

Williams testified. Greg Miller, Albert Satterla, and Douglas Wellet appeared and testified for the proponents. David Case and Rebecca Wellett testified by telephone. Gloria Jones appeared and testified on her own behalf. The record closed at the conclusion of the hearing on June 14, 2011.

On May 25, 2011, OAH received Wellet's request for subpoenas to Mike Ritchie and Scott Busby.¹ Wellet asserted that he contacted OAH on May 31, 2011, to inquire about the subpoenas. OAH faxed the subpoenas to Wellet on June 9, 2011. Wellet asserted that he did not serve the subpoenas because he believed he must serve them at least 10 days before the hearing. On June 13, 2011, Wellett asked OAH to postpone the hearing to allow him more time to serve the subpoenas. ALJ Han denied the postponement request.

At the start of the June 14, 2011, hearing, Wellet asserted that he felt "handicapped" because he was unable to present the testimony of Mike Ritchie and, to a lesser extent, Scott Busby, because Wellet had not received OAH's subpoenas for the witnesses at least 10 days before the hearing. The ALJ asked Wellett to raise the matter at the end of the hearing if, after hearing the evidence, he still believed Ritchie's and Busby's testimonies were necessary for a full hearing. At the conclusion of the hearing, no one asked for an opportunity to present additional witnesses before the record closed.

ISSUES

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. ORS 540.610.
2. Whether Jones's portion of the water right 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. ORS 540.610.

EVIDENTIARY RULINGS

The following exhibits were admitted into evidence without objection: The Department's Exhibits F1 through F16, Jones's Exhibits A1 through A3, Miller's Exhibits B1 and B2, and Wellet's Exhibits C1 and C2.

Miller offered as Exhibit B3 his calculations of the amount of water necessary to irrigate 108 acres, the number of truck loads of water required to deliver that amount, and the length of time needed to irrigate the acres using a water tank truck and K-lines. The exhibit was not admitted into evidence because Miller had not provided a copy of the exhibit to Jones and the Department before the hearing.

¹ On May 1, 2011, Miller asked the OAH to issue subpoenas to Mike Ritchie, Jamie Hopkins, and Jones for their appearance at the hearing. OAH mailed the subpoenas to Miller on May 17, 2011.

Wellet offered a letter from David Crane and a newspaper article regarding the amount of rain and the temperature in the region. The documents were not received or admitted in evidence because Wellet had not provided a copy of the documents to Jones and the Department before the hearing. During Crane's testimony, Crane read from the letter Wellet had offered.

FINDINGS OF FACT

1. In January 1975, the Oregon State Engineer issued Certificate of Water Right 41522 to Ray E. and Patricia M. Doerner. The certificate authorized their use of 0.63 cubic feet per second (cfs) of water from Umpqua River to irrigate 50.4 acres of land (the West Lot) in Sections 23 and 26, Township 25 South, Range 7 West, Willamette Meridian, Douglas County, Oregon. On April 5, 1973, a final proof survey of the land confirmed that an operable pump and water delivery system was in place that was capable of delivering the full rate and duty authorized under the certificate. (Ex. F13; test. of Williams.)

2. In December 1988, the Oregon Water Resources Director issued Certificate of Water Right 59059 to the Doerners. The certificate authorized their use of 0.73 cfs from Umpqua River to irrigate 58.6 acres of land (the East Lot) in Sections 23 and 26, Township 25 South, Range 7 West, Willamette Meridian, Douglas County, Oregon. On February 28, 1985, a final proof survey of the land confirmed that an operable pump and water delivery system was in place that was capable of delivering the full rate and duty authorized under the certificate. (Ex. F14; test. of Williams.)

3. The certificates authorized the water use "during the irrigation season of each year." (Ex. F13 and 14.) In the Umpqua Basin, the annual irrigation season is from March 1 through October 31. OWRD does not allow irrigation, under water rights certificates, before or after the irrigation season. (Test. of Williams.)

4. Gloria Ann Jones, as the trustee of the Gloria Ann Hager Jones Revocable Trust, is the current record owner of the land described in Certificate 41522 and—except for 2.3 acres owned by Donald R. Heiden—the land described in Certificate 59059, Jones having bought the lands in 2005 from then-record owner Scott Busby. (Test. of Jones; Ex. F2 at 4 and 5; Ex. F9 at 7 and 14.) Heiden is the current record owner of 2.3 acres of the land described in Certificate 59059. (Ex. F8 at 1.) Heiden did not file a protest against the Department's Notice of Proposed Cancellation of Water Right and the Department has cancelled his right to irrigate his 2.3 acres under Certificate 59059. (Statement of Pandian.)

