



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

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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 PROPOSED)	
PARTIAL CANCELLATION OF THE WATER)	NOTICE OF WITHDRAWAL
RIGHT EVIDENCED BY CERTIFICATE 2057)	AND PROPOSED PARTIAL
FOR USE OF WATER FROM INDIAN CREEK)	CANCELLATION OF
FOR IRRIGATION , GRANT COUNTY,)	WATER RIGHT
OREGON)	

TO: Record Owner Tax Lot 2501: (T13S R33E Section 28)
Beverly Curtis Harmon
1802 W Idaho Blvd
Emmett, ID 83617

Background

On December 14, 2006 Oregon Water Resources Department issued a Final Order in the matter of cancellation of the Water Right Evidenced by Certificate 2057 for use of water from Indian Creek for Irrigation, Grant County, Oregon. A request for reconsideration was received on February 9, 2007. The Department herein withdraws the Final Order dated December 14, 2006 and issues this Notice of Proposed Partial Cancellation of Water Right.

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 28, Township13 South, Range 33 East, Willamette Meridian (W.M.), Grant County, Oregon of the proposed partial cancellation of an irrigation water right evidenced by Certificate 2057 in the name of Dan Stephenson, C. L. Mier, David Moyer and O. J. Moyer.

Basis for Initiation of Proposed Cancellation Action

It is asserted in affidavits filed with the Water Resources Department (Department) by Steve Mullin, Carolyn Mullin, and Donald Polack, that a portion of the water right evidenced by Certificate 2057 has been forfeited due to non-use for irrigation for 9 years 6 months (1992 through June 2001), on the subject lands.

Water right proposed to be canceled for non-use

The water right for which cancellation is proposed is:

Certificate 2057 - Certificate 2057, in the name of Dan Stephenson, C. L. Mier, David Moyer and O. J. Moyer, authorizes the use of 5.125 cubic foot per second (cfs) from Indian Creek, tributary to the John Day River for irrigation of 410 acres of land, being 30.0 acres in the NE1/4NE1/4, 40.0 acres in the NW1/4NE1/4, 40.0 acres in the SW1/4NE, 40.0 acres in the SE1/4NE1/4, 40.0 acres in the NE1/4SE1/4, 40.0 acres in the NW1/4SE1/4, 40.0 acres in the SW1/4SE1/4, 20.0 acres in the SE1/4SE1/4, 30.0 acres in the NE1/4NW1/4, 30.0 acres in the SE1/4NW1/4, 30.0 acres in the NE1/4SW1/4, 30.0 acres in the SE1/4SW1/4, Section 28, Township 13 South, Range 33 East, W.M. The priority date is June 1, 1910. A copy of said water right certificate, final proof map, and tax lot map are attached.

The portion of Certificate 2057 proposed to be canceled for nonuse is: irrigation of 200 acres, being 40.0 acres in the NE1/4SE1/4, 40.0 acres in the NW1/4SE1/4, 40.0 acres in the SW1/4SE1/4, 20.0 acres in the SE1/4SE1/4, 30.0 acres in the NE1/4SW1/4, 30.0 acres in the SE1/4SW1/4, Section 28, Township 13 South, Range 33 East, W.M. The priority date is June 1, 1910.

Applicable law

Oregon water law (ORS 540.610 to ORS 540.650) 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. Use made after a period of five successive years of non-use will not make the forfeited right valid again.

Cancellation of a forfeited water right is not automatic. The Water Resources Department must initiate an administrative proceeding to make a legal record of the matter. This notice initiates such a proceeding. If there is a hearing regarding this proposed cancellation it will be held pursuant to ORS 183.310 to ORS 183.550.

Oregon Administrative Rule (OAR) Chapter 690 Division 17 governing water right cancellation; ORS 540.610, Forfeiture of Water Rights; and Notice of Contested Case Rights and Procedures, 2004; are enclosed with this notice for your information.

Your options if you don't agree with the proposed cancellation

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, as the water right holder, 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 apply to you. Water right holders asserting excused non-use should provide supporting documentary evidence. The grounds excusing non-use are established by law in ORS 540.610(2).

You have the right to a contested case hearing. If you do not agree with the proposed cancellation of your water right you may file a protest against the proposed action setting forth your reasons for objecting.

Time lines

The legal owner or the occupant has a period of 60 days from the date of the mailing of this notice to protest the proposed cancellation. Any protest must be prepared in writing and received with a \$250.00 protest filing fee in the office of the Water Resources Department, Attention Ms. Juno Pandian, 725 NE Summer Street, Suite A, Salem, Oregon 97301-1271, by 5:00 p.m. on May 29 2007.

If no protest is filed against the proposed cancellation, if you request a hearing and then withdraw a hearing request, notify the Department or 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. If the Department issues a final order by default, the entirety of the Department's file in this matter will be designated as the record and a Final Order will be entered canceling the right(s) in question.

If a protest is filed, the matter will be set for contested case hearing. The time and place of the contested case hearing will be determined at a later date. The purpose for the hearing is to take testimony and evidence from the parties and their witnesses regarding the alleged non-use and/or the grounds excusing non-use under ORS 540.610(2) and OAR 690-17-0800.

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. In the event you determine 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.

DATED this 6th day of April 2007.



Barry Norris, Administrator
Technical Services Division

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED