

BEFORE THE STATE ENGINEER OF OREGON

Josephine County

IN THE MATTER OF THE)
CANCELANON OF WATER)
RIGHTS IN THE NAMES OF)
JOSEPH FARREN AND H. H.)
MORRIS)
-----)

O R D E R

STATEMENT

This proceeding was initiated by the State Engineer under the provisions of ORS 540.610 to 540.650 for the cancelation of certain water rights. The water rights in question are for: (a) the appropriation 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 from Rough and Ready Creek for domestic, stock and the irrigation of 15.0 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 12, Township 40 South, Range 9 West, W.M., with a date of priority of September 15, 1899, as evidenced by the certificate recorded at page 13854, Volume 12, State Record of Water Right Certificates, in the name of Joseph Farren, and (b) the appropriation of not to exceed 1.43 cubic feet per second of water from Rough and Ready Creek and 0.19 cubic foot per second of water from Parker Creek for the irrigation of 5.0 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, 38.0 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and 38.0 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 12, Township 40 South, Range 9 West, W.M., with a date of priority of June 21, 1938, as evidenced by the certificate recorded at page 13981, Volume 12, State Record of Water Right Certificates, in the name of H. H. Morris.

Notices dated December 11, 1973 of initiation of the proceedings for cancelation of the water rights in question were given to:

Wendell M. and Lona M. Fales
11500 Orum Road
West Los Angeles, CA 90049

Thomas F. and Corinne S. Chinu
4611 Custis Avenue
Sacramento, CA 95822

Ngai Ho and Violet G. Hong
c/o Thomas F. Chinn
4611 Custis Avenue
Sacramento, CA 95822

David and Dorothy Fong
c/o Thomas F. Chinn
4611 Custis Avenue
Sacramento, CA 95822

William Y. and Mabel W. Fong
c/o Thomas F. Chinn
4611 Custis Avenue
Sacramento, CA 95822

as owners, contract purchasers or occupants of the lands to which the water right in question is appurtenant.

On January 17, 1974 and February 5, 1974 protests in the names of Wendell M. Fales and Ngai Ho Hong were filed in the office of the State Engineer against the proposed cancelation of the water rights in question

Pursuant to Notices of Hearing dated February 20, 1974 and March 14, 1974, the matter was brought to hearing before Mr. Larry W. Jebousek, Assistant to the State Engineer, in Room 206, Old Hospital Building, Grants Pass, Oregon on Wednesday, April 3, 1974. Testimony was received from Robert B. Steimer, Watermaster, and Arthur Herrick, Margaret Evans, and Russell Doran as proponents of cancelation who appeared without legal counsel. The protestant, Wendell M. Fales, was present and was represented by Daniel F. Hughes of the firm of Brown, Hughes and Bird, Attorney at Law, Grants Pass, Oregon. Protestant Ngai Ho Hong was not present at the hearing. Mr. Hughes also represented the interest of Ngai Ho Hong to the extent that this property was used by Mr. Fales.

Rough and Ready Creek is a perennial stream rising on the eastern slope of the Coast Range in Townships 39 and 40 South, Range 10 West in Josephine County and flows generally in an easterly direction to its confluence with the Illinois River in Section 17, Township 40 South, Range 8 West, W.M. about five miles south of the town of Cave Junction.

Parker Creek rises in the NW $\frac{1}{4}$ of Section 2, Township 40 South, Range 9 West, W.M. and flows southeasterly through the lands in question

in this proceeding about two miles to its confluence with Rough and Ready Creek near the N $\frac{1}{2}$ corner of Section 13.

Under the provisions of the water right evidenced by the certificate recorded at page 13854, Volume 12, State Record of Water Right Certificates, in the name of Joseph Farren, water was diverted from Rough and Ready Creek at a point near the center of the NE $\frac{1}{2}$ SW $\frac{1}{2}$, Section 14, Township 40 South, Range 9 West, W.M. into the Wing-Farren Ditch. This ditch, which is an open gravity ditch, transports the water in a northeasterly direction about 1 $\frac{1}{2}$ miles where it crosses Parker Creek. The ditch continues on from Parker Creek in a northeasterly direction another $\frac{1}{2}$ mile along the west side of the land in question.

