

BEFORE THE STATE ENGINEER OF OREGON

Josephine County

IN THE MATTER OF THE)
CANCELATION OF A WATER)
RIGHT IN THE NAME OF)
ESTATE OF J. W. SEAT)

STATEMENT
FINDINGS OF FACT
CONCLUSIONS
AND ORDER

STATEMENT

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

The water right in question is for the use of water at the rate of not to exceed one cubic foot per second for each fifty acres of land irrigated during the irrigation season from April 1 to November 1 of each year, from Choke Cherry Gulch and springs for irrigation of 7.6 acres in NE $\frac{1}{4}$ SE $\frac{1}{4}$ and 19.2 acres in SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 31, Township 39 South, Range 9 West, W.M., with a date of priority of 1855, as evidenced by certificate of water right issued in the name of Estate of J. W. Seat and recorded at page 13918, Volume 12, State Record of Water Right Certificates.

Notice of intention of such proceedings, dated February 6, 1968, was sent by certified mail to Glenn A. & Verna Prottzman, 801 Westside Road, Cave Junction, Oregon, owners of said lands and to Mr. Sam B. Harbison, Attorney at Law, 230 West Main Street, Medford, Oregon

On March 26, 1968, a protest in the name of Glenn A. & Verna Prottzman was filed in the office of the State Engineer by Mr. William H. Ferguson, Attorney at Law, Grants Pass, Oregon, protesting cancelation of the said water right.

On April 2, 1968, the State Engineer notified all interested parties that a hearing on the protest of Glenn A. & Verna Prottzman against the proposed cancelation of the water right would be held before the State Engineer in Room 103, of the Josephine County Office Building, Cave Junction

Oregon, on Thursday April 25, 1968, commencing at 10:00 a.m. Said hearing, convened pursuant to notice, was recessed at 4:20 p.m. and, pursuant to notice sent on May 16, 1968 to all interested parties, was reconvened on Tuesday, June 4, 1968, at the above stated place, at 9:30 a.m. The hearing was held at the designated times before Mr. James Carver, Jr., Deputy State Engineer.

The protestants, Glenn A. & Verna Prottsman, were represented by Mr. William H. Ferguson, Attorney at Law, Grants Pass, Oregon. Mrs. Olive Dietzler, Mr. Roy M. Waldron, Mr. Lawrence Kusial and Mr. Glenn A. Prottsman were called and gave testimony for the protestants.

The proponents were represented by Mr. Sam B. Harbison and Mr. G. W. Kellington, Attorneys at Law, Medford, Oregon. Robert B. Steimer, Watermaster, District 14, Mrs. Donald (Jerrine) Clark, Cora B. Masoner, Mr. Richard Meads, Mrs. Doris Boyd, Mr. James R. Holten and Mr. Joe L. Bleser were called and gave testimony for the proponents.

On Tuesday, May 14, 1968, the testimony of J. Otis Seat, predecessor in interest to Glenn A. and Verna Prottsman to the lands in question, was taken pursuant to the stipulation of counsel for the respective parties. The original transcript of the deposition was received upon reconvening the hearing on June 4, 1968.

FINDINGS OF FACT

The sources of water for the water right in question lie to the north and east of the subject lands. Under the terms of the water right, water is diverted from Choke Cherry Gulch and springs into the Home Ditch, which conveys the water in a southerly and easterly direction for a distance of some 2,000 feet where it is released into a natural stream channel. The water is then partially rediverted into a system of ditches and flumes onto lands in the northerly part of the NE $\frac{1}{4}$, SE $\frac{1}{4}$ of Section 31, Township 39 South,

Range 8 West, W.M., and flows on southerly toward the subject lands which lie within that portion of Donation Land Claim No. 39 within Section 31 of Township 39 South, Range 8 West, W.M. That portion of the said Donation Land Claim that lies within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 31, as projected, is traversed by a small stream which flows from the northwesterly corner toward the southeasterly corner of the said portion. This stream was identified by a variety of names during the hearing; but in this matter it will be identified as Woodcock Creek, which designation is in agreement with the testimony of J. Otis Seat. That portion of Donation Land Claim No. 39 which lies within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 31, as projected, is also traversed by a stream channel which enters the said portion near the center of the west line and leaves near the center of the east line. In the testimony of J. Otis Seat, this stream was identified as Stickwood Gulch, also at times referred to as Woodcock Creek, and is so identified on the Cave Junction quadrangle map published by the U. S. Geological Survey in 1954. A county road identified as the West Side Road traverses both said tracts in a north-south direction. The lands in question lie on both sides of West Side Road north of Woodcock Creek, (the northerly stream), and are confined, generally, to the east of West Side Road, south of the said Woodcock Creek. The Prottsman house is situated on a small knoll lying west of West Side Road and south of Woodcock Creek. A second residence on the property, occupied by Mrs. Schleimann, Mrs. Prottsman's mother, is situated north of Woodcock Creek and on the east side of West Side Road, near the north property line. Mr. Prottsman's barn is located near the center of the above described southerly tract and is situated east of West Side Road and north of the stream referred to as Stickwood Gulch.

