

Josephine County

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

STATEMENT
 FINDINGS OF FACT
 CONCLUSIONS
 ORDER

This proceeding was initiated by the State Engineer under the provisions of ORS 540.631 to 540.650 for cancelation of a certain water right.

The water right in question was established by Decree of the Circuit Court for Josephine County, entered September 26, 1939, in the Matter of the Determination of the Relative Rights to the Use of the Waters of Illinois River and its Tributaries, in the name of Estate of H. S. Woodcock, and is for the use of not to exceed one cubic foot per second of water for each 50 acres of land irrigated during the irrigation season from April 1 to November 1 of each year of the waters of Frost Gulch and Choke Cherry Gulch for irrigation of 3.5 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ and 5.5 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 31, Township 39 South, Range 8 West, W.M., being lands west of Westside Road, with a date of priority of 1873, and is evidenced by certificate of water right recorded at page 13950, Volume 12, State Record of Water Right Certificates.

That part of the above described water right for the use of not to exceed one cubic foot per second of water for each 50 acres of land irrigated during the irrigation season from April 1 to November 1 of each year for domestic use and irrigation of 1.3 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ and 1.7 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 31 and 3.2 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$ and 1.6 acres in Lot 1 (NW $\frac{1}{4}$ SW $\frac{1}{4}$), Section 32, Township 39 South, Range 8 West, W.M., being lands lying east of Westside Road, with a date of priority of 1873, as evidenced by certificate of water right recorded at page 13950, Volume 12, State Record of Water Right Certificates, is not in question in this proceeding.

Notice of the State Engineer's intention to cancel the above described water right in question was sent by certified mail to:

Paschal H. and Irene Jewell
505 B Street N. E.
Auburn, Washington 98002

Ernest F. and Florence Leiser
P. O. Box 441
Cucamonga, California 91730

Elwin and Rosa Frye
5833 Westside Road
Cave Junction, Oregon 97523

Josephine County Court
County Courthouse
Grants Pass, Oregon 97526

as owners of the lands to which the water right is appurtenant, and to Joe L. Bleser, Box 820, Westside Road, Cave Junction, Oregon.

On February 19, 1969, the State Engineer received a protest from Ernest F. and Florence Leiser and on March 10, 1969, a protest was received from Paschal H. Jewell against the proposed cancelation of the water right in question. No protest was entered by Josephine County, owner of the lands within Westside Road.

By notice dated April 22, 1969, the State Engineer notified Paschal H. and Irene Jewell, Ernest F. and Florence Leiser and Joe L. Bleser that a hearing before the State Engineer on the protests of the proposed cancelation of water right would be held in Room 104, County Building, Cave Junction, Oregon on May 20, 1969, commencing at 9:30 a.m.

The hearing was held at the stated time and place before Mr. James W. Carver, Jr., Deputy State Engineer. Protestants Paschal H. and Irene Jewell appeared and were represented by Oscar R. Nealy, Attorney at Law, Grants Pass, Oregon. Protestants Ernest and Florence Leiser appeared and were not represented by counsel. The proponents were represented by Donald H. Coulter, Attorney at Law, Grants Pass, Oregon.

The waters of Frost Gulch and Choke Cherry Gulch are diverted into a ditch, thence into a flume and pipeline to a point some 400 feet northwest of the E $\frac{1}{4}$ corner of Section 31, Township 39 South, Range 8 West, W.M.; thence conveyed under Westside Road through a culvert and onto the lands as evidenced by certificate of water right numbered 13950. Water may be diverted by a ditch or by sprinkler system from the flume or pipeline before it crosses Westside Road. Most of the old wooden flume has been replaced by a pipeline, to prevent loss by leakage.

