



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

North Mall Office Building  
725 Summer St. NE, Suite A  
Salem, OR 97301  
Phone 503-986-0900  
FAX 503-986-0904  
www.wrd.state.or.us

### BEFORE THE OREGON WATER RESOURCES DEPARTMENT

IN THE MATTER OF THE PROPOSED	)	NOTICE OF WITHDRAWAL
CANCELLATION OF THE WATER RIGHT	)	AND PROPOSED
EVIDENCED BY WATER RIGHT	)	CANCELLATION OF
CERTIFICATE 27072 FOR USE OF WATER	)	WATER RIGHT
FROM WEST FORK ILLINOIS RIVER FOR	)	
IRRIGATION OF 0.9 ACRE, JOSEPHINE	)	
COUNTY, OREGON	)	

TO: Record Owners: Section 26, T40S R9W, W.M. (Tax Lot 900):  
Robert M. Elting & Anna C. Cornelison  
1595 Lone Mountain Road  
O'Brien, OR 97534

#### **Background**

On February 23, 2012, the Oregon Water Resources Department issued a Final Order in the matter of cancellation of the Water Right Evidenced by Certificate 27072 for use of water from West Fork Illinois River, a tributary of the Illinois River, for irrigation of 0.9 acre in the SE1/4 NW1/4, Section 26, Township 40 South, Range 9 West, W.M., in Josephine County, Oregon. A request for reconsideration was received on March 19, 2012. The Department herein withdraws the Final Order dated February 23, 2012, and issues this Notice of Proposed 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 owners of record of certain real property in Section 26, Township 40 South, Range 9 West, Willamette Meridian (W.M.), Josephine County, Oregon of the proposed cancellation of irrigation water rights evidenced by Certificate 27072 in the name of Mrs. Helen A. Bottel.

#### **Basis for Initiation of Proposed Cancellation Action**

It is asserted in affidavits filed with the Water Resources Department (Department) by Barbara A. Nelson and Judith H. Zulliger that the water right evidenced by Certificate 27072 has been forfeited due to non-use for irrigation for five years (April 1994, through April 1999), on the subject lands.



**Water right proposed to be canceled for non-use**

The water right for which cancellation is proposed is:

Water Right Certificate 27072 in the name of Mrs. Helen A. Bottel, authorizes the use of 0.02 cubic foot per second (cfs) from West Fork Illinois River, tributary of the Illinois River for irrigation of 0.9 acre in the SE1/4 NW1/4, Section 26, Township 40 South, Range 9 West, W.M. The priority date is March 14, 1955.

The entirety of Water Right Certificate 27072 is proposed to be canceled for non-use of water from West Fork Illinois River, tributary of the Illinois River for irrigation of 0.9 acre in the SE1/4 NW1/4, Section 26, Township 40 South, Range 9 West, W.M. The priority date is March 14, 1955. A copy of said water right certificate, final proof map and tax lot map are attached.

**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. Use made after a period of five successive years of non-use will not make the forfeited right valid again. ORS 540.610; ORS 540.631.

A presumption of forfeiture may be rebutted by evidence that you submit in a protest and request for hearing and by evidence you may submit in a contested case hearing. ORS 540.610; 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.

**Notice of right to request a contested case hearing if you don't agree with the proposed cancellation asserted in this Notice**

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 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 rights specified in this Notice should not be cancelled.

To request a contested case hearing, the legal owner or occupant 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 \$600.00 protest filing fee in the office of the Water Resources Department, Attention Ms. Juno

Pandian, 725 NE Summer Street, Suite A, Salem, Oregon 97301-1266, by 5:00 p.m. on June 25, 2012. See ORS 536.050(1)(j)(authority for fee).

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 as the record.

**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.

Dated this 26<sup>th</sup> day of April, 2012.



Barry F. Norris, Administrator  
Technical Services Division

## CERTIFICATE OF SERVICE

I certify that on April 26, 2012, a copy of this Notice of Withdrawal and Proposed Cancellation was served by certified mail, return receipt requested, and first class mail, postage prepaid upon the persons listed below:

Barbara A. Nelson  
PO Box 304  
O'Brien, OR 97534-0304

Judith H. Zulliger  
PO Box 632  
O'Brien, OR 97534-0632

Robert Graham, Jr.  
Attorney Representing Anna Cornelison and Robert Elting  
236 NW "E" Street  
Grants Pass, OR 97526

  
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Tracy Fox  
Water Resources Department