quarter of Section 36, Township 8 South, Range 42 East W. M.; South half of Southwest quarter, and Southwest quarter of Southeast quarter of Section 19; West half of Section 20; West half of East half; East half of West half; and Southwest quarter of Southwest quarter of Section 29; Northwest quarter of Northeast quarter; South half of Northeast quarter; North half of Northwest quarter; Southeast quarter of Northwest quarter; South half of Southwest quarter; and East half of Southeast quarter of Section 30; all those portions situate north of Powder River of the North half, and the North half of the Southeast quarter of Section 31; the Northeast quarter; the North half of the Northwest quarter; the North half of the Southeast quarter; and the Southeast quarter of the Southeast quarter of Section 32; the Northwest quarter of the Northwest quarter; and the South half of the Northwest quarter of Section 33, Township 8 South, Range 43 East W. M., in Baker County, Oregon.

3. That under and by virtue of that certain decree made, rendered and entered on the 18th day of March, 1918, in the Circuit Court of the State of Oregon for Baker County, in the matter of the Determination of the Relative Rights of the Various Claimants to the Use of the Waters of Powder River and its Tributaries, a right was confirmed, under the name of George Grant, Sparta Irrigation Company, successor in interest, for the diversion of not to exceed 1000 miners' inches of water from West Eagle Creek, a tributary of Powder River, under a priority date of 1870 for the irrigation of 1542 acres of land in the following legal subdivisions, (as an inchoate right to be completed by Jan. 1, 1921) to wit:

The West half of the Northeast quarter; the Northwest quarter of the Northwest quarter; the South half of the Northwest quarter; the Southwest quarter; and the West half of the Southeast Quarter of Section 25; the East half of the Southwest quarter, and the Southeast quarter of Section 26; the Northeast quarter of Section 35; the West half of the Northeast quarter, and the Northwest quarter of Section 36; the Southeast quarter of the Northeast quarter of Section 23; the South half of the Northwest quarter and the Northeast quarter of the Southwest quarter of Section 24, all in Township 8 South, Range 43 East W. M.; the Southeast quarter of the Southeast quarter of Section 1; the East half of the Northeast quarter, and the Northeast quarter of the

Southeast quarter of Section 12, Township 9 South, Range 44 East W. M.; the southwest quarter of the Southwest quarter of Section 6; the West half of the Northwest quarter and the Northwest quarter of the Southwest quarter of Section 7, Township 9 South, Range 45 East W. M.; all in Baker County, Oregon.

4. That heretofore and during about the year 1917, applicants, or their predecessors in interest, filed upon, and duly secured the right to impound, the surplus water of Eagle Creek in Eagle and Looking Glass Lakes, situate at or near the source of Eagle Creek in Baker County, Oregon, to the extent of 527 acre-feet of the waters of Looking Glass Lake and 844 acre-feet of the waters in Eagle Lake. That said rights are evidenced by certificates of water right, issued by the then State Water Board, on December 1st, 1920, and appearing of record at pages 2924 and 2925 of Volume 4, State Record of Water Right Certificates, with priorities of September 18th and November 16th, 1917, respectively. That the secondary permit, (Recorded in Volume 9, page 3939, State Record of Permits) for applying the water stored in Eagle and Looking Glass Lake, under said rights, to a beneficial use, describes the use as follows: "700 inches to supply Sparta Irrigation Company through the Sparta Ditch, so we may use 700 inches of West Eagle Creek above the Sparta Ditch and through the Hogum or Phillip Ingle & Goose Creek Ditch."

5. That at about the same time, to wit, the year 1917, applicants, or their predecessors in interest, entered into an arrangement with the said Sparta Irrigation Company, whereby applicants were permitted to and did divert the said stored and impounded waters from said Looking Glass and Eagle Lakes to the head of the Ditch of the said Sparta Irrigation Company, then known as the Sparta Ditch, making a diversion from said West Eagle Creek, within the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 20, Twp. 6 S., Rge. 43 E. W. M., and at all times thereafter until about the year 1926, delivered to the head of said Sparta Ditch, throughout each and every irrigation season, from said lakes, water to the extent of not less than 1000 inches miners' measurement, under six-inch pressure, and in lieu thereof diverted and took from said West Eagle Creek at the head of the said Hogum or Phillips & Ingle Ditch an equivalent amount of the normal flow waters of said stream for the

irrigation of their aforesaid lands, which practice applicants, or their predecessors in interest, continued until about the year 1926.

6. That applicants are likewise the owners of certain rights in and to the use of the waters of West Eagle Creek in the irrigation of their said lands, as evidenced by certificates of water right issued by the State Engineer of the State of Oregon, two under date of January 17, 1929, appearing of record at page 7908 and 7909, respectively, of Volume 8, State Record of Water Right Certificates, with priorities of June 18, 1917, and one issued by said State Engineer, under date of November 16, 1933, and appearing of record at page 10626 of Volume 10, State Record of Water Right Certificates, with priority of October 30, 1933.