5. Greg R. Miller, David R. Crane, Albert Gordon Satterla, and Douglas C. Wellet are Jones's neighbors. They each filed with the Department Affidavits Asserting Non-use of Water Right under Certificates 41522 and 59059. The affidavits asserted that the entire water rights under both certificates had not been used for irrigation from September 2001 through September 2006, or—in Satterla's affidavit regarding Certificate 41522—from September 2001 through June 2010. (Ex. F9 at 1, 9, and 17; Ex. F10 at 1, 10, and 19; Ex. F11 at 1 and 9.)

6. Miller's affidavit asserted:

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I am familiar with these lands and I am aware of the non-use of this water right because: [Para.] For the past ten years on an average of 3 times a week I have drove through the middle of Mrs. Jones property to access my own irrigation pump, water lines, and electrical service and I can view that she has not irrigated all her lands from September 2001 through July 2010. I also live in a location on a hill that looks down on Mrs. Jones property and I again I can say she has not irrigated all her lands the past 9 years. I also have a point of diversion about 50 feet up river from Mrs. Jones and can say she did not have a pump in the river and did not pump any water from her point of diversion till 2009 when she irrigated an acre of land behind her home.

(Ex. F9 at 1.) Miller taught school full-time starting early September each year. Therefore, he removed his water pump from the river and stopped irrigating his property each September. (Test. of Miller.)

7. Crane's affidavit asserted:

Since Sept. 5, 2001, Hopkins gave up land lease on Sept. 1, 2001. From that time on, no irrigation has been used. I border their western side of property, approximately 2000' north to south and operate a 60-acre prune orchard there. No irrigation has been used since Sept. 5, 2001 through Sept. 5, 2006. I observed this visually while working in the orchard and also while inspecting the orchard during all times of the year.

(Ex. F10 at 1.) In early October 2006, Crane was away from his property for several days. (Test. of Crane.)

8. Satterla's affidavit asserted:

I own 60 acres next to Ms Jones and have not seen any irrigation on her land s[ince] she purchased the land and for several years before. I am on my land daily [and] have never seen her irrigation in use.

(Ex. F11 at 9.)

9. Wellet's affidavit asserted:

I am an immediate adjacent land owner to the property holding the water right in question, to the south and part of the west. I have a view of said property and can say I saw no irrigation on said land from Sept. 1, 2001 thru Sept 20, 2006. I have spoken to the prior lease holders of property from Aug 30, 2001 thru late 2004 and they assured me there was no irrigation during that period of time. Mrs. Jones, who moved onto land in early 2005, does not claim to have done any irrigation until after the end of 2006.

(Ex. F12 at 1.)

10. Jamie and Suzanne Hopkins leased the subject lots from Busby from 2000 until September 2001. Jamie Hopkins last irrigated the entire area of both lots from June 2001 to sometime in September 2001. During that time, Hopkins irrigated the subject lots "constantly," "24/7," using Busby's 50 hp water pump and the irrigation system that was present on the lots. Hopkins pulled the water pump from the river and stored the irrigation equipment at the end of September 2001. At that time, the irrigation system worked. (Test. of Miller.)

11. The power meters connected to the water pumps at the points of diversion showed in 2001 the pumps used 113,693 kilo-watt hours for the East Lot and 127,000 kilo-watt hours for the West Lot, resulting in power bills totaling \$18,000 for the two meters. The pumps supplied water to the irrigation pipes installed on the lots. (Test. of Jones: Ex. A3 at 1.) The pumps were connected to the power meters from June 1, 2001, through November 14, 2001. (Ex. A3 at 8 and 10.) The meter for the West Lot also reflected power to Jones's barn and Miller's pump. (Test. of Jones.)

12. In 2004, before Jones acquired the property, her broker Denny Kruse obtained a written statement from the property's then-owner Busby that the property "was last irrigated in the summer of 2002." (Exs. A2 and F2 at 3 and 4.) Jones knew she had to make use of the water within five years to keep her water rights. Therefore, she planned to irrigate the lots in 2007. (Test. of Jones.)

13. Jones has planted rye seed on the property every year since 2005. Rye normally does not require irrigation, but after the seedlings had germinated in September 2006, three weeks elapsed with no rain. Jones, therefore, hired a 3,000 gallon water tank truck from Mike Ritchie's company, LaBrie Ranch & Seed, Inc., to irrigate the rye seedlings just enough to help them survive. Jones did not use the pumps and pipes that were present on the lots because Miller had his pump connected to the West Lot pipes and Jones could not attach her pump until Miller first removed his pump. Miller and Jones had a dispute over control of the irrigation line that was not resolved until a court entered a judgment in 2009 awarding Jones the right to access the west irrigation line. (Test. of Jones.)

14. For three successive days in October 2006, for about 10 hours each day, Jones irrigated the entire West and East Lots using Ritchie's water tank truck, 800 feet of K-line irrigation lines, and Rain Bird irrigation sprinklers. Jones's husband drove the water tank truck while Jones laid the K-line. (Test. of Jones; Ex. F1 at 6 through 50; Ex. A1.) Jones and her husband pumped the irrigation water from the stub out pipe at the point of diversion in the Umpqua River into the water tank truck, using the truck's pump. (Test. of Jones.)

15. Under Certificate 41522, the duty is 2.25 acre feet per acre, and the maximum rate is 283 gallons per minute. Under Certificate 59059, the duty is 2.5 acre feet per acre; the rate is 328 gallons per minute. (Test. of Williams.)

16. Currently on the East and West Lots are three stub outs in the river and three power poles near the authorized points of diversion. One of the stub outs is capped. (Test. of Menteer and Williams.) The most downstream stub out supplies water to the East Lot and a

cross-over line that waters the West Lot. (Test. of Williams.) One of the power poles is abandoned; the other two poles are operable and are attached to power meters. Irrigation risers and wheel lines are present on both lots. (Test. of Menteer and Williams.) Jones has a 50 hp water pump she stores in her barn that was last used during the 2001 irrigating season. The pump and pipes are capable of being used to irrigate the West and East Lots. In 2008, Jones installed a submersible pump for the East Lot. (Test. of Jones.)

CONCLUSIONS OF LAW

1. No 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.

2. Jones's portion of the water right evidenced by Certificate 59059 has not 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.

OPINION

The Department proposed to cancel Jones's water rights under Certificates 41522 and 59059 based on the allegations of non-use asserted by the proponents Miller, Wellet, Satterla, and Crane. The proponents argued that (1) they did not see any irrigation on the subject lots from September 2001 through September 2006, the alleged non-use period; (2) if, as Jones asserted, Jones irrigated the lots in October 2006, the irrigation occurred after the alleged non-use period expired; and (3) if Jones irrigated the lots in October 2006, she applied such a miniscule amount of water that it could not constitute a beneficial use. The proponents of cancellation have the burden both to present evidence and to prove by a preponderance of "reliable, probative and substantial evidence" that Jones failed to use the water for five successive years. *Rencken v. Young*, 300 Or 352, 364 (1985); ORS 183.450(2) and 540.610(2).

The proponents failed to carry their burden. Although the proponents established that they did not personally see any irrigation on the lots during the alleged non-use period, the preponderance of the evidence established that the water rights at issue had been used to irrigate the lots in 2001 and 2006. The evidence also established that the irrigation both years occurred during the Umpqua Basin irrigation season, which is the applicable period for measuring the statutory five year non-use period. Finally, the evidence established that although in 2006 Jones used less water than allowed by the certificates, she had a facility capable of handling the entire rate and duty authorized by the certificates and was ready, willing, and able to make full use of the rights. Therefore, under ORS 540.610, Jones's water rights are not subject to forfeiture.

Forfeiture by non-use of perfected water rights is governed by ORS 540.610, which provides, in part:

Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state. Whenever the owner of a perfected and developed water right ceases or fails to use all or part of the water appropriated for a period of five

successive years, the failure to use shall establish a rebuttable presumption of forfeiture of all or part of the water right.

ORS 540.610(1).²

² The full text of ORS 540.610 provides:

(1) Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state. Whenever the owner of a perfected and developed water right ceases or fails to use all or part of the water appropriated for a period of five successive years, the failure to use shall establish a rebuttable presumption of forfeiture of all or part of the water right.

(2) Upon a showing of failure to use beneficially for five successive years, the appropriator has the burden of rebutting the presumption of forfeiture by showing one or more of the following:

(a) The water right is for use of water, or rights of use, acquired by cities and towns in this state, by appropriation or by purchase, for all reasonable and usual municipal purposes.

