

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

Order of Certification in the Matter of)
Cancellation of Permit S-51600)

FINAL ORDER

Findings of Fact

1. Application S-71485, in the name of Roy E and Darlene S. Smith, was received April 4, 1991. Permit S-51600 was issued April 24, 1995, approving the application. Subsequently, on April 20, 2017, the application was assigned to Carlton Plants Nursery Company, LLC.
2. Permit S-51600 allowed the use of 0.08 cubic feet per second of water from an Unnamed Stream, tributary of Willamette River for irrigation of 60.0 acres and agricultural use.
3. The date for complete application of water (C-Date) was to be made on or before October 1, 1998.
4. The Department received a Claim of Beneficial Use on October 1, 2001. Subsequently, on January 26, 2000, the C-Date for the permit was extended to October 1, 2009.
5. The extension of time, contained the below listed condition that was not complied with:

By October 1, 2000, the permittee shall install, maintain, and operate fish screening to prevent fish from entering the proposed diversion. The permittee shall also install a fishway at the obstruction that will provide adequate upstream and downstream passage for fish. The permittee may submit evidence that the Oregon Department of Fish and wildlife (ODFW) has determined screens and/or fishways are not necessary.
6. In reviewing the claim, it was found that a fish screen has been installed. However, the date the screen was installed is not noted. Also, the claim did not address the whether the fishway was installed or determined by ODFW to not be necessary.
7. The permit holder did not installed a fishway as required between when extension of time was issued (January 26, 2000) and the October 1, 2000.

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484 and ORS 536.075. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 183.484, ORS 536.075 and OAR 137-004-0080, you may petition for judicial review and petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

8. Under the provisions of ORS 537.250, after the Water Resources Department has received a request for issuance of a water right certificate accompanied by the survey required under ORS 537.230(5) that shows, to the satisfaction of the Department, that an appropriation has been perfected in accordance with the provisions of the Water Rights Act, the Department shall issue to the applicant a certificate of the same character as that described in ORS 539.140.


Conclusions of Law

The permit holder demonstrated to the satisfaction of the Department that no beneficial use was accomplished under the permit. The use allowed by Permit S-51600 is lost.

Now, therefore, it is ORDERED:

Permit S-51600 is cancelled and is of no further force or effect.

Issued SEP 06 2019.



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