

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

IN THE MATTER OF THE PROPOSED) NOTICE OF PROPOSED
CANCELLATION OF THE WATER RIGHT) CANCELLATION OF
EVIDENCED BY CERTIFICATE 54635, IN THE) WATER RIGHT
NAME OF JAMES L. AND LOUELLA MONROE, FOR)
USE OF WATER FROM AN UNNAMED STREAM)
AND SOPHY 1 RESERVOIR, IN LINN COUNTY,)
OREGON)

TO: Record Owner: Tax Lot 1001, Southeast Ag Investments LLC, 2018 Eastwood Road,
Suite 103, Wilmington, NC 28403

Notice

Pursuant to the provisions of Oregon Revised Statutes (ORS) 183.415 and ORS 540.631, you are hereby notified as the owner of record of certain real property in Section 4, Township 10 South, Range 1 East, Willamette Meridian (W.M.), Linn County, Oregon, of the proposed cancellation of an irrigation and stock water right evidenced by Certificate 54635, in the name of James L. and Louella Monroe.

A. Basis For Initiation Of Proposed Cancellation Action

Findings of Fact

The Affidavits

1. It is asserted in an affidavit filed with the Water Resources Department (Department) by Ronald F. Krantz that the water right evidenced by Certificate 54635 has been forfeited due to non-use for irrigation from January 1990 through January 2022, and for stock from January 1990 through July of 2017, on the subject lands.
2. It is asserted in an affidavit filed with the Water Resources Department by Gerald Duman that the water right evidenced by Certificate 54635 has been forfeited due to non-use for irrigation from May 1990 through January 2022, and for stock from January 1990 through July of 2017, on the subject lands.
3. It is asserted in an affidavit filed with the Water Resources Department by Carmen Gretzon that the water right evidenced by Certificate 54635 has been forfeited due to non-use for irrigation and stock water from September 1994 through January 2022, on the subject lands.
4. It is asserted in an affidavit filed with the Water Resources Department by Kent Doerfler that the water right evidenced by Certificate 54635 has been forfeited due to non-use for

irrigation and stock water from March 15, 1980, through January 14, 2022, on the subject lands.

5. Together, the four affidavits assert that Certificate 54635 has not been used for irrigation from September 1994 through January 2022, and for stock watering from September 1994 through July of 2017, periods of non-use exceeding five successive years.

Water Right Proposed To Be Canceled For Non-Use

The water right for which cancellation is proposed is:

Water Right **Certificate 54635**, in the name of James L. and Louella Monroe, authorizes the use of 0.055 cubic feet per second (cfs) from an unnamed stream and Sophy 1 Reservoir, a tributary of Thomas Creek, for irrigation (at a rate of 0.05 cfs for irrigation of 5.0 acres and 0.005 cfs for stock) on the following place of use:

5.0 acres and stock SE 1/4 SE 1/4
Section 4, T 10 S, R 1 E, W.M.

The priority date is May 1, 1979. The point of diversion is located in the SE1/4 SE1/4, Section 4, T 10 S, R 1 E, W.M. The entire certificate is proposed to be cancelled. A copy of said water right certificate, application map and tax lot map are attached.

Conclusion of Law

1. The evidence submitted to the Department by affiants appears to create a rebuttable presumption of forfeiture. ORS 540.631; OAR 690-017-0400.

B. Applicable Law

Oregon water law provides that if any portion of a water right undergoes five or more successive years of non-use, that non-use creates a rebuttable presumption of forfeiture. Oregon Revised Statutes (ORS) 540.610; ORS 540.631.

A presumption of forfeiture may be rebutted by evidence submitted in a protest and by evidence you may submit in a contested case hearing. ORS 540.610(2); Oregon Administrative Rule (OAR) 690-017-0800.

Other applicable law includes ORS 540.610 through ORS 540.650, OAR Chapter 690 Division 17 (governing water right cancellation), ORS Chapter 183 and OAR 137-003-0501 through 0700

(governing contested case hearings) and OAR 690-002-0010 through 0190 (governing protests, hearings, and exceptions).

C. Notice Of Right To Protest the Proposed Cancellation and Receive a Contested Case Hearing

The information before the Department, if not countered by other evidence, establishes at least five years of non-use of your water right. Five years of non-use creates a rebuttable presumption of forfeiture. This means that you have an opportunity to show either that water use has occurred during the subject five-year period or that one or more statutorily established reasons excusing non-use as stated in ORS 540.610(2) and OAR 690-017-0800 apply to you.

You have the right to a contested case hearing on the matters asserted in this Notice of Proposed Cancellation. If you do not agree with the matters asserted in this Notice you may file a protest and request for hearing setting forth the reasons why the water right specified in this Notice should not be cancelled. You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions or public or private organizations are represented by an attorney. OAR 137-003-0550. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an authorized representative may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Administrative Law Judge determines that the appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

To request a contested case hearing, the legal owner or occupant of the land must file a written request for hearing with the Oregon Water Resources Department within **60 days** from the date of the mailing of this Notice. Any protest and request for hearing must be in writing and **received** with a \$950.00 protest filing fee in the office of the Oregon Water Resources Department, Attention: Protest Program, 725 NE Summer Street, Suite A, Salem, Oregon 97301-1266, by 5:00 p.m. on April 11, 2023. See ORS 540.641(2)(60-day time period for filing a protest); ORS 536.050(1)(j)(authority for fee). A protest **may not** be filed by electronic mail. OAR 690-002-0025(3).

If you request a hearing, you will be notified of the time and place of the hearing. You will also be given information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing. You have the right to be represented by an attorney and to respond and present evidence and argument on all issues properly before the Administrative Law Judge.

If you do not request a hearing

If you do not request a hearing within 60 days of the date of the mailing of this Notice, or if you withdraw a hearing request, notify the Department or the Administrative Law Judge that you will not appear, or fail to appear at a scheduled hearing, the Department may issue a final order by default canceling your water right. ORS 540.641(1); OAR 137-003-0670. If the Department

issues a final order by default, it designates its file on this matter, including any materials submitted by you that relate to this matter, as the record for the purpose of proving a prima facie case.

Voluntary cancellation

Holders of a water right *may also voluntarily relinquish* their water right by filing a notarized authorization to cancel with the Water Resources Department, Water Rights Section. ORS 540.621. If you decide to authorize voluntary cancellation of the water right or portion thereof appurtenant to your land, you do not need to file a protest. You should contact the Department or your local watermaster for the proper Cancel Authorization form.

NOTICE TO ACTIVE DUTY SERVICEMEMBERS

Active duty Servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.

Dated in Salem, Oregon on

FEB 09 2023



Dwight French, Administrator, Water Right Services Division, *for*
Douglas Woodcock, Acting Director
Oregon Water Resources Department