

BEFORE THE STATE ENGINEER OF OREGON

Douglas County

IN THE MATTER OF THE PROTEST
TO THE APPROVAL OF APPLICATION
NO. 23756 IN THE NAME OF
ROBERT E. PROCTOR

O R D E R

APPROVING APPLICATION

On May 2, 1949, Robert E. Proctor filed an application with the State Engineer for a permit to appropriate 0.075 cubic foot of water per second from Alder Creek, a tributary of South Umpqua River, for the irrigation of 6 acres of land in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, Township 30 South, Range 5 West, W. M., which application is designated in the records of the State Engineer as No. 23756.

On June 2, 1949, James L. Zumwalt and Evelyn Zumwalt, filed a protest against the approval of the Proctor application by issuance of a permit.

The protest is based on a statement by the protestants to the effect that the appropriation proposed under the application in question would cause injury to the protestants by preventing them from securing water from Alder Creek to satisfy a right which they claim by virtue of use prior to 1909.

On August 26, 1949, an examination of the sites described in the application and protest was made by a representative of the State Engineer.

At the place of stated use on the protestants' property about 1/4 mile below the applicant's proposed point of diversion a small centrifugal pump direct connected to a gas engine of probably 1 1/2 HP was in place. Indications were that water had been applied with this equipment to a small garden. No evidence of an old ditch or flume or any trace of old diversion works from Alder Creek could be found. The protestants claim that diversion was made before 1909 by a dam, flume and ditch and water applied by gravity.

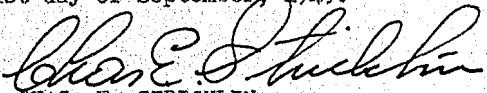
In a proceeding of this nature the State Engineer cannot make a determination of existing rights and whether a vested right exists as claimed by the protestants, would be a matter for the courts to decide.

Under Section 116-421 O.C.L.A., the State Engineer is required to approve all applications made in proper form unless such applications conflict with existing rights or unless, in the judgement of the State Engineer, they prejudicially affect the public interest.

A permit issued approving the Proctor application would grant a right strictly subject to any and all existing rights and it appears that such a permit would not prejudicially affect the public interest.

IT IS THEREFORE HEREBY ORDERED that the application in the name of Robert E. Proctor for a permit to appropriate 0.075 cubic foot of water per second from Alder Creek for the irrigation of 6 acres of land, be approved by issuance of a permit subject to existing rights.

Dated at Salem, Oregon this 1st day of September, 1949.


CHAS. E. STRICKLIN
State Engineer