

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

UMATILLA COUNTY

IN THE MATTER OF CANCELLATION OF A)
PORTION OF A PERFECTED AND) FINAL O R D E R
DEVELOPED WATER RIGHT IN THE NAME)
OF WILLIAM ELLENBERGER)

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.

FINDINGS OF FACTS

1. On December 26, 2002, the Department received affidavits from Irene Itschner, Larry and Charlene Day, and Gary and Sharyn Mullins, stating they are the owners of lands and the water right appurtenant as evidenced by Certificate 79753, State Record of Water Right Certificates. The affidavits further state a portion of the water right appurtenant to their respective property has been abandoned and request the certificate be canceled.
2. Pursuant to OAR 690-017-002(a), the Department has determined that Irene Itschner, Larry and Charlene Day, and Gary and Sharyn Mullins are the record owners, as established by county deed records, of property to which a portion of the water right evidenced by Certificate 79753 is appurtenant.
3. Certificate 79753 allows for the use of 0.44 cubic foot per second (cfs) of water from Birch Creek, tributary to the Umatilla River, for irrigation of 25.7 acres in Section 9, Township 1 South, Range 32 East, W.M. The date of priority is May 27, 1937.
4. The portion of Certificate 79753 which has been abandoned is for the use of 0.20 cfs for irrigation of 11.84 acres located as follows:

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.

TABLE 1. — ABANDONED PORTION OF CERTIFICATE 79753									
TWP	N/S	RNG	E/W	MER	SEC	¼ ¼	ACRES	TAX LOT	AFFIANTS
1	S	32	E	W.M.	9	NW NE	4.19	401 & 500	IRENE ITSCHNER
1	S	32	E	W.M.	9	SW NE	1.51	401 & 500	IRENE ITSCHNER
1	S	32	E	W.M.	9	NW NE	1.00	200	LARRY & CHARLENE DAY
1	S	32	E	W.M.	9	SW NE	5.14	400	GARY & SHARYN MULLINS
TOTAL:							11.84		

CONCLUSIONS OF LAW

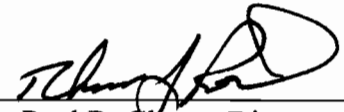
The Director of the Water Resources Department concludes that a portion of the right evidenced by Water Right Certificate 79753 has been abandoned in accordance with the provisions of ORS 540.621 and shall be canceled.

ORDER

IT IS ORDERED:

1. The portion of Certificate 79753 which has been abandoned and is hereby canceled is for the use of 0.20 cfs from Birch Creek, tributary to the Umatilla River, for irrigation of 11.84 acres located in Section 9, Township 1 South, Range 32 East, W.M., and as further described in Table 1. The date of priority is May 27, 1937.
2. Certificate 79753 is canceled
3. The Department shall issue Certificate 79858, a new and superseding certificate, to describe the remaining portion of the perfected and developed water right NOT canceled by the provisions of this order.

Dated JAN 16 2003.


 For Paul R. Cleary, Director