

STATE OF OREGON  
DEPARTMENT OF STATE LANDS

In the Matter of Violation of ORS 830.911  
By John Saunders

File No: ENF-8066

Notice of Seizure  
(Post-seizure Notice)

And Opportunity for a Hearing

Pursuant to the Abandoned or Derelict vessel statutes in ORS 830.908 to 830.948, the Department of State Lands (hereinafter the Department) has seized the abandoned or derelict vessel referenced in this notice, based on violation of the applicable provisions of ORS 830.908 through 830.948 as more particularly set forth below. In support of the proposed action the Department asserts as follows:

**I. AUTHORITIES**

1. The Legislature has authorized enforcement agencies to investigate and seize vessels that are abandoned or derelict. ORS 830.908 to 830.948. The Department is an enforcement agency authorized to enforce the Abandoned and Derelict Vessel law. ORS 830.908(4). The Department's address and telephone number are:

Department of State Lands  
775 Summer Street NE, Suite 100  
Salem, OR 97301  
503 986-5200

2. An enforcement agency may seize a vessel if it has probable cause to believe that the vessel is abandoned or derelict, and the owner fails to correct the issues identified in the agency's notice. ORS 830.911. An enforcement agency may immediately seize a vessel if it presents a hazard to navigation or an imminent threat to public health or safety. ORS 830.923. In addition, an enforcement agency may enter and inspect the vessel, or take other actions as authorized by ORS 830.911.
3. "Abandoned vessel" means a vessel that has been left without authorization on public or private land, the waters of this state, or any other water. ORS 830.908 (1).
4. After a seizure, the enforcement agency must issue a post-seizure notice to the owner and post the notice on the agency's website, as provided in ORS

830.931. At any time before the date specified in this Notice, the owner may immediately reclaim a seized vessel by (a) Paying all costs incurred by the enforcement agency in salvaging, towing and storing the vessel; and (b) Establishing to the satisfaction of the enforcement agency that the owner is able to move the vessel to a place where the vessel can be lawfully kept. ORS 830.933.

5. If a vessel is seized and not reclaimed in the manner provided by this Notice, title to the vessel and all personal property found in the vessel vests in the enforcement agency, and the enforcement agency may sell or otherwise dispose of the vessel and the property. ORS 830.933(2)
6. The owner has a right to a hearing on the pre-seizure notice or the post seizure notice. If a hearing is requested, the hearing must be held within seven business days of the request. Statute sets out further requirements for the hearing. ORS 830.936.
7. A request for a hearing after a seizure must be in writing and submitted to the enforcement agency no more than 10 business days after the notice is given. The request must include a statement of the specific grounds on which the seizure is challenged, and whether the owner challenges the reasonableness of any salvage, towing or storage costs incurred by the enforcement agency. ORS 830.931(4). If the owner requests a pre-seizure hearing under ORS 830.918 (5), the owner may request a post-seizure hearing only for the purpose of challenging the reasonableness of any salvage, towing or storage costs incurred by the enforcement agency. ORS 830.931(5).
8. If the owner requests a hearing but fails to appear at the hearing, the enforcement agency will proceed with the proposed action and the owner may be precluded from any further hearings on the matter. ORS 830.936.
9. After seizing a vessel, the enforcement agency may sell or destroy the vessel. The owner of a vessel may be responsible for all costs arising out of salvage, towing, storage and disposal of the seized vessel. ORS 830.938.
10. A boat owner that fails to comply with a notice issued under ORS 830.918 or an order issued under ORS 830.936, may be found guilty of the offense of failure to remove an abandoned vessel or possession of a derelict vessel, both Class A violations. ORS 830.944 and ORS 830.990(9).
11. ORS 830.908 further defines specific terms, including:
  - a. Derelict vessel
  - b. Enforcement agency
  - c. Owner
  - d. Vessel

12. The State is the owner of certain submerged and submersible lands in this state, including those on the Willamette River, in Multnomah County. Oregon Constitution, Article VIII, Section 5, ORS 274.025, and ORS 274.710. The State has delegated authority to the Department for the management of these submerged and submersible State lands. ORS 274.040 and ORS 274.710.
13. The Department rules provide that no person shall place a structure on, or make use of state-owned submerged and/ or submersible land without the required authorization described OAR 141-082-0265 and defined in OAR 141-082-0255, unless the use is exempt from such authorization by law or these rules. ORS 274.040, OAR 141-082-0265, and OAR 141-082-0260(4).
14. Unauthorized use of state-owned land constitutes a trespass. OAR 141-082-0315(1). The Director of the Department is required to investigate and prosecute all trespasses on state lands. ORS 273.185.
15. Limited Duration Use is exempt from authorization under these rules. OAR 141-082-0265(5). "Limited Duration Use" means any temporary or infrequent use of state-owned waterways, with no long term or extended use intended. Limited Duration Use includes any non-commercial use of state-owned submerged or submersible land which is not more than thirty (30) calendar days during any contiguous 12-month time period, within a distance of five miles. OAR 141-082-0255(43).
16. Commercial, industrial or residential uses require a lease from the Department. OAR 141-082-0265(2)(k).

