

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

JOSEPHINE COUNTY

IN THE MATTER OF CANCELLATION OF)
A WATER RIGHT IN THE NAME OF FRED)
L. MERRIL FOR USE OF WATER OF)
EAST FORK ILLINOIS RIVER)

ORDER DISMISSING
PROCEEDING

This proceeding was initiated by the Water Resources Director under the provisions of ORS 540.610 to 540.650 for the cancellation of a certain water right, on the basis of information received in the form of affidavits by Golden Malone and by Louis W. Duval.

The water right in question is for the appropriation of not to exceed 1/40th cubic foot per second of water per acre from East Fork Illinois River under a priority date of 1855 for irrigation of a certain 15.72 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 34, Township 40 South, Range 8 West, W.M., being a portion of the right allowed by decree of the court in the Matter of the Determination of the Relative Rights to Use the Waters of the Illinois River and Its Tributaries, recorded at page 113, Volume 13, Order Record of the State Engineer and described by the certificate issued to Fred L. Merrill and recorded at page 13889, Volume 12, State Record of Water Right Certificates.

Notice dated August 13, 1979, of initiation of the proceeding for cancellation of the subject water right was given pursuant to ORS 540.631 to Don Olson as owner of record of the real property to which the said water right is appurtenant.

On October 15, 1979, a protest was filed in the office of the Water Resources Director by Don Olson against the proposed cancellation of the said water right in question.

Pursuant to notice of hearing dated November 15, 1979, the matter was brought to hearing before Mr. James W. Carver, Jr., Water Resources Department, in Room 203, Josephine County Office Building, Grants Pass, Oregon, on January 24, 1980.

Proponents of cancellation, Golden Malone and Louis W. Duval, appeared without legal counsel. Protestant Don Olson appeared without legal counsel.

After commencement of the hearing, but prior to taking of testimony, the hearing was recessed for the purpose of a conference between the parties.

During the course of the said conference, the several parties joined in the following petition and agreement:

34574

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

Josephine County

RECEIVED

FEB 13 1980

WATER RESOURCES DEPT

SALEM, OREGON

VOL 27 PAGE 705

We, Golden Malone, Louis W. Duval and Don Olson, do hereby individually and severally petition the Water Resources Director to dismiss the proceeding for cancellation of that portion of the water right described by the certificate issued to Fred L. Merrill and recorded at page 13889, Volume 12, State Record of Water Right Certificates, as set forth in the Director's notice dated November 15, 1979.

We further hereby agree that the water right described by the said certificate is appurtenant to our lands severally to the extent of 46.86 acres, being 15.72 acres of Olson lands, 9.22 acres of Malone lands, and 21.92 acres of Duval lands; that water diverted from the flow of East Fork Illinois River under the provisions of said water right shall be divided between and among us as follows:

1/5 to the said 9.22 acres of Golden Malone lands on a constant flow basis;

4/5 to the said 15.72 acres of Don Olson lands and 21.92 acres of Louis W. Duval lands, be divided between the two parties on the basis of the following stated system of rotation:

Don Olson lands to receive all of said 4/5 flow from Sunday noon to 10:00 a.m. Wednesday, each week,

Louis W. Duval lands to receive all of said 4/5 flow from 10:00 a.m. Wednesday to Sunday noon, each week.

We, each and severally, do hereby further agree that this division of the water appropriated under the provisions of the said water right for the benefits of our lands shall run with the land in perpetuity, against our heirs and assigns.

Dated at Grants Pass, Oregon, this 24th day of January, 1980.

Handwritten signatures of Louis W. Duval, Golden Malone, and Don Olson with printed names below.

Subscribed and sworn to before me this 24th day of January, 1980

Handwritten signature of Robert B. Steimer with printed name below.

My commission expires August 8, 1980.

Nov 3



Water Resources Director
Jim Carver, Hearings Officer
555 13th Street, N.E.
Salem, Oregon 97310

State of Oregon,)
County of Josephine,)
I, County Clerk and ex-officio Recorder
do hereby certify that the within instru-
ment was received for record at

34574

JAN 28 '80 AM



INDEXED

COUNTY CLERK
JOSEPHINE COUNTY OREGON

and
Recorded at P. 05
of Vol. 27
MISCELLANEOUS

Records of Josephine County, Oregon.

By MAXINE FOSTER, Co. Clerk
Deputy

Fee \$ 3.00

Upon reconvening the hearing, each of the parties to the said petition stated on the record that the signing of the said petition and agreement was a voluntary act on his or her part and that each had no further testimony or evidence to submit in the matter before the Director.

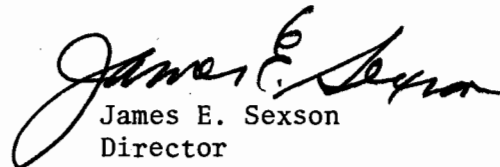
RULING ON MOTION

By joint offer of the aforesaid petition and agreement, all of the parties move for dismissal of this proceeding for cancellation of the water right in question.

Motion is hereby allowed.

NOW, THEREFORE, it is ORDERED that this proceeding for cancellation of the water right in question herein be and the same hereby is dismissed.

Dated at Salem, Oregon this 19th day of February, 1980.


James E. Sexson
Director