



In the Matter of the Proposed Partial Cancellation of the Water Right Certificates 2366 and 22086

Oregon Water Resources Commission

June 24, 2020

Dwight French

Water Right Services Division Administrator

Patricia McCarty

Protest Program Coordinator

Cancellation of Water Rights

- Terminology
- Authority
- Process

Terminology

- Proponent (or affiant) - persons who submitted an affidavit alleging non-use of a water right and who carry the burden of proving the non-use
- Protestant (or owner) – the landowner, owner of the water right, who must file a protest to the cancellation notice

Authority for cancellation

- Cancellation authorized when owner fails to use all or part of the water appropriated for 5 successive years. ORS 540.610 (1)
- Failure to use a right for 5 years creates a presumption of forfeiture, which can be rebutted by the owner.
- A certificate cannot be cancelled if the 5 year period of non-use ended more than 15 years before the evidence was received.

Cancellation process

- When affidavits of non-use received, a Notice of Proposed Cancellation is issued. The certificate owner has 60 days to file a protest. ORS 540.631
- If an owner does not protest, their part of the certificate “shall” be cancelled. OAR 690-017-0500
- If protest received, an administrative hearing is held.

Cancellation process

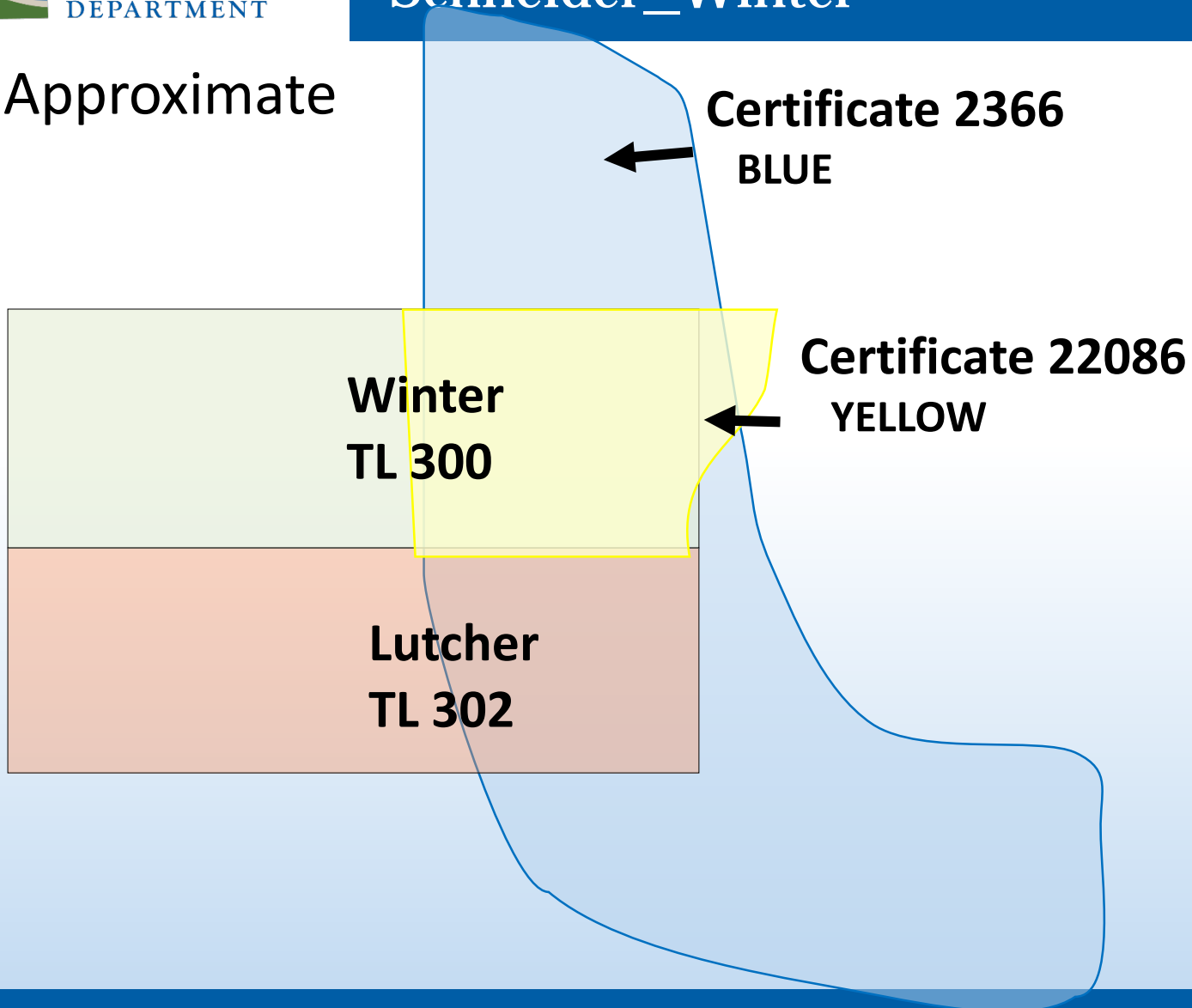
- In the hearing, the proponents must prove the non-use by a preponderance of the evidence.
- Administrative Law Judge (ALJ) issues Proposed Order after hearing.
- Exceptions can be filed.

- Nov. 1, 2017: 4 affidavits filed on 2 certificates, 2366 and 22086
- Located south of Ashland near the border
- Non-use asserted from 1997 to 2016 on tax lots 300, owned by Winter, and 302, owned by Lutcher Land LLC



C-2366 & C-22086 Schneider_Winter

- Approximate



- Nov 20, 2017: Notice of Proposed Cancellation issued to landowners.
- Dec 18, 2017: Winter protested.
- April 24-25, 2019: Hearing held in Eugene.
- Aug 9, 2019: ALJ Vaughn issued Proposed Order.
- Nov 1, 2019: OWRD issued Amended Proposed Order.

