

BEFORE THE STATE ENGINEER

FOR UNION COUNTY

IN THE MATTER OF PROTEST TO THE)
APPROVAL OF APPLICATION NO. 14684)
IN THE NAME OF ED VAN VLACK)
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O R D E R

On the 15th day of August, 1932, Ed Van Vlack filed in the office of the State Engineer application No. 14684 to appropriate one cubic foot per second of water from a group of springs as described in said application. It is proposed by the applicant to use the water sought to be appropriated for domestic and irrigation purposes.

On July 16, 1934 the approval of the application and issuance of of the permit were protested by J. H. De Haas and Hattie Alexander on the ground that the springs situated within the SE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 17, Township 3 South, Range 40 East, W. M. were on the property of the protestants, and that the water flowing therefrom had been put to beneficial use for irrigation and domestic purposes upon the lands of the protestants for the past thirty years.

That the State Engineer might inform himself of the facts, a hearing was held in the City Hall at La Grande, Oregon at 9:00 o'clock A. M. Wednesday, August 8, 1934. Both protestants and applicants were represented at the hearing by attorneys and evidence was received for and against the approval of the application.

During the hearing, the protestants contended that to approve the application would result in a conflict to existing rights and, therefore, in accordance with Section 47-503, Oregon Code 1930, should be disapproved.

The applicant contended that the phrase "existing rights" as used in said section of the Oregon Code merely related to those rights of record as determined by the courts or as represented by permits and water right


certificates issued by the State Engineer. It was further contended on behalf of the applicant that the State Engineer in attempting to determine the rights of the protestant in relation to those of the applicant at such a hearing was contrary to the statutory procedure for the determination of water rights; and, therefore, was without jurisdiction, and, consequently, in view of the language contained in Section 47-503, Oregon Code 1930, it was mandatory for him to approve said application.

There is a doubt in the mind of the State Engineer as to whether or not the water rights from the springs in question should not have been adjudicated during the determination of the relative rights to the use of the waters of Mill Creek. The protestants do not appear to have any right of record which would entitle them to the use of the water sought to be appropriated by the applicant. The purpose of the water code is to establish and make of record all water rights and thus have a basis for an orderly distribution between the water users. Even though the State Engineer has the authority to determine the rights of the protestant in such a hearing as held in this matter, he does not feel the evidence produced by the protestants with particular reference to quantity of water and priority of use was sufficient to determine the same.

All applications are issued subject to existing rights and as a consequence the protestants would not be injured by the approval of the application under consideration. The remedy of injunction would be available and the relative rights of the parties could definitely be determined before a proper court.

In view of the foregoing, IT IS HEREBY ORDERED that application No. 14684 in the name of Ed Van Vlack be approved subject to the condition that the quantity of water sought to be appropriated be reduced from one cubic foot per second to 0.60 cubic foot per second.

Dated at Salem, Oregon this 28th day of December, 1934.


CHAS. E. STRICKLIN,
State Engineer.