

BEFORE THE STATE ENGINEER OF OREGON

Jackson County

IN THE MATTER OF THE CANCELATION OF A RIGHT)
TO THE USE OF THE WATERS OF LITTLE BUTTE)
CREEK APPURTENANT TO CERTAIN LANDS FOR)
IRRIGATION AND THE ISSUANCE OF CORRECTION)
CERTIFICATES OF WATER RIGHT THEREFOR.)

ORDER

By Decree of the Circuit Court for Jackson County, Oregon, entered August 15, 1949, in the Matter of the Determination of the Relative Rights to the Use of the Waters of Little Butte Creek and its Tributaries, a Tributary of Rogue River, a water right was established in the name of the Little Butte Irrigation Company for the appropriation of 12.6 cubic feet per second of the waters of Little Butte Creek, under priority of 1883, for the irrigation of, among other lands, 632.0 acres of land within Section 31, T. 35 S., R. 1 E., W.11.; Sections 34, 35 and 36, T. 35 S., R. 1 W., W.M. and Section 3, T. 36 S., R. 1 W., W.M. Certificate of water right confirming this right was issued to Little Butte Irrigation Company and recorded at page 17196, volume 14, State Record of Water Right Certificates.

On April 23, 1958, Mr. Glen D. Hale, owner of a portion of the lands involved, submitted in writing, duly notarized, that the water right appurtenant to his land had not been used for at least the past five years and had therefore been abandoned, and requested that said right be canceled.

ORS 540.421 provides that whenever the owner of a perfected and developed water right certifies under oath to the State Engineer that the water right has been abandoned by him and that he desires cancellation thereof, the State Engineer shall enter an order canceling the water right.

Subsequent to receipt of Mr. Hale's request, seven other property owners under said Little Butte Irrigation Company submitted similar requests,

under oath, for cancelation of the water right appurtenant to their respective properties, all being located within Central Addition to the Town of Eagle Point, Oregon.

The record owners and description of the respective parcels of property for which requests for cancelation of the appurtenant water right have been submitted are as follows:

R. T. and Mary H. Weidman.

Lots 5, 6, 7 and 8, Block 6, Central Addition to the Town of Eagle Point, Oregon, containing approximately 0.26 acre, being within the NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 3, T. 36 S., R. 1 W., W.M.

S. H. and Freda M. Dye.

Lots 1, 2, 3 and the north 30 feet of Lot 4, Block 12, Central Addition to the Town of Eagle Point, Oregon, containing approximately 0.60 acre, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 3, T. 36 S., R. 1 W., W.M.

Gene and Elizabeth Hugo.

Beginning at the most northerly corner of Lot 5, Block 13, Central Addition to the Town of Eagle Point, Oregon, thence S. 25° 26' W. along the north-westerly line of Lot 5, 65 feet; thence S. 64° 34' E. 125 feet; thence N. 25° 26' E. to Stewart Avenue; thence N. 64° 34' W. 125 feet to the point of beginning, being parts of Lots 3, 4 and 5 of Block 13, Central Addition to the Town of Eagle Point, Oregon, containing approximately 0.19 acre, being within the SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 3, T. 36 S., R. 1 W., W.M.

Charles F. and Jeanne R. Martin.

Beginning at the most easterly corner of Lot 1, Block 13, Central Addition to the Town of Eagle Point, Oregon, thence S. 25° 26' W. along the south-easterly line of Lot 1, 65 feet; thence N. 64° 34' W., 125 feet; thence N. 25° 26' E. 65 feet to Stewart Avenue; thence S.

64° 34' E., 125 feet to the point of beginning, being part of Lots 1, 2 and 3 of said Block 13, containing approximately 0.19 acre and being within the SW¹/₄NE¹/₄, Section 3, T. 36 S., R. 1 W., W.M.
Darrell Copeland.

Beginning at the most southerly corner of Lot 10, Block 13, Central Addition to the Town of Eagle Point, Oregon, thence N. 25° 26' E. along the south-easterly line of Lot 10, 65 feet to the point of beginning; thence N. 64° 34' W., 125 feet; thence N. 25° 26' E., 65 feet; thence S. 64° 34' E., 125 feet to Third Street; thence S. 25° 23' W., 65 feet to the point of beginning, being parts of Lots 8, 9 and 10, Block 13, containing approximately 0.19 acre, and being within the SW¹/₄NE¹/₄, Section 3, T. 36 S., R. 1 W., W.M.

Edward D. Oswald.

The southerly one-half of Lots 9 and 10 and the southerly one-half of the easterly one-half of Lot 8, Block 13, Central Addition to the Town of Eagle Point, Oregon, containing approximately 0.19 acre, and being within the SW¹/₄NE¹/₄, Section 3, T. 36 S., R. 1 W., W.M.

Glen D. Hale.