7. That beginning about the year 1926, George Grant, Trustee, and Sparta Irrigation Company, and their successors in interest, ceased to divert any water from West Eagle Creek or from any reservoirs of the applicants into the said Sparta Ditch, and since said time neither George Grant, Trustee, nor the Sparta Irrigation Company, nor their successors in interest have used any water from West Eagle Creek or from said reservoirs, for the irrigation of their said lands as described in Paragraph 3 above. That after diversion of water through the Sparta Ditch ceased, the applicants or their predecessors in interest continued to store water in said reservoirs and to divert water through said Hogum or Phillips & Ingle Ditch, for the irrigation of their said lands, and discharged water from Looking Glass Lake and Eagle Lake into Main Eagle Creek, which water flowed down Eagle Creek for the use of irrigators in Lower Eagle Creek Valley. That said practice continued until about the year 1936, when the Dry Gulch Ditch Company and the Waterbury & Allen Ditch Company, and others, as plaintiffs, filed suit against the applicants or their predecessors in interest, as defendants, in the Circuit Court of the State of Oregon for Baker County, which said suit was duly tried, appealed to the Supreme Court of the State of Oregon, and mandate was returned, and decree was

entered in the said Circuit Court upon the mandate of said Supreme Court, on the 20th day of May, 1943, in Volume 51 of the Journals of said court at page 45. That among other things, said decree held that the plaintiffs had the right to demand that the stream flow of West Eagle Creek when required to supply prior rights be turned down when water was not being used through the Sparta Ditch, and injunction was ordered accordingly. That said decree was rendered without prejudice to an application for change of place of use.

8. That the water so impounded in said lakes by applicants is not, never has been, and with existing facilities cannot be made available for the irrigation of any of their said lands. That said waters, however, can be used for the irrigation of lands adjacent to and irrigated from Eagle Creek below its confluence with West Eagle Creek, that objectors to said application are or represent irrigators, diverting water from Eagle Creek below said confluence. That in time past said waters stored in said Eagle and Looking Glass Lakes were used upon the lands heretofore irrigated from said Sparta Ditch; that said Sparta Ditch is not now used, and the lands heretofore irrigated from said ditch cannot now be irrigated therefrom; that release of said water so impounded in said lakes by the applicants into Eagle Creek for the irrigation of lands adjacent to and irrigated from Eagle Creek below the confluence of said stream and West Eagle Creek, for an equal quantity of the waters of West Eagle Creek, to be diverted into the Hogum Ditch for the irrigation of the lands of applicants, can be made without injury to existing rights.

NOW, THEREFORE, based upon the records herein and upon the foregoing Findings, it is CONSIDERED AND ORDERED:

That the right to use the waters impounded in Eagle and Looking Glass Lakes for the irrigation of the lands described in Paragraph 3 of the above findings, as irrigated by the Sparta Irrigation Company, be and the same hereby is cancelled and henceforth shall be held for naught; and

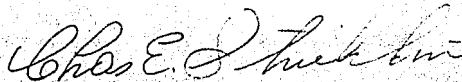
It is FURTHER CONSIDERED AND ORDERED that the applicants be and

they are hereby authorized and permitted, during any irrigation season, to release the waters impounded by said applicants in Eagle and Looking Glass Lakes for an equal quantity of the stream flow of West Eagle Creek, to be diverted into the Hogum or Phillips & Ingle Ditch, provided, however, that such release shall be accomplished as follows: that if at any time during an irrigation season an appropriator of water from Eagle Creek below the confluence of said stream with West Eagle Creek shall be entitled to water as against the applicants, under the law of beneficial use, the water master, upon demand, shall cause to be released from Eagle and Looking Glass Lakes into Eagle Creek an amount of water not exceeding that amount to be diverted by applicants from West Eagle Creek, so that the quantity available will be the same as if no diversion was made by applicants from the natural flow of West Eagle Creek. Such released water to be available to the users of water from Eagle Creek below the confluence of said stream with West Eagle Creek, entitled to water as against the applicants, under the law of beneficial use, and the Water Master, upon demand, shall cause to be released from Eagle and Looking Glass Lakes into Eagle Creek an amount of water not exceeding that then diverted by applicants from the flow of West Eagle Creek, such released water then to be available for the irrigation of the lands adjacent to and irrigated from Eagle Creek below the confluence of said stream with West Eagle Creek and having rights prior in time to the lands belonging to applicants: If, at the time such demand is made, there is no impounded water available in such lakes, or during the irrigation season all of such impounded water has been released, and the requirements of such appropriators have not been supplied, then the Water Master shall turn down waters of West Eagle Creek to supply said lands and priorities.

It is FURTHER CONSIDERED AND ORDERED that said secondary permit for applying the water stored in Eagle and Looking Glass Lakes to a beneficial use is hereby modified to conform with the provision of this order without loss of priority.

It is FURTHER CONSIDERED AND ORDERED that the place of use of the natural flow water diverted from West Eagle Creek for water so released from storage in said Eagle and Looking Glass Lakes, shall be used as a supplemental supply for the irrigation of applicants' lands described in paragraph 2 herein.

Dated at Salem, Oregon, this 21st day of December, 1943.



CHAS. E. STRICKLIN

State Engineer