A careful analysis of the testimony makes it clear that water was not appropriated to beneficial use under the water right in question for use

on the subject lands lying south of Woodcock Creek (the northerly stream) for a period of five and more consecutive years of nonuse prior to the summer of 1962. The testimony and evidence submitted does not show a five year period of nonuse of water under the terms of the water right in question on the subject lands lying north of Woodcock Creek (the northerly stream). The subject lands lying north of Woodcock Creek comprise 4.4 acres within the NE $\frac{1}{4}$ NW $\frac{1}{4}$, as projected within Donation Land Claim No. 39, Section 31, Township 39 South, Range 8 West, W.M. The subject lands lying south of Woodcock Creek comprise 3.2 acres within the NE $\frac{1}{4}$ SE $\frac{1}{4}$, and 19.2 acres within the SE $\frac{1}{4}$ SE $\frac{1}{4}$, as projected within Donation Land Claim No. 39, Section 31, Township 39 South, Range 8 West, W.M.

CONCLUSIONS

It appears, therefore, that the right to appropriate water from Choke Cherry Gulch and springs at the rate of not to exceed 1 cubic foot per second for each 50 acres of land irrigated during the irrigation season from April 1 to November 1 of each year, with a date of priority of 1855 for irrigation of the lands lying south of Woodcock Creek, being 3.2 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, and 19.2 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, as projected within Donation Land Claim No. 39, Section 31, Township 39 South, Range 8 West, W.M., as evidenced by the certificate of water right recorded at Page 13918, Volume 12, State Record of Water Right Certificates, in the name of the Estate of J. W. Seat, should be canceled.

It further appears that the right to appropriate water from Choke Cherry Gulch and springs at the rate of not to exceed 1 cubic foot per second for each 50 acres of land irrigated during the irrigation season from April 1 to November 1 of each year, with a date of priority of 1855, for irrigation of the lands lying north of Woodcock Creek, being 4.4 acres within the NE $\frac{1}{4}$ SE $\frac{1}{4}$, as projected within Donation Land Claim No. 39, Section 31,

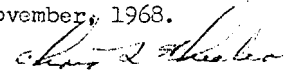
Township 39 South, Range 8 West, W.M., as evidenced by the said certificate, should not be canceled.

ORDER

NOW, THEREFORE, it is hereby ORDERED that the right to appropriate water from Choke Cherry Gulch and springs at the rate of not to exceed 1 cubic foot per second for each 50 acres of land irrigated during the irrigation season from April 1 to November 1 of each year, with a date of priority of 1855, for irrigation of the lands lying south of Woodcock Creek, being 3.2 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, and 19.2 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, as projected within Donation Land Claim No. 39, Section 31, Township 39 South, Range 8 West, W.M., as evidenced by the certificate of water right recorded at Page 13918, Volume 12, State Record of Water Right Certificates be and the same hereby is canceled.

It is FURTHER ORDERED that the certificate recorded at Page 13918, Volume 12, State Record of Water Right Certificates, be canceled, and that a corrected certificate be issued in the names of Glenn A. and Verna Prottsman in evidence of the remaining right to appropriate water from Choke Cherry Gulch and springs at the rate of not to exceed 1 cubic foot per second for each 50 acres of land irrigated during the irrigation season from April 1 to November 1 of each year, with a date of priority of 1855, for irrigation of the lands lying north of Woodcock Creek, being 4.4 acres within the NE $\frac{1}{4}$ SE $\frac{1}{4}$, as projected within Donation Land Claim No. 39, Section 31, Township 39 South, Range 8 West, W.M.

Dated at Salem, Oregon this 25th day of November, 1968.


CHRIS L. WHEELER
State Engineer

Cancelled in file 100

Note to Bureau

11/23/68