



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)	FINAL ORDER
RIGHT EVIDENCED BY CERTIFICATE 79858)	
FOR USE OF WATER FROM BIRCH CREEK)	
FOR IRRIGATION OF LANDS IN UMATILLA,)	
COUNTY, OREGON)	

FINDINGS OF FACT

1. On December 3, 2003, William Weinke and Don Weinke submitted affidavits alleging nonuse of a portion of Certificate 79858 between April 1984 and December 2003.
2. The subject water right is evidenced by Certificate of Water Right 79858, issued to William Ellenberger, the present owners' predecessors in title. The subject water right has a priority date of May 27, 1937 for use of 0.24 cfs from Birch Creek, tributary to the Umatilla River for irrigation of 3.40 acres in the NE1/4 NE1/4, 8.81 acres in the NW1/4 NE1/4, and 1.65 acres in the SW1/4 NE1/4, all in Section 9, Township 1 South, Range 32 East, W.M. being a total of 13.86 acres.
3. The portion of Water Right Certificate 79858 asserted to be forfeited due to nonuse is 1.65 acres in the SW1/4 NE1/4, Section 9, Township 1 South, Range 32 East, W.M.
4. On December 10, 2003, the Department issued a Notice of Proposed Cancellation of Water Right and lawfully served the Notice on the record owner.
5. Twain A. and Edna Patterson are the record owners of Umatilla County tax lot 402. This tax lot is located in Township 1 South, Range 32 East, Section 9, W.M., and comprise the location of the portion of the water right in question.
6. The record owners, Twain A. and Edna Patterson did not protest the Notice of Proposed Cancellation of Water Right within the 60 day period prescribed in the notice.

CONCLUSION OF LAW

1. A rebuttable presumption has been established that a perfected and developed water right 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 540.610.
3. The legal owner or occupant was provided the required notice and failed to protest the proposed cancellation within 60 days, therefore, the Water Resources Commission may enter an order canceling the water right, ORS 540.631 and 540.641.

FINAL ORDER

The portion of the water right evidenced by Certificate 79858 being 1.65 acres in the SW1/4 NE1/4, Section 9, Township 1 South, Range 32 East, W.M., is canceled.

This Final Order issued this 2nd Day of March, 2004.



Paul R. Cleary, Director
Water Resources Department

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 Oregon 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.