

BEFORE THE WATER RESOURCES DEPARTMENT OF OREGON

IN THE MATTER OF THE PARTIAL CANCELLATION) PC 93-3  
CANCELLATION OF WATER RIGHT CERTIFICATES )  
13623 IN THE NAME OF CLARENCE HANSEN, ) FINAL ORDER OF  
13624 IN THE NAME OF JOE HANSEN, AND ) PARTIAL CANCELLATION  
49695 IN THE NAME OF CLARENCE HANSEN FOR ) OF WATER RIGHTS  
USE OF WATER FOR IRRIGATION, DOMESTIC AND)  
STOCK FROM LAKE CREEK, JEFFERSON COUNTY )

HISTORY OF PROCEEDING

The proposed partial cancellation of these water right certificates was initiated following receipt of information contained in affidavits filed on March 26, 1993, by Ann Ingham and Phyllis Johnson, both of HCR 36 Box 1906, Camp Sherman, Oregon, 97730, that the portions of Water Right Certificates 13623, 13624 and 13625 (superseded by Certificate 49695) had been forfeited by failure to make beneficial use of the water under the terms of the water rights for a period of five or more consecutive years, beginning in April, 1978 and extending through April, 1991.

Notice of Proposed Partial Cancellation of these water rights of the proposed partial cancellation of these water rights for irrigation, domestic and stock on 29.37 acres in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  (Cert. 13623), 29.53 acres in the NW $\frac{1}{4}$  SE $\frac{1}{4}$  and 2 acres in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  (Cert. 13624), and 9.26 acres in the SE $\frac{1}{4}$  NE $\frac{1}{4}$  and 16.68 acres in the NE $\frac{1}{4}$  SE $\frac{1}{4}$  (Cert. 49695) of Section 16 was served by certified mail on the owners of record of certain real property located in Section 16, Township 13 South, Range 9 East, Willamette Meridian, on April 30, 1993.

Following discussions with the legal representative of the owners of Tax Lots 1000 and 1100 located in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  Section 16, supplementary correcting affidavits were received from Ann Ingham and Phyllis Johnson on August 10, 1993. The affidavits stated that the affiants had erred in describing the amount of acreage which had undergone nonuse in Tax Lots 1000 and 1100 in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of said Section 16; that the assertion of forfeiture of that portion of Certificate 13623 on 0.88 acre in TL 1000 was withdrawn, that only 0.3 acre of said Tax Lot had undergone nonuse during the period in question; that the portion of Certificate 13623 appurtenant to the remaining 1.4 acre of said Tax Lot had not undergone nonuse; that the assertion of nonuse on the entirety of TL 1100 was in error and that a total of 1.0 acre of said Tax Lot had been forfeited for nonuse; and that there was no assertion of nonuse against the portion of Certificate 13623 appurtenant to the remaining 2.6 acre of Tax Lot 1100. The owners of these two tax lots had no objection to and agreed with the changes in the portion of Certificate 13623 to be cancelled as described in the supplemental affidavits.

No protest having been filed within the time allowed, this Final Order is now issued.

## FINDINGS OF FACT

1. The entirety of the water rights in question are as follows:

The right confirmed by the decree of the Circuit Court of the State of Oregon for Deschutes County in the Deschutes River adjudication, entered in volume 9, page 362 of the Order Record of the State Engineer, and further described by Certificate 13623, issued to Clarence Hansen for use of water from Lake Creek, for irrigation, domestic and stock use on 38 acres in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of said Section 16, under a priority of 1888. Appropriation for irrigation is limited to not to exceed 1/60th of a cubic foot per second per acre during the irrigation season, being May 1 through September 15;

The right confirmed by the decree of the Circuit Court of the State of Oregon for Deschutes County in the Deschutes River adjudication, entered in volume 9, page 362 of the Order Record of the State Engineer, and further described by Certificate 13624, issued to Joe Hansen for use of water from Lake Creek, for irrigation of 37 acres in the NW $\frac{1}{4}$  SE $\frac{1}{4}$  and 2 acres in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of said Section 16, under a priority of 1888. Appropriation for irrigation is limited to not to exceed 1/60th of a cubic foot per second per acre during the irrigation season, being May 1 through September 15; and

The right confirmed by the decree of the Circuit Court of the State of Oregon for Deschutes County in the Deschutes River adjudication, entered in volume 9, page 362 of the Order Record of the State Engineer, and further described by Certificate 13625, issued to Martin Hansen for use of water from Lake Creek, which Certificate has been cancelled in part and superseded by Certificate 49695. The right is for irrigation, domestic and stock use on 30 acres in the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , 30 acres in the NE $\frac{1}{4}$  SE $\frac{1}{4}$  and 5.3 acres in the SE $\frac{1}{4}$  SE $\frac{1}{4}$  Section 16, and 30 acres in the NW $\frac{1}{4}$  NW $\frac{1}{4}$  Section 15, all in said Township 13 South, Range 9 East, under a priority of 1888, Appropriation for irrigation is limited to not to exceed 1/60th of a cubic foot per second per acre during the irrigation season, being May 1 through September 15.

