



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1266
503-986-0900
FAX 503-986-0904

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

IN THE MATTER OF THE PARTIAL)	
CANCELLATION OF THE WATER RIGHT)	
EVIDENCED BY CERTIFICATE 68612 FOR)	
USE OF WATER FROM AN UNNAMED)	FINAL ORDER
SPRING, TRIBUTARY OF SILTCOOS LAKE,)	
FOR DOMESTIC USE FOR NINE (9) HOUSES)	
AND A TWELVE (12) CABIN MOTEL, LANE)	
COUNTY, OREGON)	

FINDINGS OF FACT

1. The subject water right is evidenced by Water Right Certificate 68612, in the name of Fish Mill Lodges, Inc., authorizes the use of 0.04 cubic foot per second of water from an unnamed spring, tributary of Siltcoos Lake, for domestic use for nine (9) houses and a twelve (12) cabin motel, Lot 3 (SW1/4NE1/4), Section 34, Township 19 South, Range 12 West, W.M., place of use more explicitly described as being one house each on Lots 3, 9, 11, 12, and 13, Block 28; Lots 13 and 19, Block 29; Lots 5 and 6, Block 32, and motel on Lots 5, 6, 7, and 8, Block 28, plat of Westlake. The priority date is August 18, 1950.
2. On August 14, 2007, Judy Bedsole and Shawn Bedsole submitted affidavits alleging nonuse of a portion of the water right evidenced by Certificate 68612 from July 1992 through July 2007.
3. The portion of Certificate 68612 proposed to be canceled for nonuse is domestic use for six (6) houses, Lot 3 (SW1/4NE1/4), Section 34, Township 19 South, Range 12 West, W.M., being more explicitly described as: Lots 3, 12, and 13, Block 28; Lot 19, Block 29; and Lots 5 and 6, Block 32, plat of Westlake. The priority date is August 18, 1950.
4. On November 1, 2007, Joseph and Dorothy Morris, through their attorney, Thomas Nicholson, timely filed a protest to the Notice of Proposed Partial Cancellation with the Department and requested an administrative hearing.
5. A view of the property subject to the cancellation of the Water Right Certificate 68612 took place on October 15, 2008. In addition, informal and formal discovery was conducted between the parties during 2008.



6. A contested case hearing was scheduled for December 1 and 2, 2008.
7. During the proceeding, Shawn and Judy Bedsole submitted a sketch of the water delivery system, three photographs, an inventory of pipelines dated March 21, 1976, and three copies of canceled checks as exhibits.
8. On November 26, 2008, a fax was received by the Department from Nancy Jo Kessel, daughter of the Joseph and Dorothy Morris, indicating that they would be sending a letter through Morris's attorney withdrawing their protest.
9. On December 1, 2008, Thomas Nicholson, submitted a letter withdrawing the protest on behalf of Joseph and Dorothy Morris.
10. On December 3, 2008, the Department withdrew the case from the Office of Administrative Hearings.
11. The Department has designated its file on this matter, including any materials submitted by the Proponents or Protestants as the record in this proceeding.

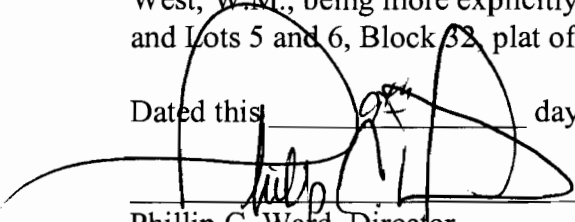
CONCLUSION OF LAW

1. A rebuttable presumption has been established that a perfected and developed water right 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.
3. The portion of Certificate 68612 proposed to be canceled for nonuse is domestic use for six (6) houses, Lot 3 (SW1/4NE1/4), Section 34, Township 19 South, Range 12 West, W.M., being more explicitly described as: Lots 3, 12, and 13, Block 28; Lot 19, Block 29; and Lots 5 and 6, Block 32, plat of Westlake. The priority date is August 18, 1950. ORS 540.610.

FINAL ORDER

It is **ORDERED** that a portion of Certificate 68612 proposed to be canceled for nonuse is domestic use for six (6) houses, Lot 3 (SW1/4NE1/4), Section 34, Township 19 South, Range 12 West, W.M., being more explicitly described as: Lots 3, 12, and 13, Block 28; Lot 19, Block 29; and Lots 5 and 6, Block 32, plat of Westlake. The priority date is August 18, 1950

Dated this _____ day of December, 2008


Phillip C. Ward, Director

Appeal Rights

You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the date of service of this Order. If this Order was personally delivered to you, the date of service is the day you received the Order. If this Order was mailed to you, the date of service is the day it was *mailed*. Judicial review, pursuant to the provisions of ORS 536.075 and ORS 183.482 is to the Oregon Court of Appeals. If you do not file a petition for judicial review within the 60-day time period, you will lose your right to appeal.

CERTIFICATE OF SERVICE

I certify that on December 9, 2008, I mailed the Final Order on the Partial Cancellation of Water Right by certified mail, return receipt requested, postage prepaid to:

George & Laura Burke
4838 Lake Blvd
West Lake OR 97493

George & Laura Burke
PO Box 233
West Lake OR 97493

Joseph H & Dorothy J Morris
4837 Summit St
West Lake OR 97493

Joseph H & Dorothy J Morris
PO Box 26
West Lake OR 97493

Lane Living Trust
Rosella & William Lane
PO Box 51
West Lake OR 97493

Craig Zolezzi
4824 Laguna Ave
West Lake OR 97493

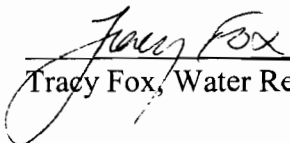
Craig Zolezzi
286 Riverwood Ln
Oakland OR 97462

Petra Koeberling
4830 Laguna Ave
West Lake OR 97493

Petra Koeberling
430 W Richmond Ave
Richmond CA 94801

Bradley Berg
Attorney Representing Shawn Bedsole
And Judy Bedsole
P.O. Box 2676
Florence, OR 97439

Dove Gutman
Administrative Law Judge
Office of Administrative Hearings
P.O. Box 14020
Salem, OR 97309-4020



Tracy Fox, Water Resources Department