



Oregon

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Water Resources Department

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MEMORANDUM

TO: Water Resources Commission

FROM: Phillip C. Ward, Director

SUBJECT: Agenda Item L, April 20, 2012
Water Resources Commission Meeting

**Consideration of the Exceptions and Issuance of Final Order in the
Cancellation of Water Right Certificates 41522 and 59059 – Gloria
Jones**

I. Issue Statement

The Commission is asked to consider exceptions and issuance of the Final Order in the Cancellation of Water Right Certificates 41522 and 59059.

II. Background

On November 30, 2010, the Oregon Water Resources Department issued to Gloria Ann Jones, Trustee of the Gloria Ann Hager Jones Revocable Trust, two Notices of Proposed Cancellation of Water Right. The notices proposed to cancel the entire water rights evidenced by Certificate of Water Rights 41522 and 59059. The water rights are for irrigation from the Umpqua River in Douglas County. Affidavits asserting non use were filed by Greg R. Miller, Douglas C. Wellet, Albert G. Satterla, and David R. Crane. Gloria Jones is the current owner of the land described by Water Right Certificates 41522 and a portion of the land described by Water Right Certificate 59059. Donald Heiden is the owner of 2.3 acres of land also described by Water Right Certificate 59059.

Ms. Jones requested an administrative hearing and the Department referred the matter to the Office of Administrative Hearings (OAH) on January 21, 2011. Donald Heiden did not request a hearing nor did he contest the Notice of Proposed Cancellation, therefore he was not a part of the contested case hearing. Administrative Law Judge (ALJ) James W. Han was assigned to preside over the case. On March 4, 2011, ALJ Han conducted a telephone prehearing conference, at which the parties discussed witness subpoenas and agreed to hold the hearing on June 14 and 15, 2011. On May 25, 2011, ALJ Han viewed the lands described on the water rights certificates.

The hearing was held on June 14, 2011, at OAH's offices in Salem, Oregon. Greg R. Miller, Douglas C. Wellet, Albert G. Satterla, and David R. Crane (Proponents) represented themselves. Gloria Jones (Protestant) appeared and testified on her own behalf. The record closed at the conclusion of the hearing on June 14, 2011.

The issues for hearing were (1) Whether a portion of the water right evidenced by Certificate 41522 has been forfeited by failure to make beneficial use of the water for a period of five or more consecutive years during the 2001 through 2006 irrigation seasons; and (2) Whether the portion of the water right owned by Gloria Jones and evidenced by Certificate 59059 has been forfeited by failure to make beneficial use of the water for a period of five or more consecutive years during the 2001 through 2006 irrigation seasons.

On August 3, 2011, a Proposed Order was issued in which ALJ Han found that the Protestants' water rights have not been forfeited and that 2.3 acres owned by Mr. Heiden had been forfeited due to non use. On September 1, 2011, Mr. Wellett (Proponent) filed exceptions to the Proposed Order with OWRD. The Protestant did not file a response to Proponent's exceptions.

III. Exceptions

Proponent Douglas Wellet filed exceptions to the ALJ's Proposed Order on September 1, 2011. The exceptions and the Department's responses to those exceptions are made a part of the Final Order (Attachment 3). Generally, Mr. Wellet's exceptions take issue with procedural matters. The Proposed Order was not amended to reflect the exceptions filed by Mr. Wellet.

The Proposed Order provides that written exceptions may be filed within specified time periods. The Proposed Order provides the opportunity required by ORS 183.460 and OAR 137-003-0645(5) for the Proponents and the Protestants to make written arguments concerning the Proposed Order for the Commission's consideration. The Proposed Order does not allow for oral argument to the Commission.

IV. Alternatives

1. Issue a Final Order (Attachment 3) that is consistent with the ALJ's Proposed Order confirms the Department's responses to the exceptions and declares that the Water Rights of Gloria Jones, evidenced by Water Right Certificate 41522 and 59059, have not been forfeited due to non use during the period in issue.
2. Request that staff gathers additional information and report back to the Commission at its August meeting.
3. Request that staff modifies the draft Final Order in a manner requested by the Commission.

V. Recommendation

The Director recommends the Commission adopt Alternative 1.

Attachments

1. Proposed Order
2. Proponent Wellet's Exceptions
3. Draft Final Order declaring that the Water Rights of Gloria Jones, evidenced by Water Right Certificates 41522 and 59059 have not been forfeit due to non use during the period in issue.

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