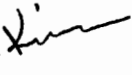


May 11, 2006

TO: File PC 95-4

FROM: Kimberly Grigsby, Water Resources Policy Analyst 

RE: Clarification of final order on Partial Cancellation of Certificate 48362

On February 29, 1996, the Department issued a final order on the Partial Cancellation of the Water Right Evidenced by Certificate 48362 in the Name of Adelbert Moore (the Order). It ordered a portion of Certificate 48362 (the Certificate) to be canceled, and further ordered a new confirming certificate for the remainder of the right to issue. Although the Order includes some errors, as described below, in the description of the place of use for this water right, the Department can issue the remaining right as required by the Order. The remaining right should include the places of use in the Certificate that were not asserted to have been forfeited for nonuse, as well as the acres that were asserted to have been forfeited but that the Department determined had not been forfeited. (See Ultimate Finding of Fact, Final Order at 6.)

The Order states that "10.4 acres in ... Section 13 and 106.7 acres in Section 24, T39S, R1E, ... is hereby canceled." (Order at 9.) For the reasons described below, the reference to 106.7 acres in Section 24 is inaccurate, but the Department can nonetheless identify the portion of the right canceled by the Order.

Page one of the Order described the place of use of the right asserted to have been forfeited for nonuse. That description, however, included errors in the number of acres included in the place of use that was asserted to have forfeited. These errors were presumably transferred from the June 7, 1995 affidavit of nonuse of water right certificate 48362 by Paul and Connie Foland, which contains the same errors. As shown below, each error described more acres asserted to be forfeited than was included in Certificate 48362:

	<u>Acres asserted to be forfeited as described in PC 95-4 Final Order</u>	<u>Acres in places of use as described in Certificate 48362</u>
NE ¼ NE ¼	28.5 acres	26.0 acres
SE ¼ NE ¼	36.3 acres	34.0 acres
SE ¼ SW ¼	1.0 acres	0.0 acres
SW ¼ SE ¼	11.1 acres	5.0 acres

Section 24  
T 39 S, R 1 E, WM

The Order indicated that the acreage in section 24 T 39 S, R 1 E, WM that was asserted to have forfeited for nonuse totaled 117.6 acres. (Final Order at 1.) The forfeiture proponents, however, did not prevail as to all of these acres. The Order made a finding

that a portion of the right appurtenant to the following acreage in Section 24 had not been forfeited: 2.0 acres of TL 704; all 5.6 acres in TL 706; and 3.3 acres in TL 101. (Final Order at 6.) Thus the proponents failed to prove forfeiture on 10.9 acres. The Department ordered that 106.7 acres in section 24 T 39 S, R 1 E, WM be canceled. (Final Order at 9.) This total was presumably reached by subtracting 10.9 acres found to have been irrigated from the total 117.6 acres originally alleged to have been forfeited.

However, as described above, the final order overstated by 11.9 acres the land appurtenant to Certificate 48362. Thus, only 105.7 acres in the land subject to the affidavit of forfeiture were appurtenant to the certificate. Of these 105.7 acres, the right associated with 10.9 acres was found to not have been forfeited, leaving 94.8 acres on which forfeiture was proved. Thus, the portion of the water right associated with these 94.8 acres was forfeited and the Department should include the remainder of the right in the new certificate.