Under the provisions of the water right evidenced by the certificate recorded at page 13981, Volume 12, State Record of Water Right Certificates, in the name of H. H. Morris, an additional 1.43 cubic feet per second of water was diverted from Rough and Ready Creek into the Wing-Farren Ditch and 0.19 cubic foot per second from Parker Creek for the irrigation of an additional 81 acres in the SE $\frac{1}{2}$ of Section 12, Township 40 South, Range 9 West, W. M.

FINDINGS

Mrs. Margaret Evans, who lived on the property now owned by Mr. Fales from 1945 until 1956, testified that the source of the domestic water supply was a well and that the ditch was not used for domestic purposes.

After the testimony of the proponents of cancelation was given, a stipulation was offered and agreed to by all parties involved in this matter, whereby the evidence of nonuse related only to the NW $\frac{1}{2}$ SE $\frac{1}{2}$, SW $\frac{1}{2}$ SE $\frac{1}{2}$ and that part of the SE $\frac{1}{2}$ SE $\frac{1}{2}$ of Section 12, Township 40 South, Range 9 West, W.M., being south and west of a certain fence running generally in a southeast direction from a barn located near the southwest corner of the NE $\frac{1}{2}$ SE $\frac{1}{2}$ of said section to the east line of said section and that none

of the land lying northeasterly of this fence was in question.

Immediately following the hearing the property was inspected by Mr. Jebousek who was accompanied by Mr. Steimer, the watermaster; Mr. Herrick, proponent of cancelation; and Miss Sharon Fales, daughter of Wendell Fales, the protestant and occupant of the land in question.

Subsequently, an instrument survey was made by Mr. Steimer on April 12, 1974 based on the inspection of the property showing the location of the fence line and barn agreed to in the stipulation and the number of acres of each water right located northeasterly of said fence. The results of this survey are shown in Figure 1.

Testimony of the witnesses and evidence on the ground clearly shows that that part of the H. H. Morris water right as evidenced by the certificate recorded at page 13981, Volume 12, State Record of Water Right Certificates, located southwesterly of the fence line has not been irrigated under the provisions of said right for a period of five or more successive years immediately prior to the initiation of this proceeding.

CONCLUSIONS

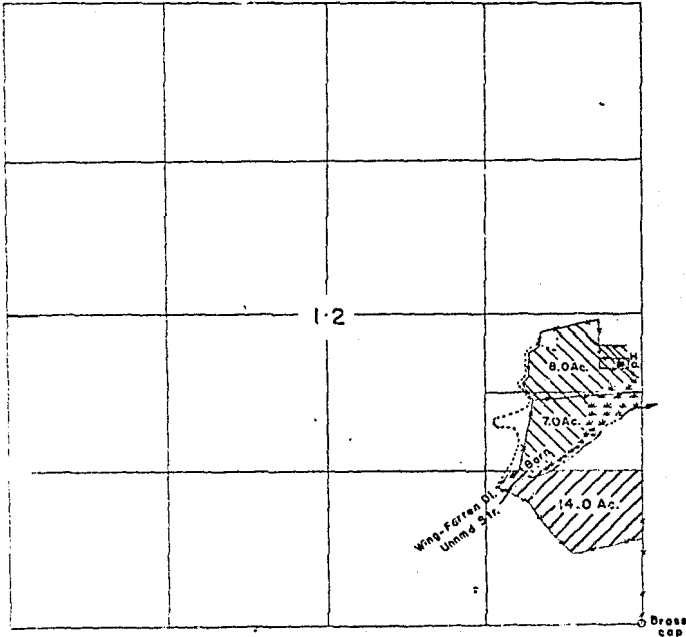
The question before the State Engineer is one of fact whether or not a period of five or more successive years of nonuse of the rights in question has occurred.