The Easterly 30 feet of Lot 9 and the westerly 40 feet of Lot 8, in Block 14, Central Addition to the Town of Eagle Point, Oregon, containing approximately 0.21 acre, and being within the SW¹/₄NE¹/₄, Section 3, T. 36 S., R. 1 W., W.M.

Gwen E. and Earl W. Kelley.

Lot 14, Block 14, Central Addition to the Town of Eagle Point, Oregon, containing approximately 0.15 acre, and being within the SW¹/₄NE¹/₄, Section 3, T. 36 S., R. 1 W., W.M.

The foregoing described tracts total 1.98 acres of which 0.26 acre is located within the NW¹/₄NE¹/₄ and 1.72 acres is located within the SW¹/₄NE¹/₄, Section 3, T. 36 S., R. 1 W., W.M.

It appearing that the use of water upon the above described tracts of land from the Little Butte Irrigation Company, has not been exercised for a period of more than five years, and that the respective owners of said tracts have each submitted an affidavit to the State Engineer, subscribed to under oath, that they have abandoned the water right appurtenant to their property, as described, and have each requested that said water right be canceled, which requests have been approved by the Little Butte Irrigation Company, attested by its Secretary, Marion Nagel. That the certificate of Water right heretofore issued in the name of the Little Butte Irrigation Company, and recorded at page 17196, volume 14, State Record of Water Right Certificates, should be canceled and a new certificate of water right issued to the Little Butte Irrigation Company, eliminating therefrom 0.26 acres in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and 1.72 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 3, T. 36 S., R. 1 W., W.M.

It further appears that the Little Butte Creek Decree, entered August 15, 1949, provided that the lands owned by Wm. J. and Ella C. Phillips and served by the Little Butte Irrigation Company, shall be covered by a separate certificate of water right, as provided by paragraph 19, but that said certificate of water right recorded at page 17196, volume 14, State Record of Water Right Certificates, included the lands owned by said Wm. J. and Ella C. Phillips and that a separate certificate was not issued to Phillips covering their lands, as described under said paragraph 19 of the Decree dated August 15, 1949, being

4.0 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$
Section 31
T. 35 S., R. 1 E., W.M.

3.0 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$
Section 36
T. 35 S., R. 1 W., W.M.

Under priority of 1883, and

5.3 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$
30.9 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$
0.9 acre in SE $\frac{1}{4}$ SW $\frac{1}{4}$
Section 31
T. 35 S., R. 1 E., W.M.

4.03 acres in NW¹/₄NW¹/₄
Section 6
T. 36 S., R. 1 E., W.M.

21.6 acres in SE¹/₄SE¹/₄
Section 36
T. 36 S., R. 1 W., W.M.

under priority of 1908.

That in the new certificate of water right to be issued to the Little Butte Irrigation Company, the above described lands owned by Wm. J. and Ella C. Phillips should be omitted from the description of lands, and that a separate certificate should be issued to Wm. J. and Ella C. Phillips covering their said lands.

It further appears that certain transfers of water right have been allowed, as approved by Orders of the State Engineer, recorded in Special Order Record, Volume 5 at page 280 and Volume 6 at page 116, involving certain lands under said certificate of water right recorded at page 17196, Volume 14, State Record of Water Right Certificates, and that the owners of the lands therein involved have filed their affidavit of completion thereof, that in the issuance of the new water right certificate to the Little Butte Irrigation Company, the tabulation of lands should be corrected to show the acreage as irrigated in completion of said transfers of water right.

NOW THEREFORE, it is hereby ORDERED that the water right heretofore appurtenant to said 1.98 acres of land, as hereinabove described, for which requests for cancelation, subscribed to under oath, have been submitted to the State Engineer, be, and the same is hereby canceled.

It is hereby FURTHER ORDERED, that certificate of water right heretofore issued to the Little Butte Irrigation Company, recorded at page 17196, Volume 14, State Record of Water Right Certificates, be, and the same is hereby canceled, and that a new certificate of water right shall be issued to the Little Butte Irrigation Company covering use of water for irrigation of lands served by their distribution system, incorporating therein the

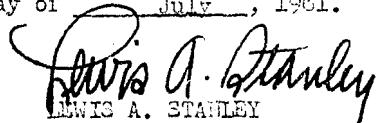
transfers of water right approved by State Engineer's Orders as recorded in Special Order Record, Volume 5 at page 280 and Volume 6 at page 116; and omitting from the tabulation of lands the acreage hereinabove described as being owned by Wm. J. and Ella C. Phillips, for which a separate certificate of water right shall be issued.

It is hereby FURTHER ORDERED, that a certificate of water right shall be issued in the name of Wm. J. and Ella C. Phillips, as provided by paragraph 19 of the Little Butte Creek Decree dated August 15, 1948, covering the lands heretofore owned by them, as hereinabove described.

Dated at Salem, Oregon, this 31st day of July, 1961.

*Noted on Decree
Vol. 14, p. 520
Cert. # 17196*

~~*Super. by Cert. 29368*~~


LEWIS A. STANLEY
State Engineer