

BEFORE THE STATE ENGINEER OR OREGON

Umatilla County

IN THE MATTER OF THE APPLICATION OF)
GEORGE E. CALHOUN FOR THE APPROVAL OF A)
CHANGE IN POINT OF DIVERSION OF WATER)
FROM WEST PRONG OF LITTLE WALLA WALLA)
RIVER.)

O R D E R
APPROVING APPLICATION

On September 3, 1947, George E. Calhoun, whose address is Route 1, Walla Walla, Washington, filed an application for approval of a change in point of diversion of water from West Prong of Little Walla Walla River, a tributary of Walla Walla River, pursuant to the provisions of Section 116-606, O.C.L.A.

By decree of the Circuit Court of the State of Oregon, for the county of Umatilla, dated September 11, 1916, a water right was adjudicated in the name of George E. Calhoun, the applicant, for the use of 0.13 cubic feet per second of water from the West Prong of Little Walla Walla River for the irrigation of 4 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, 2.5 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 15, 2.5 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, and 1 acre in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 16, Township 6 North, Range 35 East, W.M., with a date of priority of 1894.

The applicant herein proposes to change the point of diversion, which is herein more particularly described, downstream to a point 239 feet south and 45 feet east from the northwest corner of that part of Section 15, Township 6 North, Range 35 East, W.M., in Oregon, which point is upon lands of the applicant. At the proposed point of diversion the water is to be diverted by means of a pump and the lands irrigated by the sprinkler method.

Notice of the filing of the application was given by publication, setting forth a time and place for hearing objections to the proposed change

in point of diversion of water, if any there were, namely: in the city hall in Milton, Oregon, on January 15, 1948, at 10:00 o'clock A.M. The notice was published in the Milton Eagle, a newspaper of general circulation, as defined by Sections 1-509, 1-510, O.C.L.A., printed and published at Milton, Umatilla County, Oregon, for a period of three successive weeks in the issues of November 20, 27, and December 4, 1947. The date set for hearing in said notice being not less than 30 days after the last publication of said notice.

Objections of Alvin Knopf and John Woodhall were filed with the State Engineer on December 31, 1947, against the approval of the application of George E. Calhoun, said date of filings being at least 10 days previous to the date set for hearing.

It is asserted in the objection to the approval of the application filed by Alvin Knopf that;

"1. In the event the application for a change in point of diversion be granted, it would not be necessary for the Applicant, George E. Calhoun, to rotate water during the short periods, which would be prejudicial and detrimental to the undersigned Objector.

2. That in the event the application is granted, the undersigned Objector would receive no benefits from the extra water turned back into the river when not otherwise used by the Applicant because of the self-dividing weirs located at the undersigned Objector's point of diversion.

3. That the relative rights to the use of the waters from the West Prong of Little Walla Walla River and its tributaries has been adjudicated and determined and that any change in that adjudication and determination will be prejudicial and detrimental to the rights of the undersigned Objector."

In the objection filed by John Woodhall it was asserted that;

"1. That in the event the application is granted, the undersigned Objector would receive no benefits from the extra water turned back into the river when not otherwise used by the Applicants because of the self-dividing weirs located at the undersigned Objector's point of diversion.

2. That the relative rights to the use of the waters from the West Prong of Little Walla Walla River and its tributaries has been adjudicated and determined and that any change in that adjudication and determination will be prejudicial and detrimental to the rights of the undersigned Objector."

A hearing was held by the State Engineer beginning at 10:00 o'clock A.M., on January 15, 1948, in the city hall, Milton, Oregon, at which hearing the applicant, represented by his legal counsel, George H. Bishop, and the objectors, represented by their legal counsel, Henry M. Kaye, appeared. The hearing was informal but it is believed that the information given at the hearing together with conditions observed from an examination of the grounds preceeding the hearing, that the State Engineer is fully advised as to the position of both the applicant and the objectors.

It appears that at the time the relative rights to the use of the waters of the West Prong of Little Walla Walla River were adjudicated, that the main channel divided in two channels at a point some 100 feet south and 440 feet east of the center of the SW $\frac{1}{4}$ of Section 15, Township 6 North, Range 35 East, W.M., which channels will be referred to herein as the East and West channels. The West channel, through which the applicants adjudicated water right was conveyed, joined the East channel at a point about 1700 feet below the head and from this point the West Prong of Little Walla Walla River flows across into Washington in one channel.

It appears that several years ago the owner of the lands, upon which the aforesaid two channels originated, placed a dam in the West channel

at the head confining the water to the East channel, and since that time the applicant has been diverting the water to which he is entitled from the East channel into the West channel by means of short canals, the point of diversion being changed three times. Two of the diversions were located below the head of the West channel and above the point of diversion of the canal conveying water to the lands of Alvin Knopf, and the last diversion at a point about 450 feet below.

