

## MULTNOMAH COUNTY

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IN THE MATTER OF THE CONTEST OF OLIVE )  
 STREBIN AND FIFTEEN OTHERS, PROTESTING )  
 THE APPROVAL OF APPLICATION NO. 10358 )  
 OF M. TAMURA. ) *Cert 7747* )  
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O R D E R

Now at this time this matter coming on for consideration by the State Engineer, who, having carefully considered all of such evidence and facts presented in this cause, finds as follows:

That on the 27th day of August, 1925, M. Tamura of Troutdale, Oregon, filed an application in the office of the State Engineer for permit to appropriate one-fourth cubic foot per second of water from Beaver Creek for the irrigation of twenty acres of land in the NW $\frac{1}{4}$  and the NE $\frac{1}{4}$  of Section 12, Township 1 South, Range 3 East, Willamette Meridian;

Before the above application was taken up for approval, the contestants filed a notice of protest with the State Engineer, in which it was alleged among other things that the contestants and their predecessors in interest have used the waters of Beaver Creek for watering cattle and other stock and domestic purposes for more than thirty years, and during certain seasons of the year, especially during the months of July, August, September, and October, all the water in said stream is required by the contestants and other owners along the stream for such use;

That the lands to be irrigated by M. Tamura under his application are situated above the lands of contestants and that the diversion of one-fourth cubic foot per second by said M. Tamura will require practically the entire natural flow of the stream during the late summer months;

That such diversion will leave pools of water standing at various places along the stream channel which will become stagnant,

That it is the intention of the State to regulate about this stream causing mosquitos to breed prolifically, and injure the health of the residents living on or near said stream.

A hearing in the matter was held at Gresham, Oregon, on March 12, 1927, and all parties interested were allowed to present such evidence as they deemed material, and based on such evidence the State Engineer finds the facts as follows:

That Beaver Creek is a small stream flowing in a northerly direction, rising in the western part of Township 1 South, Range 4 East, and flows in a westerly direction into and through Section 12, Township 1 South, Range 3 East, and thence in a northerly direction a distance of approximately three miles to its junction with the Sandy River near Troutdale, Oregon;

That the contestants herein own land adjoining said stream and for the most part are engaged in dairying; That at the present time there are about seventy-five head of stock depending upon Beaver Creek for water and that the number during the past years has been at times approximately one hundred and sixty head;

That the water from Beaver Creek is not used for household or culinary purposes;

That there is no record of the quantity of flow or discharge of Beaver Creek, but it appears that there is a sufficient quantity at all times to keep a continuous flow in the channel of the stream throughout its course.

It was contended by contestants and supported by conflicting testimony that when the water becomes stagnant it provides a breeding ground for mosquitos and that the water then becomes contaminated and unfit for stock consumption and that the result is a menace to the health and comfort of the riparian owners;

That it is the intention of M. Tamura to irrigate about thirteen acres by means of a pumping system, pipes and sprinklers, which will require approximately 3,000 gallons per hour for five hours a day, or 15,000 gallons for each twenty-four hours;

That such use will be intermittent according to the needs of the crops, that the land to be irrigated is situated so that the return seepage, if any, will find its way back to the channel of Beaver Creek.

Section 5715, Oregon Laws, provides, "All water within the State from all sources of water supply belong to the public."

Section 5716, Oregon Laws, provides, "Subject to existing rights, all waters within the State may be appropriated for beneficial use."

Section 5723, Oregon Laws, provides, "It shall be the duty of the State Engineer to approve all applications made in proper form which contemplate the application of water to a beneficial use, but when the proposed use conflicts with determined rights, or is a menace to the safety and welfare of the public, it shall be the duty of the State Engineer to enter an order directing the refusal of such application, if, after full hearing, the public interest demands." It further provides that an application may be approved for a less amount of water than applied for if there exist substantial reasons therefor.

The rights of the land owners on Beaver Creek are not of record. They have not been adjudicated either by order of the State Engineer or by court decree, and are therefore not considered as having been determined within the purview of the act above quoted. If the application is approved, Mr. Tamura will receive a permit to appropriate water which is subject to all existing rights, and even though the rights have not been determined he will not be allowed to divert and use water when such water is required to satisfy vested rights below. It is not shown that the use of water by M. Tamura will constitute a menace to the safety or welfare of the public. The State Engineer knows of no other grounds on which he can refuse to

issue permit, and it is therefore ORDERED that the application be approved and that the quantity of water appropriated thereby be limited to the use of not to exceed 5,000 gallons per hour or 15,000 gallons per day.

Dated this 12th day of May, 1927, at Salem, Oregon:

  
RHEA LUPER, STATE ENGINEER.