Exceptions Considered

- Proponents filed exceptions disputing failure to prove non-use. Assert non-use was proven for period of April 1997 through April 2002.
- Final Order concludes this period is more than 15 years before the affidavits were filed and rebuts any evidence of non-use in that period.

Final Order

- Final Order adopts the Amended Proposed Order
- Cancels C-2366 on Winter's land because non-use was admitted.
- Cancels part of both certificates on the property of the owner that did not protest (Lutcher).

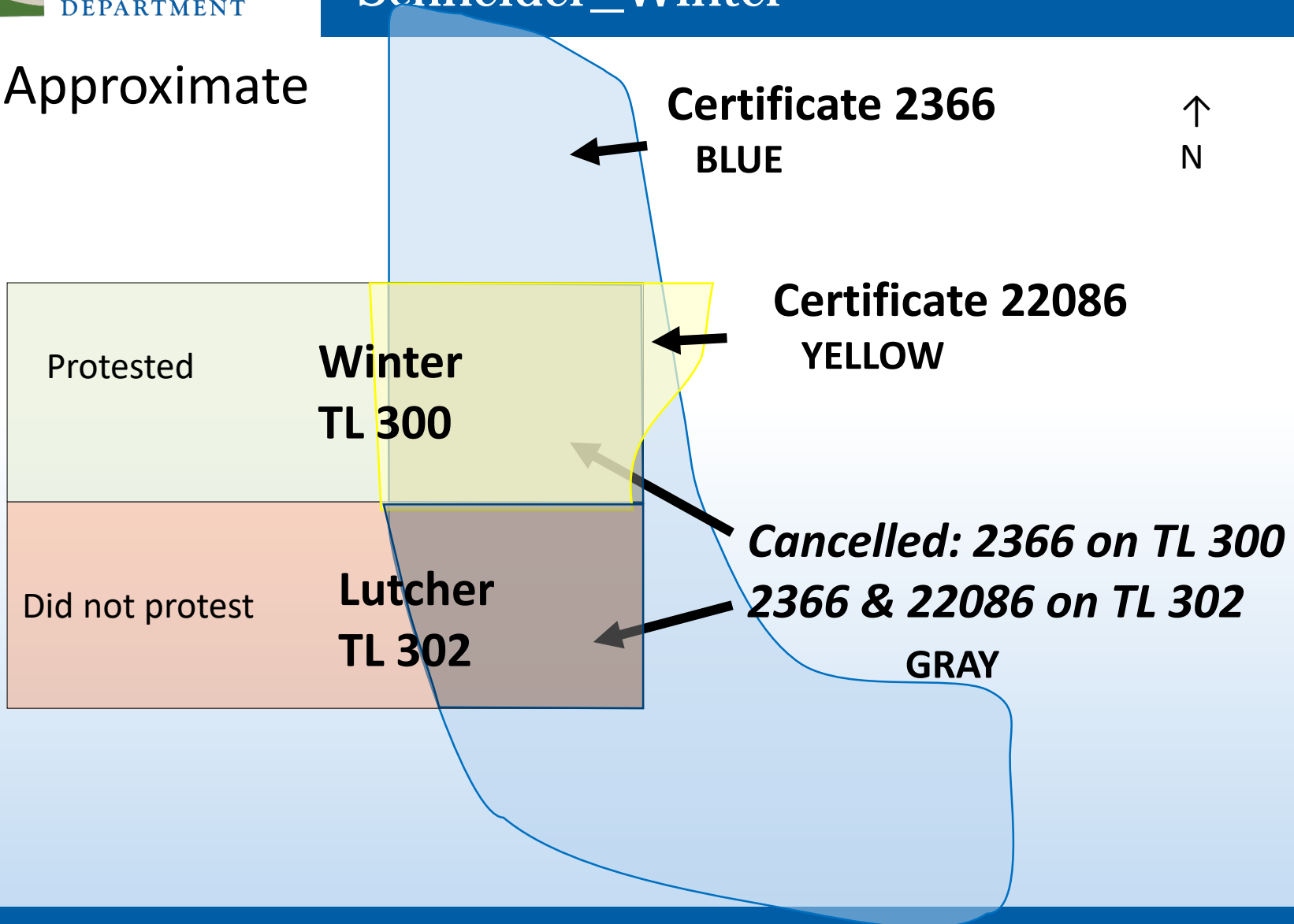
Final Order

- New certificates will be issued for the portion of the certificates not cancelled.



C-2366 & C-22086 Schneider_Winter

- Approximate



Commission Action

Alternatives:

1. Issue the Final Order included as Attachment 7, cancelling the portion of Certificate 2366 located within Tax Lots 300 and 302 and cancelling the portion of Certificate 22086 located within Tax Lot 302, and direct the Department to issue certificates confirming the portions of Certificate 2366 and 22086 not cancelled.
2. Request the Administrative Law Judge to conduct further hearings as specified by the Commission.

Commission Action

Alternatives:

1. Issue the Final Order included as Attachment 7, cancelling the portion of Certificate 2366 located within Tax Lots 300 and 302 and cancelling the portion of Certificate 22086 located within Tax Lot 302, and direct the Department to issue certificates confirming the portions of Certificate 2366 and 22086 not cancelled.
2. Request the Administrative Law Judge to conduct further hearings as specified by the Commission.



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WATER RESOURCES
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Thank you.