



# Oregon

Theodore R. Kulongoski, Governor

**Water Resources Department**  
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## BEFORE THE OREGON WATER RESOURCES DEPARTMENT

IN THE MATTER OF THE PARTIAL	)	
CANCELLATION OF THE WATER RIGHT	)	
EVIDENCED BY CERTIFICATE 50474 FOR	)	<b>FINAL ORDER</b>
USE OF WATER FROM THE SOUTH FORK	)	<b>PC 04-09</b>
CROOKED RIVER, TRIBUTARY OF	)	
CROOKED RIVER FOR IRRIGATION OF	)	
57.0 ACRES, STOCK AND DOMESTIC,	)	
CROOK COUNTY, OREGON	)	

### FINDINGS OF FACT

1. The subject water right evidenced by Water Right Certificate 50474 issued in the name of W. C. Jacobs, the present owners' predecessor in title. The subject water right has a priority date of 1885 for a reasonable amount for domestic and stock use, and 0.71 cubic foot per second (cfs) from the South Fork Crooked River, tributary of the Crooked River for irrigation of 22.0 acres in the SE1/4 SE1/4, Section 1, Township 18 South, Range 22 East W.M. and 35.0 acres in the NE1/4 SW1/4, Section 7, Township 18 South, Range 23 East, W.M.
2. On July 24, 2009, Harold Delamarter submitted an affidavit alleging nonuse of the water right evidenced by Certificate 50474, from 1996 through 2002 and from 2004 through July 2009.
3. On July 24, 2009, Kirk D. Winebarger submitted an affidavit alleging nonuse of the water right evidenced by Certificate 50474, from 1996 through 2002.
4. On July 24, 2009, Rick Delamarter submitted an affidavit alleging nonuse of the water right evidenced by Certificate 50474, from 1996 through 2002 and from 2004 through July 2009.
5. The affidavits of nonuse asserted that the entire right evidenced by Certificate 50474, is forfeited due to nonuse as follows: for domestic and stock use and for irrigation of 22.0 acres in the SE1/4 SE1/4, Section 1, Township 18 South, Range 22 East W.M. and 35.0 acres in the NE1/4 SW1/4, Section 7, Township 18 South, Range 23 East, W.M.

6. Otto C. and Faye M. Keller are owners of record of Township 18 South, Range 22 East, Section 1, Crook County tax lot 200. This tax lot comprises a portion of the water right in question. The appurtenant portion of the water right is for the use of water from the South Fork Crooked River, tributary of the Crooked River for domestic and stock and for irrigation of 22.0 acres in the SE1/4 SE1/4, Section 1, Township 18 South, Range 22 East, W.M.
7. U.S. Bureau of Land Management is the owner of record of Township 18 South, Range 23 East, Section 7, W.M., Crook County tax lot 200. This tax lot comprises a portion of the water right in question. The appurtenant portion of the water right is for use of water from the South Fork Crooked River, tributary of the Crooked River for domestic and stock and for irrigation of 35.0 acres in the NE1/4 SW1/4, Section 7, Township 18 South, Range 23 East, W.M.
8. On August 20, 2009, the Oregon Water Resources Department issued a Notice of Proposed Cancellation of Water Right evidenced by Certificate 50474 for use of water from the South Fork Crooked River, tributary of the Crooked River for domestic and stock use and for irrigation of 22.0 acres in the SE1/4 SE1/4, Section 1, Township 18 South, Range 22 East W.M. and 35.0 acres in the NE1/4 SW1/4, Section 7, Township 18 South, Range 23 East, W.M.
9. On August 31, 2009, the Oregon Water Resources Department issued an Amended Notice of Proposed Cancellation of Water Rights to correctly reflect the protest fee pursuant to Oregon Revised Statutes 536.050 Section 5 (1)(j), amended by Senate Bill 788 (75<sup>th</sup> Oregon Legislative Assembly).
10. On October 30, 2009, the owners of record, Otto C. and Faye M. Keller, Township 18 South, Range 22 East, Section 1, W.M., Crook County tax lot 200, filed a timely protest to the Notice of Proposed Cancellation with the Department and requested an administrative hearing.
11. The record owner, U.S. Bureau of Land Management, Township 18 South, Range 23 East, Section 7, W.M., Crook County tax lot 200, did not protest the Notice of Proposed Cancellation of Water Right within 60 day period prescribed in the notice.

#### CONCLUSION OF LAW

1. A rebuttable presumption has been established for that a portion of the perfected and developed water right evidenced by Certificate 50474, for a reasonable amount of water for domestic and stock use and irrigation of 35.0 acres NE1/4 SW1/4, Section 7, T18S, R23E W.M tax lot 200 Crook County, Oregon, has been forfeited due to five consecutive years of nonuse, ORS 540.610.

2. The appropriator has the burden of rebutting the presumption of forfeiture, ORS 5401.610.
3. The legal owner or occupant was provided the required notice and failed to protest the proposed cancellation within 60 days.

### FINAL ORDER

That portion of the water right evidenced by Water Right Certificate 50474, with a priority date of 1885 for a reasonable amount for domestic and stock use, and 0.44 cubic foot per second (cfs) from the South Fork Crooked River, tributary of the Crooked River for irrigation of 35.0 acres in the NE1/4 SW1/4, Section 7, Township 18 South, Range 23 East, W.M. is canceled.

This Final Order issued on 29<sup>th</sup> day of January 2010.



Phillip C. Ward, Director

#### Appeal Rights

You are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for review within 60 days from the date of service of this Order. If this Order was personally delivered to you, the date of service is the day you received the Order. If this Order was mailed to you, the date of service is the day it was mailed. Judicial review, pursuant to the provisions of ORS 536.075, is to the Court of Appeals. If you do not file a petition for judicial review within the 60-day time period, you will lose your right to appeal.