(b) A finding of forfeiture would impair the rights of such cities and towns to the use of water, whether acquired by appropriation or purchase, or heretofore recognized by act of the legislature, or which may hereafter be acquired.

(c) The use of water, or rights of use, are appurtenant to property obtained by the Department of Veterans' Affairs under ORS 407.135 or 407.145 for three years after the expiration of the period of redemption provided for in ORS 18.964 while the land is held by the Department of Veterans' Affairs, even if during such time the water is not used for a period of more than five successive years.

(d) The use of water, or rights of use, under a water right, if the owner of the property to which the right is appurtenant is unable to use the water due to economic hardship as defined by rule by the Water Resources Commission.

(e) The period of nonuse occurred during a period of time within which land was withdrawn from use in accordance with the Act of Congress of May 28, 1956, chapter 327 (7 U.S.C. 1801-1814; 1821-1824; 1831-1837), or the Federal Conservation Reserve Program, Act of Congress of December 23, 1985, chapter 198 (16 U.S.C. 3831-3836, 3841-3845). If necessary, in a cancellation proceeding under this section, the water right holder rebutting the presumption under this paragraph shall provide documentation that the water right holder's land was withdrawn from use under a federal reserve program.

(f) The end of the alleged period of nonuse occurred more than 15 years before the date upon which evidence of nonuse was submitted to the commission or the commission initiated cancellation proceedings under ORS 540.631, whichever occurs first.

(g) The owner of the property to which the water right was appurtenant is unable to use the water because the use of water under the right is discontinued under an order of the commission under ORS 537.775.

(h) The nonuse occurred during a period of time within which the water right holder was using reclaimed water in lieu of using water under an existing water right.

(i) The nonuse occurred during a period of time within which the water right holder was reusing water through land application as authorized by ORS 537.141 (1)(i) or 537.545 (1)(g) in lieu of using water under an existing water right.

(j) The owner or occupant of the property to which the water right is appurtenant was unable to make full beneficial use of the water because water was not available. A water

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The "five successive years," prescribed by the statute are not calendar years. See *Rencken v. Young*, 300 Or at 364. The Department does not allow irrigation use of Umpqua River water outside the basin's irrigation season; and the water rights certificates also limit the use of the water to "the irrigation season of each year." Therefore, irrigation occurring during any part of the irrigation season can constitute use during that year. Thus, the five year period started from March 1, 2001, the beginning of the 2001 annual irrigation season, and ran through October 31, 2006, the end of the 2006 irrigation season.

Irrigation During 2001

There is no dispute that the lots were irrigated during the 2001 irrigation season. Miller and Satterla both testified that Hopkins had irrigated the entire subject lots between June and September 2001. Miller testified Hopkins may have irrigated into late September 2001. According to Miller, Hopkins irrigated the lots "constantly" and "24/7" during that period. Wellet testified that Hopkins irrigated the lots sometime before September 2001.

right holder rebutting the presumption under this paragraph shall provide evidence that the water right holder was ready, willing and able to use the water had it been available.

(k) The holder of a water right is prohibited by law from using the water. If the prohibition is subject to remedial action that would allow the use of the water, the water right holder shall provide evidence that the water right holder is conducting the remedial action with reasonable diligence.

(L) The nonuse occurred during a period of time within which the exercise of all or part of the water right was not necessary due to climatic conditions, so long as the water right holder had a facility capable of handling the full allowed rate and duty, and was otherwise ready, willing and able to use the entire amount of water allowed under the water right.

(m) The nonuse occurred during a period of time within which the water was included in a transfer application pending before the Water Resources Department.

(n) The nonuse of a supplemental water right occurred during a period of time when the primary water right used in conjunction with that supplemental water right was leased as an in-stream water right pursuant to ORS 537.348.

(3) Notwithstanding subsection (1) of this section, if the owner of a perfected and developed water right uses less water to accomplish the beneficial use allowed by the right, the right is not subject to forfeiture so long as:

(a) The user has a facility capable of handling the entire rate and duty authorized under the right; and

(b) The user is otherwise ready, willing and able to make full use of the right.

(4) The right of all cities and towns in this state to acquire rights to the use of the water of natural streams and lakes, not otherwise appropriated, and subject to existing rights, for all reasonable and usual municipal purposes, and for such future reasonable and usual municipal purposes as may reasonably be anticipated by reason of growth of population, or to secure sufficient water supply in cases of emergency, is expressly confirmed.

(5) After a water right is forfeited under subsection (1) of this section, the water that was the subject of use shall revert to the public and become again the subject of appropriation in the manner provided by law, subject to existing priorities.