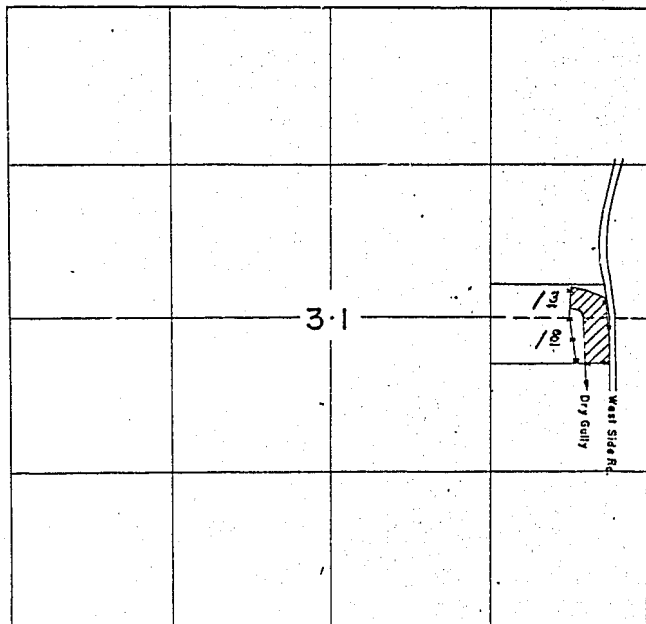
FINDINGS OF FACT

The matter of the protest of Paschal H. and Irene Jewell, pertaining to their lands within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31, Township 39 South, Range 8 West, W.M., was disposed of by the following stipulation:

We, Oscar R. Nealy, Attorney for protestants Paschal H. and Irene Jewell, and Donald H. Coulter, Attorney for proponents of cancelation, do hereby certify that a stipulation between parties was reached at the hearing before the State Engineer at Cave Junction, Oregon on May 20, 1969, in the matter of the proposed cancelation of the water right in the name of the Estate of H. S. Woodcock, for use of not to exceed one cubic foot per second of water for each 50 acres of land irrigated during the irrigation season from April 1 to November 1 of each year of the waters of Frost Gulch and Choke Cherry Gulch for irrigation of 3.5 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and 5.5 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31, Township 39 South, Range 8 West, W.M., with a date of priority of 1873, evidenced by the certificate recorded at page 13950, Volume 12, State Record of Water Right Certificates, insofar as the said water right pertains to the lands of the protestants, Paschal H. and Irene Jewell; that it was agreed that nonuse of the subject water right on a certain pasture area along the east end on the Jewell lands, adjacent to Westside Road, the extent of the area to have been determined by the State Engineer by actual field survey, such survey having been made by Mr. Robert Steimer on May 29, 1969, as evidenced by a map of said survey attached hereto and establishing the pasture area as being 1.3 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and 1.8 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31, Township 39 South, Range 8 West, W.M., for a period of five or more successive years of nonuse has not occurred; and that it was further agreed

T. 39 S. R. 8 W.W.M.

RECEIVED
COUNTY CLERK
STATE OF TEXAS
SALADO, TEXAS



FINAL PROOF SURVEY
UNDER

Application No. Permit No.
IN NAME OF

Stipulation between Jewells & Proponents.....

Surveyed May 29... 1969, by R.B. STEIMER..

301-A

that nonuse of the subject water right on the balance of the Jewell lands, being 2.2 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$ and 3.7 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31, Township 39 South, Range 8 West, W.M. for a period of five or more successive years of nonuse has occurred.

Dated and signed at Grants Pass, Oregon, this 16 day of June, 1969

Oscar R. Nealy
Donald H. Coulter

Sworn to before Mary M. Williams, Notary Public for Oregon.