On January 15, 1948, the West channel was not too well defined and doubtless some difficulty and loss of water would result in conveying the applicant's water through this channel.

The objector, Alvin Knopf, owns 6 acres of land in Washington, and 14 acres in Oregon, with a water right, being that tract to which a water right was adjudicated in the aforesaid decree in the name of C. Knopf. This right is for the use of 0.08 cubic feet per second of water from the West Prong of Little Walla Walla River for the irrigation of 6 acres of land with a date of priority of 1902, and 0.18 cubic feet per second of water from said stream for the irrigation of 14 acres of land with a date of priority of 1894. The lands to which these rights are appurtenant are described in the decree as 6 acres in the state of Washington, 4 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, 6.5 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, 2.5 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, and 1 acre in the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 15, Township 6 North, Range 35 East, W.M.

The canal used to convey the water to objector Alvin Knopf's lands diverts from aforesaid East channel of the West Prong of Little Walla Walla River, at a point about 880 feet west and 1400 feet south of the center of Section 15, Township 6 North, Range 35 East, W.M., as shown by the adjudication survey map prepared by the State Engineer.

The land owned by the objector, John Woodhall, is located in the

state of Washington and includes that tract of land for which a water right for winter irrigation only was adjudicated, with a date of priority of 1895, in the aforesaid court decree in the name of F. E. Binford. It appears that Charles C. Reinhardt, predecessor-in-interest of John Woodhall, initiated and perfected a right to the use of the waters of the West Prong of Little Walla Walla River with a date of priority of August 19, 1920, for the irrigation of 15 acres in the $N\frac{1}{2}$ $NW\frac{1}{4}$ $NW\frac{1}{4}$, Section 15, and 17 acres in the $E\frac{1}{2}$ $NE\frac{1}{4}$ $NE\frac{1}{4}$, Section 16, Township 6 North, Range 35 East, W.M., which includes the 15 acres with a winter irrigation right.

It appears that the canal which conveys water to the Woodhall lands diverts a short distance above the east line of the applicants lands.

The courts decree defining the relative rights to the use of the waters of the West Prong of Little Walla Walla River, when construed with the laws of this state, require that when a land owner is not using the water beneficially to which he is entitled to divert and use the same, that the water shall be turned out of his ditch and made available for use of others in order of priorities, regardless of the location of the point or points of diversion. No land owner who is receiving the quantity of water to which he is entitled to divert would have a legal right to such water if there exists other rights which are not receiving their full supply.

The aforesaid court decree and laws of Oregon provide for rotation in use of water providing the method of rotation does not deprive anyone of water to which he is entitled to use. In this proceeding no system or practice of rotation is involved.

From the testimony submitted at the hearing, examination of the ground and careful consideration of the decree defining the relative rights to the use of the waters of the West Prong of Little Walla Walla River, it

appears that the change in point of diversion and diverting the water by means of pumping will not result in injury to existing rights provided the installation is made so that the water flowing to the pump sump can be regulated and records obtained of the water diverted.


NOW, THEREFORE, it hereby is ORDERED that the proposed change in point of diversion from the point of diversion as hereinabove described to a point 239 feet south and 45 feet east of the northwest corner of that part of Section 15, Township 6 North, Range 35 East, W.M., within Oregon, and diverting the water by means of pumping for the irrigation of 4 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$, 2.5 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 15, 2.5 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, and 1 acre in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 16, Township 6 North, Range 35 East, W.M., within Oregon, with a date of priority of 1895, hereby is approved without loss of priority subject to the following conditions:

That the pumping plant be constructed at a sufficient distance from the stream to permit the construction of a headgate to regulate the flow of water from the stream to the pump sump, and to install a weir for measuring the water to which the applicant is entitled to use;

That the location of the pumping plant and channel to convey the water to the pump and the plans of the head-gate and weir or measuring device be approved, before the beginning of construction work, by the water master of Umatilla County, Oregon, and that the head-gate, weir or measuring device be constructed under the general supervision of said water master;

That all of the other provisions of the aforesaid court decree be in full force and effect.

Dated at Salem, Oregon, this 30th day of January, 1948.


CHARLES E. STRICKLIN
State Engineer

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That the location of the pumping plant and channel to convey the water to the pump and the plans of the head-gate and weir or measuring device be approved, before the beginning of construction work, by the water master of Umatilla County, Oregon, and that the head-gate, weir or measuring device be constructed under the general supervision of said water master;

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