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CERTIFICATE AND ORDER
FOR FILING
PERMANENT
ADMINISTRATIVE RULES WITH THE SECRETARY OF STATE
DAVID L. BROWN
SECRETARY OF STATE

I HEREBY CERTIFY that the attached copy is a true, full and correct copy of PERMANENT rule(s) adopted on August 5, 1988

(Date) RECEIVED

by the Water Resources Commission
(Department) (Division)

to become effective August 10, 1988
(Date)

AUG 10 1988

The within matter having come before the Water Resources Commission
(Department) (Division)

LEGISLATIVE COUNSEL'S
OFFICE after

all procedures having been in the required form and conducted in accordance with applicable statutes and rules and being fully advised in the premises:

Notice of Intended Action published in Secretary of State's Bulletin: NO YES Date Published: April 15, 1988

NOW THEREFORE, IT IS HEREBY ORDERED THAT the following action be taken: (List Rule Number(s) or Rule Title(s) on Appropriate Lines Below)

Adopted:
(New Total Rules) Chapter 690, Division 17

Amended:
(Existing Rules)

Repealed:
(Total Rules Only)

as Administrative Rules of the Water Resources Department Field Operations Division
(Department) (Division)

DATED this 10th day of August, 19 88

By: John E. Borden - Deputy Director
(Authorized Signer)

Title: Director, Water Resources Department

Statutory Authority: ORS _____ or

Chapter(s) 183, 536, 537, 540 & 339 Oregon Laws 19 87 or

House Bill(s) _____, 19 _____ Legislature; or Senate Bill(s) SB 139, 19 87 Legislature

Subject Matter:

These rules define the process the Water Resources Department will follow when intending or requested to cancel a perfected water right. The Action to cancel the perfected water right can be initiated as the result of a request by the owner of the land to which the water right is appurtenant, or as the result of a request to determine the validity of a water right which may be forfeited due to five successive years of non-use.

For further information contact Bruce Estes Phone: 378-3739
(Rule Coordinator)

WATER RESOURCES DEPARTMENT
DRAFT ADMINISTRATIVE RULES
CHAPTER 690
DIVISION 17
CANCELLATION OF PERFECTED WATER RIGHTS

INTRODUCTION

690-17-005 THESE RULES DEFINE THE PROCESS THE WATER RESOURCES DEPARTMENT WILL FOLLOW WHEN INTENDING OR REQUESTED TO CANCEL A PERFECTED WATER RIGHT. THE ACTION TO CANCEL THE PERFECTED WATER RIGHT CAN BE INITIATED AS THE RESULT OF A REQUEST BY THE OWNER OF THE LAND TO WHICH THE WATER RIGHT IS APPURTENANT, OR AS THE RESULT OF A REQUEST TO DETERMINE THE VALIDITY OF A WATER RIGHT WHICH MAY BE FORFEITED DUE TO FIVE SUCCESSIVE YEARS OF NON-USE.

DEFINITIONS

690-17-020 (1) ABANDONMENT: means an intentional relinquishment of a water right.

(2) AFFIDAVIT: means a declaration upon oath, usually in writing, signed by the party and sworn to before a notary public.

(3) BANKRUPTCY: means proceedings under federal bankruptcy statutes to relieve a debtor (bankrupt) from insurmountable debt. The commencement of a bankruptcy action occurs with the date of petition being filed by debtor or creditor to the bankruptcy court for relief.

(4) CANCELLATION: means the action taken by the Director, the Commission, or the courts to abolish all or part of a permit or certificate of water right.

(5) DEED-IN-LIEU: means a deed tendered by the owner to prevent the creditor from asserting a legal right to recover payment of a debt through a foreclosure action.

(6) FORECLOSURE: means a proceeding in or out of court to extinguish all right, title, and interest of the owners of property in order to sell or repossess the property to satisfy a lien against it. The commencement of a foreclosure action begins as of the date of presentation of the official demand for payment made to the debtor by the creditor through certified mail with return receipt requested.

(7) FORFEITURE: means the involuntary or forced loss of a water right, caused by the failure of the appropriator or owner of the right to use the water for five successive years.

(8) JUDICIAL ACTION: means a suit, injunction, or litigation filed with or allowed by the courts.

(9) LANDOWNER: means the owner of an estate in fee simple, the vendee on a land sale contract, or in law, an entity with an owners interest in real property.

(10) NATURAL DISASTER: means an act of God, such as flooding or erosion, which occurred with such magnitude that it

either prohibited or severely limited the ability to use the water.

(11) PERFECTED WATER RIGHT: means a water right which has been confirmed by the issuance of a certificate of water right or by a court decree.

(12) PRINCIPAL FARM OPERATOR: means the landowner and includes a lessee to whom the right of possession of agricultural property has been granted by the lessor for a specified period of time in return for a consideration.

(13) RECORD OWNER: means the person shown as the owner of the land in the county deed records established under ORS chapter 93.

CANCELLATION AUTHORIZED BY LANDOWNER

690-17-100 Perfected water rights shall be cancelled by order of the Director in accordance with the provisions of ORS 540.621 when requested by the owner of the land to which the water right in question is appurtenant.

CANCELLATION INITIATED BY DIRECTOR

690-17-200 (1) Whenever it appears to the satisfaction of the Water Resources Director, upon evidence submitted to the Director by any person that a perfected water right has been forfeited as provided in ORS 540.610, the Director may initiate proceedings to cancel the right as provided in ORS 540.631.

