



Oregon

John A. Kitzhaber, MD, 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)	FINAL ORDER
EVIDENCED BY WATER RIGHT)	
CERTIFICATE 13865 FOR USE OF WATER)	
FROM EAST FORK ILLINOIS RIVER FOR)	
IRRIGATION, DOMESTIC, AND STOCK FOR)	WRD Case No.: 02-13
TRACT #1; MINING FOR TRACT #2)	
JOSEPHINE COUNTY, OREGON)	

FINDINGS OF FACT

- The subject water right, evidenced by Certificate 13865, in the name of G. W. Hales, authorizes the use of water from the East Fork Illinois River for irrigation, domestic and stock for Tract #1 and mining for Tract #2. The amount of water not to exceed one cubic foot per second (cfs) for each 50 acres of land irrigated during the irrigation season from April 1 to November 1 of each year for Tract #1 and 33.25 cubic feet per second for Tract #2. The priority date is 1853. The place of use is described as follows:

Tract 1		
9.8 acres	NW SW	Lot 2
2.3 acres	NE SW	
2.0 acres	SW SW	Lot 1
10.0 acres	SE SW	
Section 22		
22.7 acres	NE NW	
0.2 acres	NW NW	Lot 5
2.4 acres	SE NW	
7.0 acres	NE NE	
1.9 acres	NE NE	Lot 1
1.5 acres	SW NE	Lot 2
Section 27		
Township 40 South Range 8 West, W.M.		

Tract 2
SE 1/4
SW 1/4



Tract 2
Section 4
NE 1/4
SE 1/4
Section 5
NE 1/4
Section 8
NE1/4
NW1/4
E1/2 NE SE
E 1/2 SE SE
NW SE
SW SE
W1/2 NE SE
W1/2 SE SE
Section 9
ALL
Section 10
NW1/4
SW 1/4
Section 14
ALL
Section 15
SE 1/4
NE NE
SE NE
Section 16
NE NE
SW NE
SE NE
NE SE
Section 21
SE 1/4
NE 1/4
Section 22
NW1/4
SW 1/4
Section 23
NW1/4
Section 26
NE NE
NW NE
SW NE
NW1/4
N1/2 NW SE
Section 27
Township 40 South, Range 8 West, W.M.

2. On October 23, 2013, Donald J. Smith and Gregory A. Walter submitted affidavits alleging non-use of a portion of the water right evidenced by Certificate 13865 from September 2003 through September 2013.
3. On October 23, 2013, Gordon R. Lyford submitted an affidavit alleging non-use of a portion of the water right evidenced by Certificate 13865 from June 2007 through September 2013.
4. The portion of Water Right Certificate 13865 proposed to be canceled for non-use is for the purpose of mining, being 1.21 cubic feet per second of water. The mining operation is located in Tract # 2, NE1/4 SW1/4, NW1/4 SW1/4, SW1/4 SW1/4, SE1/4 SW1/4, Section 10, Township 40 South, Range 8 West, W.M., Josephine County, Oregon.
5. On November 29, 2013, the Department issued a Notice of Proposed Partial Cancellation of Water Right.
6. The Notice of Proposed Partial Cancellation of Water Right was lawfully served on the US Department of the Interior, Bureau of Land Management, the owner of record of certain real property located in Tract # 2, NE1/4 SW1/4, NW1/4 SW1/4, SW1/4 SW1/4, SE1/4 SW1/4, Section 10, Township 40 South, Range 8 West, W.M., Josephine County, Oregon.
7. The US Department of the Interior, Bureau of Land Management did not contest the Notice of Proposed Cancellation of Water Right within the 60 day period prescribed in the Notice nor did they request a hearing.
8. The Department has designated its file on this matter, including the materials submitted by the Proponents, as the record in this proceeding. The Record contains evidence that persuades the Department that a portion of Water Right Certificate 13865 was not used from September 2003 through September 2013.

CONCLUSION OF LAW

1. A rebuttable presumption has been established that a perfected and developed water right has been forfeited due to ten consecutive years of non-use, ORS 540.610.
2. The presumption of forfeiture has not been rebutted, ORS 540.610.

FINAL ORDER

It is ORDERED that a portion of Water Right Certificate 13865 be cancelled, being 1.21 cubic feet per second of water from the East Fork Illinois River for the purpose of mining. The mining operation being located in Tract # 2, NE1/4 SW1/4, NW1/4 SW1/4, SW1/4 SW1/4, SE1/4 SW1/4, Section 10, Township 40 South, Range 8 West, W.M., Josephine County, Oregon. The priority date is 1853.

Dated this 20th day of April, 2014.


Dwight French, Water Right Services Administrator, for
Phillip C. Ward, 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 and ORS 183.482 is to the Oregon Court of Appeals. If you do not file a petition for judicial review within the 6-day time period, you will lose your right to appeal.

CERTIFICATE OF SERVICE

I certify that on May 1st, 2014 a copy of this Final Order was served by certified mail, return receipt requested, and first class mail, postage prepaid upon the persons listed below:

US Dept. of the Interior
Bureau of Land Management
Attn: Jonas Parker
3040 Biddle Rd
Medford, OR 97504-4180

US Dept. of the Interior
Bureau of Land Management Oregon
PO Box 2965
Portland, OR 97208

Gordon R. Lyford
PO Box 118
O'Brien OR 97534

Donald J. Smith
5685 Westside Rd
Cave Junction OR 97523

Gregory A. Walter
PO Box 1668
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Codi Holmes
Water Resources Department