The matter of the protest of Ernest F. and Florence E. Leiser pertaining to their lands within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 31, Township 39 South, Range 8 West, W.M., was disposed of by the following document:

We, Ernest F. and Florence E. Leiser, husband and wife, being duly sworn, depose and say that we are the owners of record of a certain tract of real property as described by deed recorded at page 544 of Volume 253, Deed Records of Josephine County (copy of deed attached hereto); that we have sold by contract to Lawrence J. and Mary G. Cheatham, husband and wife, the south one-half of said tract of real property, pursuant to agreement of sale dated March 15, 1969; that upon examination of the documents evidencing the water right for use of waters of Frost Gulch and Choke Cherry Gulch for irrigation of 3.5 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ and 5.5 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 31, Township 39 South, Range 8 West, W.M., (being lands west of Westside Road) with a date of priority of 1873, evidenced by certificate recorded at page 13950, Volume 12, State Record of Water Right Certificates in the name of Estate of H. S. Woodcock, we recognize that no part of the said water right is appurtenant to the lands as identified by the above described deed; and that we have no interest in the matter of the proposed cancelation of the said water right.

Witness our hands this 20th day of May, 1969.

Signed Ernest F. Leiser
Florence E. Leiser

Sworn to before Mr. James W. Carver, Jr.

CONCLUSIONS

A part of the water right in question for the use of not to exceed one cubic foot per second for each 50 acres of land irrigated during the

irrigation season from April 1 to November 1 of each year of the waters of Frost Gulch and Choke Cherry Gulch for irrigation of said part being appurtenant to 2.2 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ and 3.7 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 31, Township 39 South, Range 8 West, W.M., being lands west of Westside Road, with a date of priority of 1873, has been forfeited through five and more successive years of nonuse and should be canceled. The remainder of the water right in question, appurtenant to the lands in pasture grass adjacent to and bordering on Westside Road, being 1.3 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ and 1.8 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 31, Township 39 South, Range 8 West, W.M., as determined by the survey made by Robert B. Steimer, Watermaster District 15 on May 29, 1969, has been exercised without the occurrence of a period of five successive years of nonuse and therefore is not subject to cancellation in this proceeding.

ORDER

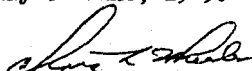
NOW, THEREFORE, it is hereby ORDERED that the right for the use of not to exceed one cubic foot per second of water for each 50 acres of land irrigated during the irrigation season from April 1 to November 1 of each year of the waters of Frost Gulch and Choke Cherry Gulch for irrigation of 2.2 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ and 3.7 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 31, Township 39 South, Range 8 West, W.M., with a priority date of 1873, is canceled.

It is FURTHER ORDERED that certificate of water right recorded at page 13950, Volume 12, State Record of Water Right Certificates, is canceled, and in lieu thereof a certificate be issued to Paschal H. and Irene Jewell covering that part of said water right not subject to cancellation, for the use of not to exceed one cubic foot per second of water for each 50 acres of land irrigated during the irrigation season from April 1 to November 1 of each year of the waters of Frost Gulch and Choke Cherry

Gulch for irrigation of 1.3 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$ and 1.8 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 31, Township 39 South, Range 8 West, W.M., with a date of priority of 1873.

It is FURTHER ORDERED that a certificate of water right be issued in the name of Elwin and Rosa Frye, 5833 Westside Road, Cave Junction, Oregon, covering that part of the water right not in question in this proceeding which is for the use of not to exceed one cubic foot per second of water for each 50 acres of land irrigated during the irrigation season from April 1 to November 1 of each year of the waters of Frost Gulch and Choke Cherry Gulch for domestic and irrigation of 1.3 acres in SE $\frac{1}{4}$ NE $\frac{1}{4}$, 1.7 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 31; and 3.2 acres in SW $\frac{1}{4}$ NW $\frac{1}{4}$, 1.6 acres in Lot 1 (NW $\frac{1}{4}$ SW $\frac{1}{4}$), Section 32, Township 39 South, Range 8 West, W.M., being lands lying east of Westside Road, with a date of priority of 1873.

Dated at Salem, Oregon this 20th day of June, 1969.



CHRIS L. WHEELER
State Engineer

*Noted on Decree
Vol. 13, p. 125
Oct. 13, 1969*

*Superseding
cc 36456
36457*

*Misc. Hearing
Sta 138*