

BEFORE THE STATE ENGINEER OF OREGON

IN THE MATTER OF THE APPLICATION OF THE )  
GLENDALE LUMBER COMPANY FOR APPROVAL OF )  
A CHANGE IN POINT OF DIVERSION, USE AND )  
PLACE OF USE OF WATER. )

C R D E R

In the proceedings now under way to determine the relative rights of the various users to the waters of Cow Creek and its tributaries, the Glendale Lumber Company has filed three claims:

Claim "A" is based upon State Engineer's Permit No. 3396, which granted a right from Windy Creek, with a priority of May 11, 1917, for irrigation of 4.5 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ , 2 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ , 6.3 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ , and 7.6 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 33, Township 32 South, Range 6 West, W.M. This right has been confirmed by issuance of Water Right Certificate No. 2784.

Claim "B" is based upon an alleged appropriation, diversion and use of water from Windy Creek made in the year 1886, for irrigation of 9.8 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of said Section 33.

Claim "C" is based upon an alleged appropriation, diversion and use of water made on May 10, 1898, for sawmill purposes, including fire protection, domestic use, generating steam, operation of condenser, on saws and planer, for log pond, fluming lumber and all other sawmill purposes. The diversions under this claim are from Bear Creek, Woods Creek, North Fork of Windy Creek, Tributaries of Windy Creek, and Windy Creek, Tributary of Cow Creek. The total quantity of water claimed is 12 cubic-feet per second, which was used at the mill located in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ , Section 23, Township 32 South, Range 6 West, W.M., and for fluming lumber from this mill to Glendale, a distance of approximately four miles.

The Glendale Lumber Company now has under construction a sawmill at Glendale located in the SW $\frac{1}{4}$  of Section 33, Township 32 South, Range 6 West, W.M., and wishes by the transfer requested to secure a right to use all of

the water as described in the three claims for general sawmill purposes, including a supply for a large mill pond.

The location of the new mill is such that the lumber can be readily loaded on the cars, which will render the maintenance and operation of the lumber flume from the present site to the railroad unnecessary for the purpose of fluming lumber, and said water can no longer be beneficially or economically used for that purpose.

With the consent of the owners of the Cunningham Ditch, which diverts water from Windy Creek in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 27, for irrigation of certain lands in Section 33, the company proposes to enlarge said ditch for diversion of the waters of Windy Creek and its tributaries, Woods Creek, Bear Creek and the North Fork of Windy Creek to the site of the new mill. The company also proposes to convey water from Windy Creek through a twelve-inch pipe diverting in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 33, to the new mill.

There are no diversions of water from Woods Creek, North Fork of Windy Creek, Bear Creek or Windy Creek between the point in Section 23 at which the mill is now located and the head of the Cunningham Ditch, through which applicant proposes to divert said water. There is only one diversion between the point of diversion of the Cunningham Ditch and the point at which the twelve-inch pipe will divert from Windy Creek, which said right is for irrigation of 25.6 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  and 2 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 33. In its application the Glendale Lumber Company specifically acknowledges that the right for irrigation of this land is superior to any right which said company now has or will expect to exercise after the approval of the proposed change.

All of the surplus or overflow water from the new mill will be returned to Cow Creek in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of said Section 33, a short distance below the point at which the lumber flume returned its water to Cow Creek, and it appears that no diversions or intervening rights divert or use any of the waters of Cow Creek between the points at which the lumber flume discharges its water in Cow Creek and the point at which water from the new mill site will be returned to said stream.

After receipt by the State Engineer of the application for approval of the change as above outlined, a notice was prepared and published in the Glendale Log, a newspaper published and of general circulation in Douglas County, Oregon, in four consecutive weekly issues beginning August 30th and ending September 20th, 1928. Said notice advised all parties interested that they must appear in the office of the State Engineer at 10 o'clock a.m., on the 27th day of September, 1928, and file objections, if any they had, to the proposed change. On the date and at the time appointed, no such objections were filed nor have any objections been filed at any other time.

It appears to the State Engineer that this proposed change can not be an injury to any existing rights on the streams, except the right for a diversion in the canal below the Cunningham Ditch and in the SW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 27. This possible injury may be disregarded in view of the specific acknowledgment of the applicant that the right is and will continue to be superior to its own.

Because the present rights of the Glendale Lumber Company, with the exception of that right confirmed by Certificate No. 2784, above mentioned, are not as yet determined, it would not be proper to approve the change of the specific quantity of water claimed or attempt to preserve the priorities claimed.

IT IS THEREFORE ORDERED that the change in use and place of use of water as confirmed by Certificate No. 2784 be and the same is hereby approved, and that a new certificate be issued to correct and supersede said Certificate No. 2784. IT IS FURTHER ORDERED that the change in point of diversion, use and place of use of water from Windy Creek, Bear Creek, North Fork of Windy Creek, and Woods Creek be approved but such approval is subject to the final determination of the rights to the use of water of Cow Creek and its tributaries, and this transfer shall be effective for only such rights as the company is able to finally establish and determine in said proceedings.

Dated at Salem, Oregon, this 28th day of September, 1928.

  
RHEA LUPER,  
State Engineer.