

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

JOSEPHINE COUNTY

IN THE MATTER OF CANCELLATION OF)
A WATER RIGHT IN THE NAME OF)
RAPHAEL S. LEONARD FOR USE OF)
WATERS FROM EMERALD TUNNEL)
SEEPAGE)

PC 79-3
ORDER DISMISSING
PROCEEDING

This proceeding was initiated by the Water Resources Director under the provisions of ORS 540.610 to 540.650 for the cancellation of a certain water right, based on information furnished to the Director in the form of affidavits alleging nonuse of the said water right in question over a period of five and more successive years of nonuse.

The water right in question is for the appropriation of not to exceed 0.5 cubic foot per second of water from Emerald Tunnel Seepage, tributary to Illinois River, under a priority date of July 23, 1928, for irrigation of a certain 25 acres in SW 1/4 NE 1/4 and 15 acres in SE 1/4 NW 1/4 of Section 5, Township 40 South, Range 7 West, WM, as described by the certificate issued to Raphael S. Leonard and recorded at page 11062, Volume 10, State Record of Water Right Certificates.

Notice dated December 8, 1975 of initiation of the proceeding for cancellation of the subject water right was given pursuant to the provisions of ORS 540.631 to Edward L. Gerber and Meredith R. Middough as owners of record and occupants of the real property to which the water right is appurtenant.

On January 22, 1976, a protest against the proposed cancellation of the water right in question was filed in the office of the Water Resources Director by Edward L. Gerber and Meredith R. Middough.

Pursuant to the Director's Notice of Hearing dated February 3, 1976, the matter was brought to a hearing at Grants Pass, Oregon on March 17, 1976, before Chris L. Wheeler, Deputy Director, authorized to preside in behalf of the Water Resources Director.

Proponents of cancellation were represented at the hearing by William H. Ferguson of the firm Grant, Ferguson and Carter, Attorneys at Law, Medford, Oregon. The protestants were represented at the hearing by Wally P. Martin, Attorney at Law, Grants Pass, Oregon.

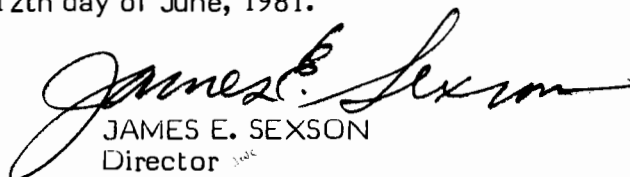
During the course of the hearing, with agreement of the parties, the hearing was recessed to allow the parties opportunity to formulate a stipulation as to the facts.

A stipulation as to the facts has not been executed by the parties.

It now appearing that witnesses for proponents of cancellation are not available to proceed at hearing, the proceeding should be dismissed without prejudice.

NOW, THEREFORE, it is ORDERED that this proceeding for cancellation of the aforesaid water right in question be and the same hereby is dismissed without prejudice.

Dated at Salem, Oregon this 12th day of June, 1981.


JAMES E. SEXSON
Director