

BEFORE THE STATE ENGINEER OF OREGON

Jackson County

IN THE MATTER OF THE)
CANCELANON OF A WATER)
RIGHT IN THE NAME OF R.)
V. MARTIN)

ORDER
CANCELING IN PART
Cancellation Hearings
File No 165

STATEMENT

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 is for the appropriation of not to exceed 0.407 cubic foot per second of water from the Rogue River, with a date of priority of June 6, 1913, for irrigation of 15.6 acres in Lot 3 (S½ SW¼) and 17.0 acres in Lot 4 (W½ SE¼), Section 20, Township 36 South, Range 4 West, W.M., as evidenced by certificate of water right issued in the name of R. V. Martin and recorded at page 2828, Volume 4, State Record of Water Right Certificates.

Pursuant to the provisions of ORS 540.631, notice of initiation of the proceeding for cancelation of the water right in question was given to B. K. Herndon, Grants Pass, Oregon; B. K. Herndon, c/o Wm. N. and Hazel Evans, Agents, Rogue River, Oregon; Charles A. Morrison, c/o Rollin E. Maltby, Agent, San Diego, California; Roy W. and Isabel H. Larson, Gold Hill, Oregon; and to Oliver A. and Ruth L. Tucker, Huntington Park, California, as owners and/or occupants of the said lands.

Notice was also given to Patricia and Lawrence Wills and John D. and Pearl M. Walker, Gold Hill, Oregon; Patricia A. Wills, et al, c/o Delos Walker, Agent, Gold Hill, Oregon; and to Lawrence C. Wills, Fresno, California, as owners of lands to which the water right in question is appurtenant. However, upon further investigation, it was determined that the portion of the water right in question appurtenant to the Wills-Walker property was canceled in its entirety by an administrative order of the State Engineer entered on March 13, 1964, and recorded at pages

263 and 264, Volume 13, Special Order Record of the State Engineer.

Protests against the proposed cancelation were filed in the office of the State Engineer in the names of Roy W. and Isabel H. Larson; in the names of James P. Olmsted, Rollin E. Maltby, and Katherine M. Maltby; and in the names of Mr. and Mrs. Oliver A. Tucker.

Pursuant to notice given to all interested parties, the matter was brought to hearing before James W. Carver, Jr., Deputy State Engineer, at the Jackson County Courthouse Annex in Medford, Oregon, on April 13, 1971.

Isabel H. Larson appeared in behalf of herself and her husband, Roy W. Larson. Protestants Rollin E. Maltby and Katherine M. Maltby appeared in their own behalf and also in behalf of protestant James P. Olmsted. Protestants Mr. and Mrs. Oliver A. Tucker did not appear nor were they represented at the hearing. However, subsequent to the hearing, a telephone conference was had between the protestants Tucker and James W. Carver, Jr. and as a result of that conference an affidavit was submitted by Ruth L. Tucker and Oliver A. Tucker testifying to the facts regarding use of water during the years of 1965 to date on that portion of the lands in question which has been under their ownership since August 31, 1965.

FINDINGS

Protestant Larson stipulated in the hearing that the only use of water under the water right in question on the Larson property over the past five and more successive years has been confined to an area of one-half acre on the Rogue River end of their tract, as identified by blue shading within Lot 3 (SE $\frac{1}{4}$ SW $\frac{1}{4}$), Section 20, Township 36 South, Range 4 West, W.M. on Figure 1 and that in regard to the said one-half acre area a period of nonuse of the water right in question of five or more successive years of nonuse has not occurred.

Protestant Rollin E. Maltby testified that he and Katherine

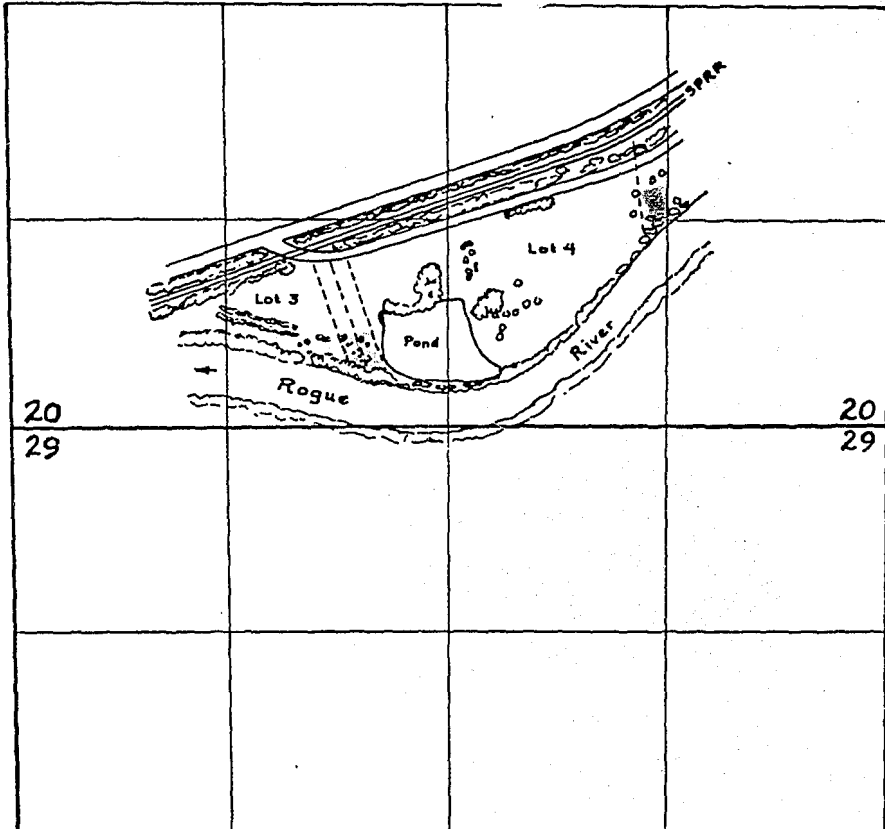
M. Maltby and James P. Olmsted and Katherine L. Olmsted are purchasing from the owner of record, Charles A. Morrison, a certain tract of land to which a part of the water right in question is appurtenant.