(2) The Director shall notify the record owner of the land to which a perfected water right is appurtenant, that he/she intends to cancel all or a portion of the water right. The occupant of affected lands, if different from the owner, shall also be notified. Notice shall be sent to each by certified mail, return receipt requested. The notice to the record owner shall be addressed to the owner at the owner's last address of record in the office of the county assessor of the county in which the lands are located. The notice shall contain the following:

(a) A description of the water right and the land to which the water right is appurtenant.

(b) A statement that the legal owner or the occupant has a period of 60 days from the date of the mailing of the notice within which to protest the proposed cancellation.

CANCELLATION INITIATED BY WATERMASTER

690-17-300 (1) If a watermaster has reason to believe that circumstances exist that prevent a water right from being exercised, including but not limited to, the lands being covered by an impermeable surface or the diversion mechanism used to appropriate the water is no longer operable, the watermaster shall file an affidavit with the Water Resources Director:

(2) The affidavit shall state:

(a) The date and time the land or diversion mechanism or other evidence was inspected by the watermaster.

(b) The name or names of the owner of the land where the water right is appurtenant and the owners' address as it appears in the county assessors' records.

(c) The watermaster's findings during the inspection.

NOTICE OF AFFIDAVIT TO LANDOWNER

690-17-400 (1) The Water Resources Department shall notify the owner or owners of the land described by an affidavit submitted by a watermaster under ORS 540.660 in the following manner:

(a) If there are 25 or fewer record owners of the land, the department shall mail a copy of the affidavit to each record owner.

(b) If there are more than 25 record owners, the department shall provide general notice by publication according to the procedures established in ORS 193.010 to 193.100.

(c) If the land is within the boundaries of an irrigation district, the department shall mail a copy of the affidavit to the irrigation district.

(2) The landowner named in an affidavit shall be given the option of voluntarily relinquishing the water right or portion thereof, continuing to be the subject of the filing of such affidavits each year for a period of five successive years, or of applying the water to the use authorized by the certificate.

(3) If the watermaster files an affidavit each year for five successive years, the Water Resources Director shall initiate proceedings under ORS 540.631 to cancel the water right.

CANCELLATION NOT PROTESTED

690-17-500 If the record owner or occupant receiving notice as provided in ORS 540.631 fails to protest the proposed cancellation of the water right within the 60-day period prescribed in the notice, the Water Resources Director may enter an order cancelling the water right as provided in ORS 540.641.

PROTEST OF CANCELLATION

690-17-600 (1) A protest submitted to the Water Resources Department by the owner or occupant of the land on which a cancellation of a perfected water right is proposed shall include the following:

(a) A written statement citing the reasons the landowner or occupant believes the water right has not been forfeited by non-use.

(b) A written request that a hearing be held to determine the status of the water right in question.

(c) The statutory fee for filing the protest.

CANCELLATION HEARING

690-17-700 (1) If the Director receives a protest to the proposed cancellation of a water right within the prescribed 60-day period, a hearing on the protest shall be scheduled. The protestant and any other interested party shall be given not less than 10 days notice of the hearing time and place.

(2) The hearing shall be held by the Water Resources Director or the director's authorized representative, and shall be conducted under the provisions of ORS 183.310 to 183.550 pertaining to contested cases.

(3) After the hearing the Director shall enter a proposed order:

(a) cancelling the water right, or
(b) cancelling in part or modifying the water right, or
(c) declaring that the water right shall not be cancelled or modified.

(4) If no exceptions or objections to the proposed order are filed within the time allowed, the Director shall issue a final order.

CLAIMING AN EXEMPTION

690-17-800 (1) Any landowner claiming an exemption to forfeiture for non-use of water under ORS 540.610(2), as provided in these rules, shall be required to provide documentation that demonstrates the claim whenever a challenge to the validity of the right has been made.

(2) For the purpose of these rules, an economic hardship shall exist only during the following periods of time:

(a) During a bankruptcy action initiated by or for the landowner or principal farm operator.

(b) During a foreclosure of real or personal property of the landowner or principal farm operator. The foreclosure of personal property must directly affect the ability to use the water in question.

(c) During the redemption periods as provided in ORS 23.530 to 23.600.

(d) Three calendar years following the expiration of redemptions as provided in ORS 23.530 to 23.600; or, three years from the date of recording of a deed in lieu of foreclosure tendered by the landowner or principal farm operator in payment of debt owed.

(e) The time during which judicial actions limit or prohibit the landowner's or principal farm operator's normal use of the water in question.

(f) The time during which a natural disaster would limit or prohibit the landowner's or principal farm operator's use of the water in question.

(3) Documentation shall include the following items for exemptions claimed because of an enrollment in a federal program:

(a) The enrollment contract or agreement between the landowner, occupant, or principal farm operator and the appropriate federal jurisdiction, or

(b) Affidavits by knowledgeable parties such as employees administering the federal programs, or

(c) Other information which may be required by the Director.

TIME PERIOD OF NON-USE

690-17-900 The time within which an exemption is determined to qualify under these rules shall not be included in the computation of the five-year period, under ORS 540.610(1), within which the owner of a water right ceases or fails to use water appropriated.

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