



# Oregon

Theodore R. Kulongoski, Governor

## Water Resources Department

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### BEFORE THE OREGON WATER RESOURCES DEPARTMENT

|   |   |                    |
|---|---|--------------------|
| IN THE MATTER OF THE PROPOSED                   | ) |                    |
| PARTIAL CANCELLATION OF THE WATER               | ) | <b>FINAL ORDER</b> |
| RIGHTS EVIDENCED BY CERTIFICATES                | ) |                    |
| 5811 AND 6236 FOR USE OF WATER FROM             | ) | PC 03 - 03         |
| LITTLE CREEK FOR IRRIGATION, UNION              | ) |                    |
| COUNTY, OREGON                                  | ) |                    |
|   | ) |                    |
| Duane Weise and Stuart Zaugg, <i>Proponents</i> | ) |                    |
|   | ) |                    |
| Michael Becker and the Oregon Water Trust,      | ) |                    |
| <i>Protestants</i>                              | ) |                    |

### HISTORY OF THE PROCEEDINGS

This proceeding was initiated following receipt of affidavits from Duane Weise and Stuart Zaugg (Proponents) alleging nonuse of the subject water rights (Certificates 5811 and 6236) between August 9, 1987 to August 16, 2002. The affidavits were received by the Water Resources Department (Department) on April 16, 2002. On March 28, 2003, the Department issued a Notice of Proposed Partial Cancellation of Water Rights and served it on the record owners and the water right holder. Michael Becker and Oregon Water Trust (Protestants) timely requested a hearing by letter received at the Department on May 27, 2003. The matter was referred to the Office of Administrative Hearings. A prehearing conference was held on September 3, 2003. The issue for hearing was *whether the subject water rights have been forfeited by failure to make beneficial use of water under terms of the water right for a period of five or more consecutive years.*

State Record of Water Rights Certificate numbered 5811, in the name of C.L. Scott, authorizes use of 0.38 cfs from Little Creek and Springs in the SW1/4 SE1/4, S12T3SR39E, W.M., tributary to Catherine Creek for irrigation of 15.0 acres in the SW1/4 SW1/4, 15.0 acres in the SE1/4 SW1/4, Section 12, T3S, R39E, W.M., being a total of 30.0 acres. The priority date is July 13, 1925.

State Record of Water Rights Certificate numbered 6236, in the name of Florence Dobbin, authorizes use of three acre feet per acre in any irrigation season, diverted at a rate of not to exceed one-fortieth of a cubic foot per second per acre from Catherine Creek for Tract #1 and Little Creek for Tract #2, for irrigation of Tract #1: 1.5 acres in the NW1/4 NE1/4, 40.0 acres in

the SW1/4 NE1/4, 34 acres in the SE1/4 NE1/4, Section 13, T4S, R39E, W.M. being a total of 75.5 acres; and Tract #2: 40.0 acres in the SE1/4 SE1/4, 40.0 acres in the SW1/4 SE1/4, Section 12; 40.0 acres in the NE1/4 NE/4, 38.5 acres in the NW1/4 NE1/4, Section 13, T4S,R39E, W.M., being a total of 158.5 acres. The priority date is 1870 for Tract #1 and 1863 for Tract #2.

On February 2, 2005, the Proponents and the Protestants met at the Department in person and by telephone to discuss settlement options. On February 14, 2005, at a prehearing conference with Administrative Law Judge Michael A. Francis, the parties<sup>1</sup> agreed, on the record, to the following terms of settlement which resolved all issues in the contested case:

Michael Becker and the Oregon Water Trust agree to voluntary cancellation of the following lands under Certificate of Water Right 6236:

- 3.0 acres in the SW 1/4 SE 1/4 Section 12 and further described as the area in and around the homes
- 0.9 acres in the SW 1/4 SE 1/4 Section 12 and further described as the area under Godley Road
- 0.7 acres in the NW 1/4 NE 1/4 Section 13 and further described as the area under Godley Road

All the above acres are in T4S, R39E, W.M.

Proponents, Stuart A. Zaugg and Duane Weise, agree to withdraw the remaining acres alleged as forfeited under both Certificates 6236 and 5811 from their affidavits and will refrain from filing any further affidavits of forfeiture.

All parties have agreed to waive their right to appeal this order.

### **ORDER**

Therefore, it is ordered that the following acres under Certificate of Water Right 6236 are cancelled:

- 3.0 acres in the SW 1/4 SE 1/4 Section 12 and further described as the area in and around the homes
- 0.9 acres in the SW 1/4 SE 1/4 Section 12 and further described as the area under Godley Road
- 0.7 acres in the NW 1/4 NE 1/4 Section 13 and further described as the area under Godley Road.

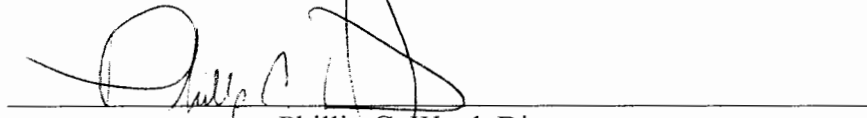
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<sup>1</sup> Michael Becker did not participate in the prehearing conference in February 14, 2005, however prior to that, he had discussed with OWT his willingness to agree to cancellation terms. Mr. Becker reviewed a draft of this final order with these terms, and submitted to the Department, in writing, his agreement with the provisions of the final order.

All the above acres are in T4S, R39E, W.M.

The Department will issue remaining rights certificates consistent with this final order.

DATED this 1st day of MARCH, 2005



Phillip C. Ward, Director  
Oregon Water Resources Department

**NOTICE:** You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for reviewing within 60 days from the date of service of this order. The date of service is the date on which the order is delivered or mailed. Judicial review, pursuant to the provisions of ORS 536.075, is to the Court of Appeals.