

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

IN THE MATTER OF THE PROPOSED PARTIAL )  
CANCELLATION OF THE WATER RIGHT ) PC 97-3  
EVIDENCED BY CERTIFICATE 35223 IN THE ) FINAL ORDER  
NAME OF HARRY PON, FOR THE USE OF WATER )  
FOR IRRIGATION FROM A WELL IN HARNEY )  
COUNTY )

Notice was sent by certified mail on January 3, 1997, to the owners of record of the following real property located in Sections 28 and 33, Township 22 South, Range 31 East, Willamette Meridian, of proposed cancellation of the water right for irrigation use on this property:

1.6 acres NW1/4 NE1/4	9.0 acres NE1/4 SW1/4
22.2 acres NE1/4 NW1/4	12.8 acres NW1/4 SW1/4
12.2 acres NW1/4 NW1/4	<b>Section 33</b>
21.0 acres SW1/4 NW1/4	26.6 acres SE1/4 SW1/4
12.4 acres SE1/4 NW1/4	4.8 acres SW1/4 SE1/4
<b>Section 33</b>	<b>Section 28</b>

No legally sufficient protest was filed within the 60-day period following mailing, pursuant to ORS 540.641. Buzco Construction Co., Inc. submitted a letter stating it is an out-of-state property owner. However, out-of-state owners are subject to cancellation of their water rights, as is any water right holder, following nonuse of a water right for five consecutive years.

The Buzco letter also stated that its water rights had not been forfeited due to non-use and that it protested the proposed cancellation. However, OAR 690-17-600 requires a protestant to provide a statement citing the reasons they believe the water right has not been forfeited by nonuse. Buzco's letter did not give a reason why the right had not been forfeited.

Finally, Buzco referred to ORS 540.610(2)(b) and (c) and OAR 690-17-800(2)(a) and (b). However, these sections are grounds for rebuttal which apply to municipal water rights and property owned by the Department of Veterans' Affairs (DVA). Buzco is not a municipality nor a municipal right holder, and the DVA does not own a recorded interest in Buzco's property to which the water right is appurtenant.

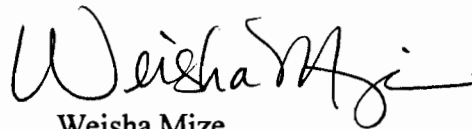
A letter was faxed to Buzco Construction on February 25, 1997, explaining that the letter described above was not a legally sufficient protest or rebuttal. Buzco was provided with the relevant laws and rules and given until March 6, 1997, to correct and complete their protest or rebuttal. Buzco did not respond within the the time allowed, or at any time since. Therefore, it is hereby ORDERED:

That the portion of Certificate 35223 for irrigation of 91.2 acres in Section 33 and 31.4 acres in Section 28, all in T 22 S, R 31 E, WM, and the water right evidenced by that portion of that certificate, is hereby CANCELED.

It is FURTHER ORDERED that a new certificate be issued for the use of water from a well in Harney County under a priority of January 11, 1963, for irrigation use on the following lands in Section 33, T 22 S, R 31 E, WM, not in question and not canceled in this proceeding:

7.6 acres NW1/4 NE1/4  
6.0 acres SW1/4 NE1/4  
16.6 acres NE1/4 NW1/4  
0.4 acres SW1/4 NW1/4  
25.4 acres SE1/4 NW1/4  
Section 33

DATED and PLACED in the US Postal Service this 30<sup>th</sup> day of May, 1997.



Weisha Mize  
Administrative Law Judge

**NOTICE:** You are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for review with the Oregon Court of Appeals 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.