

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

In the Matter of Cancellation of a Portion of a)	
Perfected and Developed Water Right Certificate)	
94958, in the name of The Tree Farm, LLC, and)	CORRECTING SUPERSEDING
Offset of Impact for Permit G-17587, Deschutes)	FINAL ORDER
County)	

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.

OAR 690-505-0610 (8) allows for the impact of use under a ground water permit application to be completely offset by a proposed voluntary cancellation of an existing ground water use subject to transfer, such that impact on surface waters from the new ground water use is the same as, or less than, impact on surface waters from the existing ground water use subject to transfer. The ground water permit application may be approved without additional mitigation once the proposed voluntary cancellation is complete.

Findings of Fact

1. On July 26, 2021, the Department received an affidavit from Kirk Schueler, president, on behalf of The Tree Farm, LLC., 409 NW Franklin Avenue, Bend, Oregon, 97703, stating The Tree Farm, LLC., is the legal holder of the water right evidenced by Certificate 94958, State Record of Water Right Certificates. The affidavit requests a portion of the rate authorized on the certificate be cancelled.
2. Certificate 94958 allows for the use of 0.78 cubic feet per second (cfs) of groundwater, from a well within the Deschutes Basin, for quasi-municipal use. The date of priority is January 30, 1995.
3. The portion of Certificate 94958 The Tree Farm, LLC., requests be canceled is for the use of 0.0659 cfs of groundwater from a well for quasi-municipal use with no reduction or change in the place of use authorized by the water right.
4. On October 6, 2021, the Department signed a Final Order that was mailed on October 7, 2021 and recorded at Special Order Volume 121, Pages 752-754, which in part, directed

This is an 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 137-004-0080, you may either petition for judicial review or 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.

the cancellation of a 0.0659 Cubic Foot per Second (CFS) portion of Certificate 94958 and the issuance of remaining right Certificate 95926 for 0.714 CFS.

5. This Correcting Superseding Final Order is being issued to correct the Final Order Special Order Volume 121, Pages 752-754. The rate on the remaining right should be 0.7141 CFS, not 0.714 [$0.78 - 0.0659 = 0.7141$]. This order also corrects a scrivener's error in Finding of Fact #7 of the original order. The mitigation obligation on Permit G-17587 is 35.1 Acre-Feet (AF) not 31.5 AF.

Evaluation of Offset of Impact for Groundwater Permit G-17587

6. A request has been submitted to use the voluntary cancellation of a portion of Certificate 94958 to offset a portion of the impact to surface water of Groundwater Permit G-17587, held by Bull Springs Ranch LLC, pursuant to OAR 690-505-0610 (8) under the Deschutes Ground Water Mitigation Rules.
7. The voluntary cancellation of an existing ground water right subject to transfer may be used to offset the impact on surface water of a ground water permit issued under the Deschutes Basin Ground Water Mitigation Rules.
8. The impact to surface water of the existing ground water right to be cancelled must be the same or greater than the impact to surface water flows of the permit. The amount of impact of a groundwater permit issued under the Deschutes Ground Water Mitigation Rules to surface water flows is the consumptive portion (mitigation obligation) of the groundwater use. Offset of the impact must occur in the same zone of impact identified by the Department in the permit.
9. Permit G-17587 allows the appropriation of 0.24 Cubic Feet per Second (CFS) for irrigation. This permit also has a mitigation obligation of 35.1 AF in the General Zone of Impact.
10. Certificate 94958 allows the diversion of up to 0.78 CFS from a well for quasi-municipal use. This right does not have an annual volume limit.
11. On behalf of The Tree Farm, LLC, Kirk Schueler, president, requested to voluntarily cancel a 0.0659 portion of Certificate 94958 in exchange for Bull Springs Ranch, LLC receiving 19.08 AF of offset for its use of groundwater for irrigation under Permit G-17587.
12. The Department has determined that the wells authorized under Certificate 94958 and Permit G-17587 impact surface water flows in the same zone of impact, being the General Zone of Impact.
13. The voluntary cancellation of 0.0659 CFS is equivalent to a maximum of 47.71 AF annually. The amount of offset generated by the voluntary cancellation of an existing

groundwater right is the consumptive portion of the existing use. The consumptive portion of 47.71 AF is 19.08 AF (40% of the maximum volume of use).

14. Based upon evaluation of the request to use the voluntary cancellation of a portion of Certificate 94958 to offset a portion of the impact to surface water of Permit G-17587, the Department has determined that Certificate 94958 impacts surface water in the same zone of impact as Permit G-17587 and would offset 19.08 AF of the impact of Permit G-17587.

Conclusions of Law

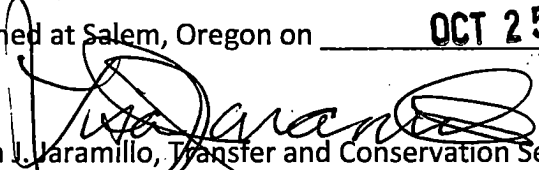
The Director of the Water Resources Department concludes that a portion of the right evidenced by Water Right Certificate 94958 shall be cancelled in accordance with the provisions of ORS 540.621.

The cancellation of a portion of Certificate 94958 results in the offset of a portion of the impact (mitigation obligation) of Permit G-17587 pursuant to OAR 690-505-0610 (8).

Now, therefore, it is ORDERED:

1. The order entered at Special Order Volume 121, Pages 752 to 754 is withdrawn and of no further force and effect and is superseded by this order.
2. Certificate 94958 is cancelled.
3. Certificate 95926 is cancelled and superseded. The Department shall issue Certificate 96026, to describe the remaining 0.7141 CFS portion of the perfected and developed water right NOT canceled by the provisions of this order.
4. The cancellation of a 0.0659 CFS portion of Certificate 94958, as described herein, offsets 19.08 AF of the impact (mitigation obligation) of Permit G-17587 in the General Zone of Impact.

Signed at Salem, Oregon on OCT 25 2021


Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M. BYLER, DIRECTOR
Oregon Water Resources Department

Mailing Date: OCT 26 2021