

BEFORE THE STATE ENGINEER OF OREGON

Lake County

IN THE MATTER OF APPLICATION)
NO. 33983 IN THE NAME OF)
THOMAS GOSS -----)

FINDINGS, CONCLUSIONS AND
ORDER
APPROVING APPLICATION

FINDINGS

- 1 -

The application of Thomas Goss, designated as application No. 33983, was filed in the office of the State Engineer on May 24, 1960. It describes an appropriation of 0.42 cubic foot per second of water from an "unnamed drain ditch" within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, Township 40 South, Range 19 East, W.M., for irrigation of 16.7 acres of land within the said SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6.

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A protest against the approval of application No. 33983 was filed by the Lakeview Water Users, Inc. In the protest it is alleged that approval of the application would result in conflict with the existing rights of the protestant.

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A hearing on the protest was held before the State Engineer in the Memorial Hall at Lakeview, Oregon, on November 3, 1960. The protestant was represented by its attorney, Mr. Theodore R. Conn, of Lakeview, Oregon, and the applicant was represented by attorneys at law, Mr. Forrest E. Cooper and Mr. Robert F. Nichols, also of Lakeview, Oregon.

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When first received and filed the application identified the source of the proposed appropriation as "springs and runoff water from SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 1, Township 40 South, Range 18 East, W.M."

The application was amended to its present form by the applicant's attorney after it was returned to him, accompanied by a letter from a representative of the State Engineer containing the following statement: *** "From the information shown on the map, it appears that it may be to the advantage of the applicant to identify the source of his appropriation as an unnamed drain ditch". ****

The statement was based on a misinterpretation of the submitted map. The line which approaches the culvert from the west and which appears to pass through the culvert and continue toward the east was assumed to represent a water course.

The map submitted with application No. 33983 was prepared by Glenn E. Tyler of Lakeview, Oregon. In his testimony regarding the preparation of said map, Mr. Tyler stated that the several arrows shown on the map are intended to indicate the direction of water movement, only, and not the existence of ditches or water courses.

The applicant testified that no drainage ditch or other water course exists along the southerly side of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1 and the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6.

In the testimony it was established that the water the applicant seeks to appropriate originates as seepage and runoff from his lands within the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 1, Township 40 South, Range 18 East, W.M., which are irrigated through contract with the Lakeview Water Users, Inc.

In the testimony it was also established that the said seepage and runoff water is collected in a drainage ditch constructed along the east side of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 1. The drainage ditch conveys the collected water to the southeast corner of the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 1 where it flows to the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6, Township 40 South, Range 19 East, W.M. by means of a culvert under the county road situated near the south lines of Sections 1 and 6. From the culvert the water is directed into a distribution ditch constructed along the west side of the area of use within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6.

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The applicant testified that he installed for his own use the culvert used to conduct the collected water from the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 1 to the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 6.

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The applicant also testified that the proposed area of use is actually limited to approximately 6 acres, and that the balance of the 16.7 acres described in the application is subirrigated from seepage water arising within the area.

CONCLUSIONS

- 1 -

Under the provisions of the water rights held by the Lakeview Water Users, Inc., water may be appropriated for irrigation of the applicant's lands within the S $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 1, Township 40 South, Range 18 East, W.M., only to the extent that it is beneficially used on said lands. Any waste or seepage water that occurs from beneficial irrigation of said area is subject to appropriation under the provisions of ORS 537.800 and it is this water that the applicant seeks to appropriate.

ORS 537.160 (2) provides that no application for permit to appropriate waste or seepage water, which is to be carried through an existing ditch or canal not owned wholly by the applicant, shall be approved until the applicant has filed with the State Engineer an agreement between the applicant and the owner of the ditch or canal, authorizing its use by the applicant to carry water. The "ditch or canal" as used in this subsection of the statute refers to works conveying waste or seepage water and not to the works through which water is carried from the stream to project lands.

The matter of the applicant's legal authority to construct works necessary to the proposed appropriation upon county lands is not within the jurisdiction of the State Engineer.

The applicant should be provided with the opportunity to amend the application No. 33983 and to submit a superseding map to correctly identify the source of the proposed appropriation, and to correct the description of the point of diversion and the extent of area of proposed use as established by the testimony. The application should be returned to the applicant endorsed, so as to allow him 30 days from the date of endorsement to complete the application, and to return the completed application together with a superseding map to the State Engineer.

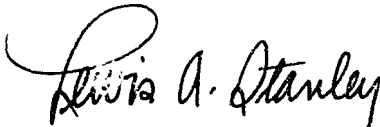
Approval of the application No. 33983, completed to describe the proposed appropriation as defined in the testimony, and with the provision that the permit granted shall give the applicant no right to compel the continuance of waste water, would not result in injury to existing rights and would not prejudicially affect the public interest.

The order to be entered in this matter should make it clear that the permit to issue shall not authorize use of water furnished under applicant's contract with Lakeview Water Users, Inc., except such waste and seepage as may occur as a result of proper irrigation of lands covered by said contract.

ORDER

NOW, THEREFORE, it is hereby ORDERED that the application No. 33893 in the name of Thomas Goss, when completed to describe the proposed appropriation as defined in the testimony, be approved. The permit issued as provided by this order shall contain the limitation that the right granted shall be limited to the water available at the proposed point of diversion, and shall not carry with it the right to compel the continuance of waste water. Neither shall it authorize use of water furnished under applicant's contract with Lakeview Water Users, Inc., except such waste and seepage as may occur as a result of proper irrigation of lands covered by said contract.

Dated at Salem, Oregon, this 3rd day of April 1961.



LEWIS A. STANLEY
State Engineer