

**BEFORE THE OREGON WATER RESOURCES DEPARTMENT**

IN THE MATTER OF THE PROPOSED ) FINAL ORDER CANCELING  
CANCELLATION OF THE WATER RIGHT ) WATER RIGHT  
EVIDENCED BY CERTIFICATE 41678 IN THE )  
NAME OF ROGNAR ANDERSON FOR USE OF ) WRD Case No. PC-01-19  
WATER FROM MILK CREEK FOR )  
IRRIGATION IN CLACKAMAS COUNTY, )  
OREGON )  
)

**FINDINGS OF FACT**

*Certificate*

1. Certificate 41678, in the name of Rognar Anderson, authorizes the use of 0.42 cubic feet per second (cfs) from Milk Creek, tributary of the Molalla River, for irrigation of 33.2 acres on the following place of use:

10.0 acres NE 1/4 SE 1/4  
23.2 acres SE1/4 SE 1/4  
Section 34, T. 4 S., R. 3 E., W.M.

The priority date is October 26, 1967. The point of diversion is located in the NW1/4 SE1/4, Section 34, T. 4 S., R. 3 E., W.M., 1700 feet North and 1420 feet West from SE Corner Section 34.

*Affidavits Alleging Non-use*

2. On January 22, 2019, Elizabeth Reed and Bruce Reed submitted affidavits alleging non-use of the water right evidenced by Certificate 41678 from January 2003 through December of 2018, establishing a rebuttable presumption of forfeiture.

*Notice of Proposed Cancellation*

3. On January 30, 2019, the Department lawfully served a Notice of Proposed Cancellation of Water Right by certified mail return receipt on Katherine L Collins, 21851 S. Schieffer Rd., Colton, OR 97017, as the record owner of Tax Lot 1502.
4. The entirety of Certificate 41678 was proposed to be canceled for non-use.

*Non-response to Notice*

5. The Department did not receive a protest and fee with a request for hearing nor any information to rebut the presumption of forfeiture within the time allowed for filing a protest.

*Designation of File as Record*

6. The Department has designated its file on this matter as the record in this proceeding. The record contains evidence that persuades the Department that Certificate 41678 was not used under the terms of the certificate from January 2003 through December of 2018.

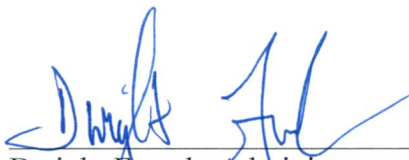
**CONCLUSIONS OF LAW**

1. A rebuttable presumption has been established that a perfected and developed water right has been forfeited due to at least five consecutive years of nonuse. ORS 540.610.
2. The presumption of forfeiture has not been rebutted. ORS 540.610.

**ORDER**

Now therefore, it is ORDERED that Certificate 41678 is canceled.

Dated in Salem, Oregon on JUL 10 2019



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

**Appeal Rights**

This order may be appealed to the Oregon Court of Appeals within 60 days from the date this order was served. ORS 536.075(2); ORS 183.482. If mailed, the date service is the date the order is mailed. A petition for reconsideration may be filed with Water Resources within 60 calendar days after this order was served. OAR 137-003-0675.