The records of the Douglas Electrical Cooperative, which Miller offered in evidence, supported the proponents' testimonies that irrigation occurred in 2001. The cooperative provides electrical power to the water pumps located at the points of diversion under the certificates. The pumps are connected to irrigation pipes installed on the subject lots. The cooperative's meter records showed that the pumps used a substantial amount of power between June 1, 2001, and November 14, 2001. Although one of the meter records also reflected power use for Jones's barn and Miller's pump, the reasonable inference from this evidence was that the pumps pumped a substantial amount of water from the Umpqua River to irrigate the lots during the 2001 irrigation season.

Irrigation During 2006

There was no evidence that anyone irrigated the lots during the 2002 through 2005 irrigation seasons.

Jones testified that she irrigated both lots during October 2006. For three successive days in October 2006, for about 10 hours each day, Jones and her husband irrigated the entire West and East Lots using a 3,000 gallon water tank truck they rented from Ritchie, 800 feet of K-line irrigation lines, and Rain Bird irrigation sprinklers. Jones's husband drove the water truck while Jones moved and laid the irrigation lines. They pumped the water into the truck from the Umpqua River near the authorized points of diversion. Jones's evidence included over 80 photographs of the irrigation in progress. Ritchie's signed letter supported Jones's testimony: "Gloria Jones used LaBrie Ranch & Seed, Inc.[s] 3000 gallon tank truck and diesel pump to irrigate her farm land in October 2006. A booster pump mounted on the tank truck provided the pressure to pump the irrigation water through the K-line irrigation heads."

Jones's evidence was more persuasive than proponents' assertion that they did not personally see irrigation of the lots in 2006. Although proponents are Jones's neighbors, they did not establish that they observed the subject lots at all hours during the entire irrigation season.

Relying on attorney Jeffrey Monarich's March 1, 2011, letter to Miller, the proponents argued that Ritchie filled his water truck with water on property owned by Henry Enterprises and trucked the water to Jones's property, where Ritchie applied the water to only a small area. The letter purports to describe a conversation Monarich had with Ritchie, but the brief letter provided insufficient information on which one could reasonably base a conclusion that the water Jones used to irrigate in October 2006 came from Henry Enterprises and that Ritchie, not Jones's husband, drove the water tank truck. The letter stated neither the date of the conversation nor the date of the event Ritchie described. The letter was double hearsay and neither Monarich nor Ritchie were subject to questioning at the hearing. Therefore, I deemed the letter was unreliable and gave little weight to it.

The proponents offered no persuasive reason to disbelieve Jones's evidence of the October 2006 irrigation. Proponents had the burden to present reliable, substantial evidence of nonuse, such as by submitting Ritchie's own written statement confirming the statements in Monarich's letter or by subpoenaing Ritchie to testify at the hearing. Although, on the day

before the hearing was to start, Wellet requested a postponement of the hearing to subpoena Ritchie, the postponement request was untimely. Proponents had known the hearing date since March 4, 2011, and had sufficient notice of the hearing to obtain and serve subpoenas. Indeed, on May 17, 2011, OAH had issued to Miller a subpoena for Ritchie's appearance. Further, no one asked to keep the record open to present additional witness testimony after the hearing.

The proponents also argued that even if Jones applied water to the lots in October 2006, the amount she applied was so small that it cannot be considered "irrigation." Proponents are correct to assert that irrigation requires more than a mere token application of water to the ground. *See e.g., Hennings v. Water Resources Department, 50 Or App 121, 123-124 (1981)*. But contrary to their argument, Jones used more than a token amount of water; she watered all day for nearly three days to promote the growth of her rye crop. Jones's activity, therefore, constituted "irrigation" under OAR 690-300-0010(26) because it was the "artificial application of water to crops or plants controlled by means to promote growth or nourish crops or plants."³

Further, although a user uses less water than allowed by the water rights, the user's rights are not subject to forfeiture if:

- (a) The user has a facility capable of handling the entire rate and duty authorized under the right; and
- (b) The user is otherwise ready, willing and able to make full use of the right.

ORS 540.610(3).⁴ Jones satisfied these criteria.

