

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

IN THE MATTER OF THE PARTIAL) FINAL ORDER PARTIALLY
CANCELLATION OF CERTIFICATE 40377 FOR) CANCELING WATER RIGHT
USE OF WATER FROM EVANS CREEK FOR)
IRRIGATION OF 17.0 ACRES, JACKSON) WRD Case No. PC-02-14
COUNTY, OREGON)

FINDINGS OF FACT

Certificate

1. Water Right Certificate 40377, in the name of Leroy M. Sinsabaugh, authorizes the use of 0.29 cubic feet per second (cfs) of water from Evans Creek, tributary to the Rogue River for irrigation of 22.0 acres, being 17.0 acres in the NE1/4 NE1/4 and 5.0 acres in the NW1/4 NE1/4, Section 5, Township 35 South, Range 3 West, Willamette Meridian (W.M.). The point of diversion is located in the SW1/4 NE1/4, Section 5, Township 35 South, Range 3 West, W.M., 1625 feet South and 1805 feet West from the NE Corner of Section 5. The priority date is November 8, 1918.

Affidavits Alleging Non-use

2. On June 16, 2014, Bruce G. Buckmaster and Jacqueline A. Buckmaster submitted affidavits alleging non-use of water right evidenced by Certificate 40377 for irrigation on 17.0 acres from May 2008 through January 2014, establishing a rebuttable presumption of forfeiture.

Notice of Proposed Cancellation

3. A Notice of Proposed Partial Cancellation of Water Right was lawfully served by certified mail return receipt to the owners of record, and occupants as applicable, of the real property to which Certificate 40377 is appurtenant in Section 5, Township 35 South, Range 3 West, W.M., Jackson County, Oregon on July 11, 2014. This notice was defective.
4. A Revised Notice of Proposed Partial Cancellation of Water Right was lawfully served by certified mail return receipt to the owners of record, and occupants as applicable, of the real property to which Certificate 40377 is appurtenant in Section 5, Township 35 South, Range 3 West, W.M., Jackson County, Oregon on October 13, 2014. William H. Baquet, Jr. protested the notice on December 12, 2014.
5. The protest was referred to the Office of Administrative Hearings for a contested case hearing on April 6, 2015. The protest was withdrawn on June 29, 2015, and the case was withdrawn from the Office of Administrative Hearings on July 1, 2015.
6. The October 13, 2014 Revised Notice of Proposed Partial Cancellation was found to contain a material error. A 2nd Revised Notice of Proposed Partial Cancellation of Water Right was lawfully served by certified mail return receipt to the owners of record, and occupants as applicable, of the real property to which Certificate 40377 is appurtenant in Section 5, Township 35 South, Range 3 West, W.M., Jackson County, Oregon on October 15, 2015.

7. The portion of Water Right Certificate 40377 proposed to be canceled for non-use is 0.22 cfs of water from Evans Creek, tributary to the Rogue River, for irrigation of 17 acres, being 12.0 acres in the NE1/4 NE1/4 and 5.0 acres in the NW1/4 NE1/4 of Section 5, Township 35 South, Range 3 West, W.M.

Non-response to Notice

8. 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 on the 2nd Revised Notice of Proposed Partial Cancellation of Water Right.

Designation of File as Record

9. The Department has designated its file on this matter as the record in this proceeding. The record contains evidence that persuades the Department that a portion of Water Right Certificate 40377 was not used under the terms of the certificate from May 2008 through January 2014.

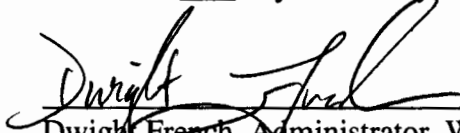
CONCLUSIONS OF LAW

1. A rebuttable presumption has been established that a portion of a perfected and developed water right, Certificate 40377, has been forfeited due to 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 a portion of Water Right Certificate 40377 is canceled, being .22 cfs of water from Evans Creek, tributary to the Rogue River, for irrigation of 17 acres, being 12.0 acres in the NE1/4 NE1/4 and 5.0 acres in the NW1/4 NE1/4 of Section 5, Township 35 South, Range 3 West, W.M. The priority date is November 8, 1918. Remaining right Certificate 91158 is issued for that portion of the right not affected by this cancellation.

Dated this 21 day of January, 2016.



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 of 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.