

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

IN THE MATTER OF THE PROPOSED) FINAL ORDER
CANCELLATION OF THE WATER RIGHT) CANCELING CERTIFICATE
EVIDENCED BY CERTIFICATE 49717 IN THE NAME) 49717
OF WALTER R. AND ANNA M. JOHNSON FOR USE)
OF WATER FROM THOMAS CREEK FOR)
IRRIGATION IN LINN COUNTY, OREGON)

Authority

Oregon Revised Statute 540.641 and Oregon Administrative Rule 690-017-0500 direct the Department to enter an order canceling a water right if the owner of record or occupant receives notice of a proposed cancellation as provided in ORS 540.631 and fails to protest within the 60-day period prescribed in the notice.

Findings of Fact

Certificate

1. Certificate 49717, in the name of Walter R. and Anna M. Johnson, authorizes the use of 0.10 cubic foot per second (cfs) from Thomas Creek, tributary of the South Santiam River, for irrigation of 14.1 acres on the following place of use:

7.0 acres NE 1/4 NE 1/4
1.0 acre SW1/4 NE 1/4
6.0 acres SE 1/4 NE1/4
Section 21
0.1 acre NW 1/4 NW 1/4
Section 22
as projected within Calavan DLC 65
T. 10 S., R. 2 W., W.M.

The priority date is February 15, 1951. The point of diversion is located in the NE 1/4 NE 1/4, as projected within Calavan DLC 65, Section 21, T. 10 S., R. 2 W., W.M.; 350 feet South and 1170 feet West, and 480 feet South and 180 feet West from NE Corner, Section 21.

Affidavits Alleging Non-use

2. On February 21, 2019, Keith Slonecker and Wendy Slonecker submitted affidavits alleging non-use of Certificate 49717 for five years, from January 2014 through January 2019.

Notice of Proposed Cancellation

3. On August 22, 2019, the Department issued a Notice of Proposed Cancellation of Water Right proposing to cancel Certificate 49717 for non-use as described in the affidavits.

4. The Notice of Proposed Cancellation was lawfully served by certified mail on August 22, 2019, on the owner of record and/or occupant of the property appurtenant to Certificate 49717 at the address on record in the office of the county assessor of the county in which the land is located, as required by OAR 690-017-0440 (6), as follows:

Sun Fires Finest Medicinal LLC, 970 Lafayette Road, Bryn Mawr, Pennsylvania, 19010.

Return of Notice

5. The Notice was returned to the Water Resources Department by the U.S. Postal Service on September 19, 2019, with notes on the envelope of "Return to Sender" and "Unable to Forward".

Non-response to Notice

6. Neither the owners of record nor the occupants, if there are any, filed a protest to the Notice of Proposed Cancellation, or requested a hearing.

Designation of File as Record

7. The Department has designated the application file for S-25648, which includes the materials submitted by the Proponents in the affidavits, as the record in this proceeding. The record contains evidence that persuades the Department that Certificate 49717 was not used from January 2014 through January 2019, a period of 5 successive years, and is therefore forfeited and subject to cancellation.

Conclusions of Law

1. A rebuttable presumption has been established that a perfected and developed water right, Certificate 49717, has been forfeited due to five successive years of nonuse. ORS 540.610.
2. The presumption of forfeiture has not been rebutted, and Certificate 49717 is subject to cancellation. ORS 540.610.

Order

Now therefore, it is ORDERED that the water right evidenced by Certificate 49717 is cancelled.

Dated at Salem, Oregon _____ DEC 04 2019 _____.



Dwight French
Water Right Services Division Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department