

BEFORE THE STATE ENGINEER OF OREGON

Malheur County

IN THE MATTER OF)
THE CANCELATION)
OF A WATER RIGHT)

FINDINGS, CONCLUSIONS
AND ORDER

On November 1, 1962, Mr. John Molthan submitted an affidavit that he is the legal owner of that portion of the E $\frac{1}{2}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ NE $\frac{1}{4}$, Section 28, Township 14 South, Range 39 East, W.M. lying between the north right of way line of Highway 26 and the north line of said Section 28 and located east of the following described line:

Commencing at a point on the north right of way of Highway 26, 2194.1 feet east and 1535.9 feet south of the northwest corner of said Section 28; thence north 18° 52' east 50 feet; thence north 71° 08' west 79.8 feet; thence north 18° 48' east 443.8 feet; thence north 42° 16' west 312.7 feet; thence north 25° 01' east 174.2 feet; thence north 89° 52' east 211.5 feet; thence north 34° 52' east 406.5 feet; thence north 45° 07' east 176.1 feet; thence north 32° 33' east 235 feet to the north line of said Section 28, containing 65 acres, more or less,

and the water right appurtenant thereto; that he has abandoned any and all interest in and to said water right and request the same to be canceled.

II

The water right in question is a part of that established in the name of J. H. Rose by Decree of the Circuit Court for Malheur County, entered June 6, 1916, in the Matter of the Determination of the Relative Rights to the Use of the Waters of Willow Creek, and its Tributaries, a tributary of Malheur River, and is for the use of not to exceed a rate of flow of 10.85 cubic feet per second from April 1st to May 1st and 5.45 cubic feet per second from May 1st to September 1st of each year; the total quantity diverted during each irrigation season not to exceed 1302 acre feet of the waters of Bridge Creek and South Fork of Willow Creek for irrigation of 434 acres, domestic, stock and storage, with priority dates of 1892 for irrigation of 25 acres from Bridge Creek; 1872 for 160 acres; 1873 for 40 acres; 1876 for 25 acres; 1882 for 25 acres and 1884 for 159 acres from South Fork Willow Creek, and

is evidenced by certificate recorded at page 1612, Volume 2, State Record of Water Right Certificates. The land to which said right is appurtenant is tabulated as follows:

Bridge Creek

6 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$
3 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$

7 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$
9 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$
Section 6, T. 15 S., R. 39 E., W.M.

South Fork Willow Creek

12.5 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$
1.0 acre in SW $\frac{1}{4}$ NE $\frac{1}{4}$
36.5 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$
38.0 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$
35.0 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$
35.0 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$
17.0 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$
37.0 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$
30.0 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$
3.0 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$
Section 28

35.0 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$
2.0 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$
35.5 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$
3.5 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$
17.5 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$
15.0 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$
Section 32

23.0 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$
5.0 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$
Section 33

7.5 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$
20.0 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$
Section 29

all in T. 14 S., R. 39 E., W.M.

III

John Molthan authorized cancelation of the water right appurtenant to 12.5 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$, 1.0 acre in SW $\frac{1}{4}$ NE $\frac{1}{4}$, 8.4 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$ and 3.2 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 28, Township 14 South, Range 39 East, W.M., of the above tabulated acreage.

IV

On April 27, 1964, notice of cancelation on grounds of abandonment under provisions of ORS 540.631 to 540.650 were sent by certified mail to the following:

Donald Oakes, Ray R. Duncan, Ernestine L. Nichols, Nellie Mae Kendall, Charles and Phoebe Redsull, Allen Fletcher, William and Fay Woodcock, Wallace and Viola Derrick, Roy G. and Audra Cox, George Farber, William Cape, Ed Oakes and Ray Duncan, all of Ironside, Oregon, and to Oregon State Highway Commission, Salem, Oregon, of the State Engineer's intention to cancel that part of the remaining right appurtenant to 2.96 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, 4.9 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$, 10.93 acres in

SW $\frac{1}{4}$ NW $\frac{1}{4}$ and 11.1 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 28, Township 14 South, Range 39 East, W.M..

V

Protests against the proposed cancelation were filed on May 6, 1965 by Roy J. and Audra Cox; on May 18, 1965 by Donald Oakes and on May 25, 1965 by Ray R. Duncan, Ernestine L. Nichols, Ed Oakes and Ray Duncan, and Charles D. and Phoebe Redsull.

VI

On April 7, 1965, Marvin E. Bennett, Assistant State Engineer, and Frank Elfering, Watermaster, District 9, met with the protestants at Ironside, Oregon, except Roy J. Cox, Ed Oakes, who was represented by Donald Oakes, and Ernestine L. Nichols, who was represented by Ray Duncan as contract purchaser of her lands.