The burden of proof rests upon those proposing cancelation of the water rights in question. Such proof has not been made in regard to the water right in the name of Joseph Farren as evidenced by the certificate recorded at page 13854, Volume 12, State Record of Water Right Certificates, except for the domestic use.


From the evidence and testimony submitted and the agreed upon stipulation, it is clear that water from Rough and Ready Creek and Parker Creek has not been used for irrigation of the subject lands for a period


FIGURE NO. 1

T. 40S. R. 9W. W.M.



FINAL PROOF SURVEY
UNDER

ILLINOIS RIV. Cert.
~~Application No.~~ DECREE, Permit No. 13854. 
~~IN NAME OF~~

Permit No. 13080, Cert. No. 13981 

Surveyed April 12.. 1974, by R.B. Steimer.....

of five or more successive years immediately prior to the commencement of this proceeding under the provisions of the water right as evidenced by the certificate recorded at page 13981, Volume 12, State Record of Water Right Certificates, in the name of H. H. Morris, therefore, has been forfeited and should be canceled under the provisions of ORS 540.610 to 540.650 except for the irrigation of 14.0 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 12, Township 40 South, Range 9 West, W.M.

ORDER

NOW, THEREFORE, it is hereby ORDERED that the water right for domestic use from Rough and Ready Creek, with a date of priority of September 15, 1899 as evidenced by the certificate recorded at page 13854, Volume 12, State Record of Water Right Certificates, in the name of Joseph Farren, is canceled.

It is FURTHER ORDERED that the certificate recorded at page 13854, Volume 12, State Record of Water Right Certificates, be and the same hereby is canceled and in lieu thereof a remaining right certificate be issued

to:

Wendell M. and Lona M. Fales
11500 Orum Road
West Los Angeles, CA 90049

Thomas F. and Corinne S. Chinn
Ngai Ho and Violet G. Hong
David and Dorothy Fong
William Y. and Mabel W. Fong
c/o Thomas F. Chinn
4611 Custis Avenue
Sacramento, CA 95822

in evidence of the right for the use of one cubic foot per second for each 50 acres of land irrigated during the irrigation season, from Rough and Ready Creek, with a date of priority of September 15, 1899, for stock use and the irrigation of 15.0 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 12, Township 40 South, Range 9 West, W.M.

It is FURTHER ORDERED that the water right for the appropriation of 1.18 cubic feet per second of water from Rough and Ready Creek and 0.16

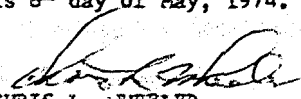
cubic foot per second of water from Parker Creek, with a date of priority of June 21, 1938, for the irrigation of 5.0 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, 38.0 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and 24.0 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 12, Township 40 South, Range 9 West, W.M., Josephine County, Oregon, as evidenced by the certificate recorded at page 13981, Volume 12, State Record of Water Right Certificates, in the name of H. H. Morris, is canceled.

It is FURTHER ORDERED that the certificate recorded at page 13981, Volume 12, State Record of Water Right Certificates, be and the same hereby is canceled and in lieu thereof a remaining right certificate be issued in the names of:

Thomas F. and Corinne S. Chinn
Ngai Ho and Violet G. Hong
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c/o Thomas F. Chinn
4611 Custis Avenue
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in evidence of the right to appropriate 0.25 cubic foot per second of water from Rough and Ready Creek and 0.03 cubic foot per second of water from Parker Creek, tributaries of Illinois River, with a date of priority of June 21, 1938 for the irrigation of 14.0 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 12, Township 40 South, Range 9 West, W.M.

Dated and signed at Salem, Oregon, this 8th day of May, 1974.


CHRIS L. WHEELER
State Engineer

NOTICE: You are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for review within sixty days from the service of this Order. Judicial review is pursuant to the provisions of ORS Chapter 183.