The protestant, Rollin E. Maltby, stipulated in the hearing that the only use of water under the water right in question on the Maltby-Olmsted, or Morrison, property over the past five and more successive years has been confined to an area of one-half acre on the Rogue River end of the tract, as identified by red shading within Lot 3 (SE $\frac{1}{4}$ SW $\frac{1}{4}$), Section 20, Township 36 South, Range 4 West, W.M. on Figure 1 and that in regard to the said one-half acre area a period of nonuse of the water right in question of five or more successive years of nonuse has not occurred.

Protestants Oliver A. Tucker and Ruth L. Tucker stipulated by affidavit that the only use of water under the water right in question on their property since they acquired the property by purchase in August of 1965 has been confined to three-quarters of an acre on the Rogue River end of the tract, as identified by green shading within Lot 4 (W $\frac{1}{2}$ SE $\frac{1}{4}$), Section 20, Township 36 South, Range 4 West, W.M. on Figure 1 and that in regard to the said three-quarters of an acre a period of nonuse of the water right in question of five or more successive years of nonuse has not occurred during their ownership.

With the exception of the above described 0.5 acre within the Larson tract, 0.5 acre within the Maltby-Olmsted, or Morrison, tract and 0.75 acre within the Tucker tract, the testimony and evidence is in agreement that the water right in question has not been exercised for a period of five and more successive years of nonuse.

T 36S, R 4W, W.M.






Certificate 2828

Certificate 9533

Lot 3

Lot 3

-  Larson 0.5 Ac.
-  Morrison 0.5 Ac.

-  Wills, et al 1.7 Ac.

Lot 4

-  Tucker 0.75 Ac.

Figure 1

CONCLUSIONS

That part of the water right in question for the appropriation of not to exceed 0.385 cubic foot per second of water from the Rogue River, with a date of priority of June 6, 1913, for irrigation of 14.6 acres in Lot 3 (S½ SW¼) and 16.25 acres in Lot 4 (W½ SE¼), Section 20, Township 36 South, Range 4 West, W.M. has been forfeited by nonuse and should be canceled pursuant to the provisions of ORS 540.641.

That part of the water right in question for the appropriation of not to exceed 0.022 cubic foot per second of water from the Rogue River, with a date of priority of June 6, 1913, for irrigation of 1.0 acre in Lot 3 (S½ SW¼) and 0.75 acre in Lot 4 (W½ SE¼), Section 20, Township 36 South, Range 4 West, W.M. being further identified as 0.5 acre within the Larson tract and as shown by blue shading on Figure 1, 0.5 acre within the Maltby-Olmsted, or Morrison, tract and as shown by red shading on Figure 1, and 0.75 acre within the Tucker tract and as shown by green shading on Figure 1, has not been forfeited by nonuse and should be confirmed by the issuance of a remaining right certificate in the names of Larson, Morrison and Tucker.


ORDER

NOW, THEREFORE, it is hereby ORDERED that the right for the appropriation of not to exceed 0.385 cubic foot per second of water from the Rogue River, with a date of priority of June 6, 1913, for irrigation of 14.6 acres in Lot 3 (S½ SW¼) and 16.25 acres in Lot 4 (W½ SE¼), Section 20, Township 36 South, Range 4 West, W.M., evidenced by the certificate recorded at page 2828, Volume 4, State Record of Water Right Certificates, in the name of R. V. Martin, be and the same hereby is canceled.

It is FURTHER ORDERED that the certificate recorded at page 2828, Volume 4, State Record of Water Right Certificates, be canceled

and in lieu thereof a new certificate be issued in the names of Larson, Morrison and Tucker in evidence of the remaining right for appropriation of not to exceed 0.022 cubic foot per second of water from Rogue River, with a date of priority of June 6, 1913, for irrigation of 1.0 acre in Lot 3 (S½ SW¼) and 0.75 acre in Lot 4 (W½ SE¼), Section 20, Township 36 South, Range 4 West, W.M.

Dated and signed at Salem, Oregon, this 15th day of December, 1971.



CHRIS L. WHEELER
State Engineer