

BEFORE THE STATE ENGINEER

OF OREGON

IN THE MATTER OF THE )  
CANCELATION OF A WATER )  
RIGHT IN THE NAME OF )  
BARBARA E. DOWNEY )  
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ORDER DISMISSING  
PROCEEDINGS

On July 7, 1970, notice was given under the provisions of ORS 540.631 to the following listed parties as owners of record, contract purchasers and/or occupants of real property to which a certain water right is appurtenant, of the initiation of a proceedings for cancellation of the said certain water right:

Clinton A. and Geraldine K. Halstead  
P. O. Box 135  
Azalea, Oregon 97410

L. H. and Nellie Olinghouse  
1445 Railroad Blvd., No. 10  
Eugene, Oregon 97402

Robert A. and Elizabeth A. Cobler  
P. O. Box 256  
Azalea, Oregon 97410

Edna Troy Cardin  
Azalea  
Oregon 97410

The water right in question is for the use of not to exceed the rate of flow of one cubic foot of water per second of time for each 70 acres of land irrigated during the irrigation season of the waters of Cow Creek, tributary of South Umpqua River, for irrigation of 2.6 acres in SW $\frac{1}{4}$  NE $\frac{1}{4}$  and 2.2 acres in NW $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 5, Township 32 South, Range 4 West, W.M., with a date of priority of 1908, as established by Decree of the Circuit Court for Douglas County, entered August 14, 1930, in the name of Barbara E. Downey and evidenced by certificate of water right recorded at page 9620, Volume 9, State Record of Water Right Certificates.

On July 23, 1970 a copy of the above described notice was given by certified mail to Herman and Elsie Lange, 15 Rio Vista Way, Petaluma, California, reported purchasers of the real property formerly owned by Troy and Edna Cardin.

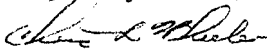
Within the time limit set forth in the notice, pursuant to ORS 540.631, protests against the proposed cancelation of the water right in question were filed in the names of Herman C. and Elsie Lange and in the names of Robert A. and Elizabeth A. Cobler.

A principal witness for cancelation no longer being available to testify at a hearing before the State Engineer, an investigation in the field was made by an employee of the State Engineer on July 20, 1971. Application of water to the subject lands was not observed on the day of the inspection. However, the lands were observed to be agricultural in character and susceptible of beneficial irrigation. Evidence on the ground was not conclusive as to use or nonuse of water under the right in question.

Based on discussions with proponents of cancelation, interviews with residents of the neighborhood, and the July 20, 1971, inspection, it appears there is not sufficient evidence to meet burden of proof to justify taking the matter to hearing and, therefore, the matter should be dismissed without prejudice.

NOW, THEREFORE, it hereby is ORDERED that in the matter of the proposed cancelation of the water right for appropriation and use of not to exceed the rate of flow of one cubic foot of water per second of time for each 70 acres of land irrigated during the irrigation season of the waters of Cow Creek, tributary of South Umpqua River, for irrigation of 2.6 acres in SW $\frac{1}{4}$  NE $\frac{1}{4}$  and 2.2 acres in NW $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 5, Township 32 South, Range 4 West, W.M., with a date of priority of 1908, as established by Decree of the Circuit Court for Douglas County, entered August 14, 1930, in the name of Barbara E. Downey and evidenced by certificate of water right recorded at page 9620, Volume 9, State Record of Water Right Certificates, the proceedings be and the same is hereby dismissed without prejudice.

Dated at Salem, Oregon, this 5th-day of October, 1971.

  
CHRIS L. WHEELER  
State Engineer