

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

MARION COUNTY

IN THE MATTER OF CANCELLATION OF A)
PORTION OF A PERFECTED AND DEVELOPED) ORDER
WATER RIGHT IN THE NAME OF KILIAN W. SMITH)

ORS 540.621 states that whenever the owner of a perfected and developed water right abandons a water right, the Water Resources Commission (Commission) shall enter an order canceling the right. The Water Resources Department (Department) received an affidavit from the owner of lands stating they have abandoned the water right appurtenant to their land and requesting the cancellation of the water right. The Department has reviewed the affidavit and makes the following disposition of the request:

STATEMENT OF FACTS

On November 15, 2000, the Department received a notarized affidavit from Marci Christian, Business Manager of Woodburn School District No. 103, stating the school district is the owner of lands and the water right appurtenant as evidenced by a portion of Certificate 27210, State Record of Water Right Certificates. The affidavit further states that the right appurtenant to the property has been abandoned and requests cancellation of that portion of the perfected water right. Deed records indicate Marion County School District 103C (now Woodburn School District 103) is the record owner of land to which a portion of Certificate 27210 is appurtenant.

Certificate 27210 allows for the use of 1.0 cubic feet per second (cfs) from Kilian Smith Well #3, tributary to Mill Creek (tributary to the Pudding River), for irrigation and supplemental irrigation of 234.9 acres with a date of priority of May 22, 1956.

The use of water under this right allows a maximum diversion of one-eightieth of one cubic foot per second, or 1.0 cfs for every 80 acres irrigated, and is further limited to total use of no more than 2.5 acre feet of water annually on each acre irrigated during the irrigation season. Given that the diversion is less than the maximum allowable rate to irrigate the acreage described under this right, the rate of diversion remains unaffected by the abandonment, and the abandoned portion of the right is only for lands to which the use of water is appurtenant.

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2).

Pursuant to ORS 536.075 and OAR 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

The portion of Certificate 27210 which has been abandoned is for the irrigation of 9.9 acres on the following lands:

SE¼ SE¼ 0.1 ACRES
as projected within G. Leasure DLC 78
SE¼ SE¼ 9.8 ACRES
as projected within J. Duchame DLC 80
SECTION 12
TOWNSHIP 5 SOUTH, RANGE 2 WEST, W. M.

CONCLUSIONS OF LAW

ORS 540.621 directs the Commission to enter an order canceling a water right whenever the owner of a perfected and developed water right certifies under oath to the Commission that the water right has been abandoned and the owner desires to cancel the right.

Oregon Administrative Rule 690-017-0100 authorizes the Director of the Water Resources Department to issue an order, under authority delegated to him by the Commission, canceling a perfected and developed water right in accordance with the provisions of ORS 540.621 when so requested by notarized affidavit of the record owner of land to which a water right is appurtenant.

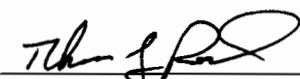
The Director of the Water Resources Department concludes that a portion of Certificate 27210 has been abandoned in accordance with the provisions of ORS 540.621 and shall be canceled.

ORDER

IT IS ORDERED that the portion of the water right described by Certificate 27210 for irrigation of 0.1 acres located in the SE¼ SE¼, as projected within the G. Leasure DLC 78 and 9.8 acres located in the SE¼ SE¼, as projected within the J. Duchame DLC 80, Section 12, Township 5 South, Range 2 West, W. M. is canceled. The Department shall issue a remaining right certificate for the use of water on those lands not canceled by this order.

IT IS FURTHER ORDERED that Certificate 27210 is hereby canceled. The Department shall issue Certificate 76638, a new and superseding water right certificate, to describe the remaining portion of the perfected and developed water right NOT canceled by the provisions of this order.

Dated December 29, 2000.



Paul R. Cleary, Director
Oregon Water Resources Department