Each certificate's final proof survey was evidence that at the time of the survey each lot had an operable water pump and water delivery system capable of handling the full rate and duty stated on the certificate. There was no direct evidence that the facilities continued to exist on the lots when Jones acquired the lots in 2005. Nevertheless, there was sufficient evidence to infer that adequate facilities were present on the lots in 2001 and 2006. According to Miller, in 2001 Hopkins used a 50 hp pump, irrigation lines, and waterwheels to water the entire two lots "constantly" and "24/7." No one contended that the irrigation equipment Hopkins used was inadequate to produce the full rate and duty under the certificates. When Hopkins took the pump

³ OAR 690-300-0010(26) states:

"Irrigation" means the artificial application of water to crops or plants by controlled means to promote growth or nourish crops or plants. Examples of these uses include, but are not limited to, watering of an agricultural crop, commercial garden, tree farm, orchard, park, golf course, play field or vineyard and alkali abatement.

⁴ OAR 690-300-0010(41) states:

"Rate and Duty of Water for Irrigation" means the maximum flow of water in cubic feet per second or gallons per minute (instantaneous rate) and the total volume of water in acre-feet per acre per year that may be diverted for irrigation.

out of the river and put away the irrigation equipment in September 2001, the equipment was working.

The equipment was still present on the lots in 2006. Stub outs, power poles, power meters, and irrigation risers were present on the lots. Jones had a 50 hp water pump in her barn and irrigation lines and water wheels on the lots that likely were the equipment present when the final proof surveys were completed. The proponents offered no evidence that the equipment was incapable of delivering the full rate and duty.

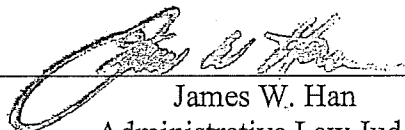
Jones established that she was ready, willing, and able to make full use of the water rights. In 2006, she knew she had to make beneficial use of the water, and she believed that she had until 2007 to do so, based on Busby's letter to Jones's real estate agent, in which Busby stated the property was last irrigated in 2002. Jones had planned to irrigate in 2007 to preserve her water rights. But in 2006, the rye seedlings she had planted were at risk of dying during a stretch of several weeks without rain. Jones knew she had to irrigate the lots in 2007 anyway; therefore, in October 2006 she applied enough water to help the rye seedlings survive.

In summary, the evidence established that the water rights under the certificates were used in the 2001 and 2006 irrigation seasons; and although Jones did not use the full amount of water allowed by the certificates, she had facilities capable of handling the entire authorized rates and duties and was otherwise ready, willing and able to make full use of the rights. Therefore, Jones's water rights are not subject to forfeiture under ORS 540.610.

PROPOSED ORDER

I propose the Department issue the following order:

The water rights of Gloria Ann Jones, Trustee of the Gloria Ann Hager Jones Revocable Trust, evidenced by Certificates of Water Rights 41522 and 59059, will not be cancelled or modified.



James W. Han
Administrative Law Judge
Office of Administrative Hearings

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RIGHT TO FILE EXCEPTIONS

Pursuant to OAR 137-003-0655(4) and OAR 690-002-0175, if the recommended action in the proposed order is adverse to any party the party may file exceptions. Exceptions must be in writing, and clearly and concisely identify the portions of the proposed order excepted to.

Parties must file their exceptions within 30 days following the date of service of the proposed order. Exceptions must be served on each of the parties and filed with the Oregon Water Resources Department as follows:

Oregon Water Resources Department
Patricia McCarty
725 Summer St. NE, Suite A
Salem, OR 97301
FAX: (503) 986-0930

Exceptions may be filed via mail, facsimile, or hand delivery. Exceptions sent through the U.S. Postal Service shall be considered filed on the date postmarked. Exceptions sent by facsimile or hand-delivered are considered filed when received by the agency. The Director must consider any exceptions to the proposed order prior to issuing a final order.

CERTIFICATE OF MAILING

On 3rd day of August 2011 I mailed the foregoing Proposed Order in Reference No. WR-11-001 by depositing a copy of said document in the United States Mail at Salem, Oregon 97309, with first class postage prepaid thereon, and addressed to:

Gloria Jones
Gloria Ann Hager Jones Revocable Trust
2307 Hubbard Creek Road
Umpqua, OR 97486

Greg Miller
2002 Hubbard Creek Road
Umpqua, OR 97486

Douglas Wellet
2419 Hubbard Creek Road
Umpqua, OR 97486

Albert Satterla
7246 Melqua Road
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David R Crane
2744 Hubbard Creek Rd
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Juno Pandian
Oregon Water Resources Dept
725 Summer St NE, Suite "A"
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Misty Fragua
Hearings Coordinator

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