

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

MARION COUNTY

IN THE MATTER OF CANCELLATION AND )  
DIMINUTION OF A PORTION OF A PERFECTED )  
AND DEVELOPED WATER RIGHT IN THE NAME ) FINAL O R D E R  
OF R. G. PALMER, AND FAILURE TO PERFECT )  
AN APPROVED CHANGE IN POINT OF DIVERSION )  
UNDER TRANSFER T-8427 )

FINDINGS OF FACTS

1. On September 4, 2003, the Department received an affidavit from Andrew and Jeanette Eder, 12730 Miller Rd. NE, Gervais, Oregon, stating they are the owners of lands and the water right appurtenant as evidenced by Certificate 16923, State Record of Water Right Certificates. The affidavit further states a portion of the water right appurtenant to the property has been abandoned and requests the certificate be canceled.
2. On September 4, 2003, the Department also received an affidavit from Andrew and Jeanette Eder, requesting a portion of the right evidenced by Certificate 16923 appurtenant to property they own be diminished from irrigation to supplemental irrigation. The affidavit states they have obtained a better source of water for primary irrigation of these lands and requests the water right be diminished from a right for primary irrigation to a right for supplemental irrigation of the lands.
3. Pursuant to OAR 690-017-002(a), the Department has determined that Andrew and Jeanette Eder are the record owners, as established by county deed records, of property to which a portion of the water right evidenced by Certificate 16923 is appurtenant.
4. Certificate 16923 allows for the use of 0.38 cubic foot per second (cfs) of water from the Pudding River, tributary to the Willamette River, for irrigation of 30.0 acres. The date of priority is October 1, 1945.

**NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW**

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2).

Pursuant to ORS 536.075 and OAR 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

5. The portion of Certificate 16923 which has been abandoned is for the use of 0.05 cfs for irrigation of 4.0 acres located as follows:

TWP	RNG	MER	SEC	1/4	1/4	DLC	LOT	ACRES	
6	S	1	W	W.M.	5	NW	NW	F. Coonse DLC 62	0.1
6	S	1	W	W.M.	6	NE	NE	F. Coonse DLC 62	3.9

6. The portion of Certificate 16923 requested to be diminished from primary irrigation to supplemental irrigation is for the use of 0.33 cfs for 26.0 acres located as follows:

TWP	RNG	MER	SEC	1/4	1/4	DLC	LOT	ACRES	
6	S	1	W	W.M.	5	NW	NW	F. Coonse DLC 62	1.9
6	S	1	W	W.M.	6	NE	NE	F. Coonse DLC 62	17.1
6	S	1	W	W.M.	6	NE	NE	F. Coonse DLC 62	7.0

7. An order of the Director issued February 26, 2001, and recorded in Special Order Volume 55, at Page 154, approved Transfer Application T-8427. The order approved an additional point of diversion for the right evidenced by Certificate 16923. A condition of the order required the change to the existing water be completed by October 1, 2002, and the applicant submit a claim of beneficial use to perfect the change by October 1, 2003.
8. The order approving Transfer Application T-8427 canceled Certificate 16923.
9. The applicant failed to file the claim of beneficial use to perfect the change.
10. Given the failure to perfect the change, pursuant to OAR 690-380-6010(6) the change in point of diversion reverts to the last authorized point of diversion prior to the transfer. The last authorized points of diversion are those described by the right evidenced by Certificate 16923.

#### CONCLUSIONS OF LAW

1. ORS 540.621 directs the Commission to enter an order canceling a water right whenever the owner of a perfected and developed water right certifies under oath to the Commission that the water right has been abandoned and the owner desires to cancel the right.
2. The Director of the Water Resources Department concludes that a portion of the right evidenced by Water Right Certificate 16923 has been abandoned in accordance with the provisions of ORS 540.621 and shall be canceled.
3. Pursuant to OAR 690-380-6010(6), if the change in point of diversion is not completed, the point of diversion shall revert to the last authorized point of diversion prior to the transfer.

ORDER

IT IS ORDERED:

1. The Department shall issue Certificate 80444, a new and superseding certificate, to describe the remaining portion of the perfected and developed water right evidenced by Certificate 16923 NOT canceled and diminished by the provisions of this order.
2. The superseding certificate also shall reflect the reversion of the points of diversion to those originally authorized under Certificate 16923.

Dated: June 18, 2004

Dwight Fredson  
Phillip C. Ward, Acting Director