Following the meeting, a physical examination of the land involved was made and it was determined by Mr. Bennett and Mr. Elfering that the following described lands were being irrigated, or had been irrigated within the past few years, to wit:

NE $\frac{1}{4}$ NW $\frac{1}{4}$ - 23.7 acres by Donald Oakes
3.7 acres by Redsull

NW $\frac{1}{4}$ NW $\frac{1}{4}$ - 33.2 acres by Donald Oakes

SE $\frac{1}{4}$ NW $\frac{1}{4}$ - 23.6 acres by Ray Duncan
1.5 acres by Roy J. Cox

SW $\frac{1}{4}$ NW $\frac{1}{4}$ - 24.8 acres by Ray Duncan
5.2 acres by Donald Oakes

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VII

On May 24, 1965, the protestants filed a statement under oath that they agreed with the area of land found irrigated, as tabulated above, and voluntarily withdrew their protests.

VIII

The following tabulation lists in Column 4 the lands for which the water right was authorized canceled and in Column 5 those lands for which proceedings were initiated and no protests against cancelation are pending.

	Sub-division	Acres of water right	Acres found irrigated	Authorized canceled	To be canceled
Section 28	NW $\frac{1}{4}$ NE $\frac{1}{4}$	12.5	0	12.5	0
	SW $\frac{1}{4}$ NE $\frac{1}{4}$	1.0	0	1.0	0
	NE $\frac{1}{4}$ NW $\frac{1}{4}$	36.5	27.4	8.4	0.7
	NW $\frac{1}{4}$ NW $\frac{1}{4}$	38.0	33.2	0	4.8
	SW $\frac{1}{4}$ NW $\frac{1}{4}$	35.0	30.0	0	5.0
	SE $\frac{1}{4}$ NW $\frac{1}{4}$	35.0	25.1	3.2	6.7

ORS 540.641 (1) provides that: "If the legal owner or the occupant receiving notice as provided in ORS 540.631 fails to protest the proposed cancelation of the water right within the sixty day period prescribed in the notice, the State Engineer may enter an order canceling the water right."

CONCLUSIONS

It appears that the water rights appurtenant to the 17.2 acres described in Column 5, and the 25.1 acres described in Column 4, both in paragraph VIII above, should be canceled, and a new certificate be issued to the owners confirming the right to the use of the waters of Bridge Creek and South Fork Willow Creek for the remaining lands.

NOW, THEREFORE, it is hereby ORDERED that the right to the use of not to exceed 0.53 cubic foot per second of the waters of South Fork Willow Creek for irrigation of 12.5 acres in NW $\frac{1}{4}$ NE $\frac{1}{4}$, 1.0 acre in SW $\frac{1}{4}$ NE $\frac{1}{4}$, 9.1 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$, 4.8 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$, 5.0 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$, and 9.9 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 28, Township 14 South, Range 39 East, W.M. with a priority date of 1884, is canceled.

It is FURTHER ORDERED that certificate of water right recorded at page 1612, Volume 2, State Record of Water Right Certificates, is canceled and in lieu thereof a certificate be issued to Ray Duncan, Donald and Ileana Oakes, Roy J. and Audra Cox, and Charles D. and Phoebe Redsull for the irrigation of 366.7 acres from South Fork Willow Creek with dates of priority of 1872 for 160 acres, 1873

for 40 acres, 1876 for 25 acres, 1882 for 25 acres and 1884 for 116.7 acres and for storage and irrigation of 25 acres from Bridge Creek with a date of priority of 1892, the quantity of water for the irrigation of said lands shall not exceed 1/40 cubic foot per second per acre until May 1st, and 1/80 cubic foot per second per acre during the remainder of the irrigation season and not to exceed 3.0 acre feet per acre per season, said 391.7 acres being described as follows:

Bridge Creek

6.0 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$
3.0 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$

7.0 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$
9.0 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$
Section 6, T. 15 S., R. 39 E., W.M.

South Fork Willow Creek

27.4 acres in NE $\frac{1}{4}$ NW $\frac{1}{4}$
33.2 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$
30.0 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$
25.1 acres in SE $\frac{1}{4}$ NW $\frac{1}{4}$
17.0 acres in NE $\frac{1}{4}$ SW $\frac{1}{4}$
37.0 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$
30.0 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$
3.0 acres in SE $\frac{1}{4}$ SW $\frac{1}{4}$
Section 28

35.0 acres in NE $\frac{1}{4}$ NE $\frac{1}{4}$
2.0 acres in SW $\frac{1}{4}$ NE $\frac{1}{4}$
35.5 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$
3.5 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$
17.5 acres in NW $\frac{1}{4}$ SE $\frac{1}{4}$
15.0 acres in SW $\frac{1}{4}$ SE $\frac{1}{4}$
Section 32

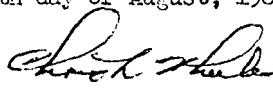
7.5 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$
20.0 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$
Section 29

23.0 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$
5.0 acres in SW $\frac{1}{4}$ SW $\frac{1}{4}$

T. 14 S., R. 39 E., W.M.

Dated at Salem, Oregon, this 12th day of August, 1965.

*Noted
Lance W. P. 200
C. 10-10
D. 10-10
M. 10-10*



CHRIS L. WHEELER
State Engineer