2. Only that portion of Certificate 13623 appurtenant to 29.47 acres in the SW $\frac{1}{4}$  SE $\frac{1}{4}$ , of Certificate 13624 appurtenant to 26.83 acres in the NW $\frac{1}{4}$  SE $\frac{1}{4}$  and 2 acres in the SW $\frac{1}{4}$  SE $\frac{1}{4}$ , and of Certificate 49695 appurtenant to 9.26 acres in the SE $\frac{1}{4}$  NE $\frac{1}{4}$  and 16.63 acres in the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of said Section 16 are proposed for cancellation.

3. No assertions of nonuse were made regarding these rights for the following lands and acreages, as further identified by tax lot number. The portions of these rights appurtenant to the acreages described below are not in question and are not proposed to be cancelled:

Cert. 13623, SW $\frac{1}{4}$ SE $\frac{1}{4}$	
<u>Tax Lot (TL)</u>	<u>ac.</u>
100	1.53
500	0.26
600	0.30
700	0.42
800	0.41
900	0.49
1000	1.40
1100	2.6
2200	0.27
3400	0.61
3800	<u>0.24</u>
	8.53 acres

Cert. 13624 NW $\frac{1}{4}$ SE $\frac{1}{4}$	
<u>Tax Lot (TL)</u>	<u>ac.</u>
100	3.0
200	1.0
201	0.5
202	0.5
400	1.0
500	0.45
600	0.28
700	0.26
2600	0.16
2700	0.24
3100	0.23
3300	<u>2.55</u>
	10.17 acres

Cert. 49695, SE $\frac{1}{4}$ NE $\frac{1}{4}$	
1900	7.14
2000	0.48
2200	0.32
2400	0.40
2800	0.55
2900	<u>11.85</u>
	20.74 acres

Cert. 49695, NE $\frac{1}{4}$ SE $\frac{1}{4}$	
200	10.63
400	0.26
600	0.30
700	0.33
800	0.35
900	0.29
1000	0.02
1100	0.29
1200	0.38
1300	0.26
1400	<u>0.26</u>
	13.37 acres

CONCLUSIONS OF LAW

No protests having been filed against the proposed partial cancellation of these water rights or against the corrected acreages on Tax Lots 1000 and 1100 as described above, the portions of Certificates 13623, 13624 and 49695 as herein described should be cancelled for five and more consecutive years of nonuse occurring between April, 1978 and April, 1991.

FINAL ORDER

NOW, THEREFORE, it is ORDERED that the portion of the water right for irrigation, domestic and stock use of the waters of Lake Creek, evidenced by Certificate 13623 and appurtenant to 29.47 acres in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  Section 16, T 13 S, R 9 E, WM, be and the same are hereby CANCELLED.

It is FURTHER ORDERED that said Certificate be canceled and that a new Certificate be issued to describe the balance of the water right not in question and not canceled by this proceeding, being for irrigation, domestic and stock use of the waters of Lake Creek on 8.53 acres of Section 16, T 13 S, R 9 E, WM..

It is FURTHER ORDERED that the portion of the water right for irrigation, domestic and stock use of the waters of Lake Creek, evidenced by Certificate 13624 and appurtenant to 26.83 acres in the NW $\frac{1}{4}$  SE $\frac{1}{4}$  and 2 acres in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 16, T 13 S, R 9 E, WM, be and the same are hereby CANCELLED.

It is FURTHER ORDERED that said Certificate be canceled and that a new Certificate be issued to describe the balance of the water right not in question and not canceled by this proceeding, being for irrigation, domestic and stock use of the waters of Lake Creek on 10.17 acres Section 16, T 13 S, R 9 E, WM.

It is FURTHER ORDERED that the portion of the water right for irrigation, domestic and stock use of the waters of Lake Creek, evidenced by Certificate 49695 and appurtenant to 9.26 acres in the SE $\frac{1}{4}$  NE $\frac{1}{4}$  and 16.63 acres in the NE $\frac{1}{4}$  SE $\frac{1}{4}$  of said Section 16, T 13 S, R 9 E, WM, be and the same are hereby CANCELLED.

It is FURTHER ORDERED that said Certificate be canceled and that a new Certificate be issued to describe the balance of the water right not in question and not canceled by this proceeding, being for irrigation, domestic and stock use of the waters of Lake Creek on 30 acres in the NW $\frac{1}{4}$  NW $\frac{1}{4}$  Section 15, 20.74 acres in the SE $\frac{1}{4}$  NE $\frac{1}{4}$ , 13.37 acres in NE $\frac{1}{4}$  SE $\frac{1}{4}$  and 5.3 acres in the SE $\frac{1}{4}$  SE $\frac{1}{4}$  Section 16, T 13 S, R 9 E, WM.

DATED and PLACED in the US Postal Service this 12<sup>th</sup> day of August, 1993.



WEISHA MIZE  
Hearings Referee

**NOTICE:** 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 (date of mailing) of this Order. Judicial review is pursuant to the provisions of ORS 536.075.