## **II. FACTUAL ALLEGATIONS**

1. John Saunders is the owner of the vessel registered as 3319 NV (sometimes referred to as '33 9 NV" due to a missing sticker) and other vessels and structures attached to the registered vessel.
2. The Department found that Mr. Saunders' vessel 3319 NV, and the other vessels and structures were moored in the Swan Island Lagoon of Willamette River without authorization. Based on this finding, the Department issued a Pre-Seizure Notice to Mr. Saunders August 8, 2018.
3. Mr. Saunders requested a hearing challenging the validity of the DSL's Pre-Seizure Notice. DSL held a hearing on September 20 and October 26, 2018.
4. The hearings office issued a proposed order on November 13, 2018 finding that the Department was authorized to seize the vessel 3319 NV. Mr. Saunders filed exceptions to the proposed order on December 7, 2018.

5. On February 1, 2019, DSL Director Vicki Walker issued a final order responding to the merits of each exception and affirming the authority to seize the vessel.
6. On February 28, 2019 Mr. Saunders filed a petition with the Multnomah County Circuit Court to appeal DSL's Final Order.
7. On June 14, 2019, Judge Leslie Roberts presided over a trial on this matter, in Multnomah County Circuit court. On June 24, 2019, Judge Roberts issued a written opinion affirming DSL's Final order and finding that substantial evidence supported the agency's order. The opinion was incorporated into a Judgment issued on July 22, 2019.
8. On August 1, 2019, at approximately 11:00 am, the Department seized vessel registered as 3319 NV in Swan Island Lagoon of the Willamette River under the authority cited above.
9. The vessel was seized by:  
Department of State Lands  
775 Summer Street NE, Suite 100  
Salem, OR 97301  
503 986-5200
10. At the time of seizure, the Department conducted an inventory of the personal property in and on the vessel. No personal belongings were found on the vessel. All items found on the vessel during the seizure will remain on the vessel until the end of the 30-day storage period.
11. To date, the Department has incurred \$9,500 for towing and storage of the vessel.

### **III CONCLUSIONS OF LAW**

Based on the foregoing, the Department determines that the vessel registered as 3319 NV was lawfully seized. The Department may sell or destroy the vessel and any personal property on the vessel if Mr. Saunders does not (a) pay all costs incurred by the Department in salvaging, towing, and storing the vessel, and (b) establish to the satisfaction of the Department that he is able to move the vessel to an authorized location, by the date provided below.

The Department also determines that John Saunders is the owner of the vessel and shall be liable to the Department for all costs arising out of salvage, towing, storage and disposal of the vessel.

## **IV RECLAMATION OF SEIZED VESSELS**

The Department has seized the vessel registered as 3319 NV, anchored in the Swan Island Lagoon in Multnomah County. Mr. Saunders is ordered to not enter or move the vessel without the written consent of the Department. If Mr. Saunders wants to reclaim this vessel, the deadline by which he may do so is:

**August 31, 2019 at 11:00 am**

In order to reclaim the vessel, Mr. Saunders must (a) pay all costs incurred by the Department in salvaging, towing, and storing the vessel, and (b) establish to the satisfaction of the Department that Mr. Saunders is able to move the vessel to an authorized location, by the date listed above.

## **V. RIGHT TO HEARING**

Mr. Saunders has a right to a hearing on this Post-Seizure notice. If a hearing is requested, the Department must set a time for the hearing that is no more than seven business days after receiving the hearing request. Mr. Saunders may mail a request for a hearing to:

The Oregon Department of State Lands  
Aquatic Resource Management Program  
775 Summer Street NE, Suite 100  
Salem, OR 97301  
503-986-5200

A request for a hearing after a seizure must be in writing and submitted to the enforcement agency no more than 10 business days after the notice is given. The request must include a statement of the specific grounds on which the seizure is challenged, and whether the owner challenges the reasonableness of any salvage, towing or storage costs incurred by the enforcement agency. ORS 830.931(4). If the owner requested a pre-seizure hearing under ORS 830.918(5), the owner may request a post-seizure hearing only for the purpose of challenging the reasonableness of any salvage, towing or storage costs incurred by the enforcement agency. ORS 830.931(5).

If the owner makes a timely request for a hearing, the Department will notify the owner of the time and the place of the hearing. The owner will also be given information on the procedures, right of representation and other rights of parties relating to the conduct of the hearing before commencement of the hearing.

If the owner's request for a hearing is not received by the Department within 10 business days or if the request otherwise fails to comply with the requirements of ORS 830.936, ORS 830.918 and ORS 830.931, then the owner's right to a hearing shall be considered waived.

## VI. FINAL ORDER BY DEFAULT

If Mr. Saunders does not request a hearing within 10 business days of the notice, or if Mr. Saunders requests a hearing and then either withdraws the hearing request, notifies the Department that he will not appear or fails to appear at a scheduled hearing, then title to the vessel and personal property will vest in the Department, and the Department may issue a final order by default authorizing the sale or destruction of the vessel and any personal property found in the vessel. In addition, the Department may issue a final order by default finding the owner of the vessel responsible for all costs arising out of salvage, towing, storage and disposal of the seized vessel. If the Department issues a final order by default, it designates its file on this matter, including any materials submitted by Mr. Saunders that relate to this matter, as the record for purposes of proving a prima facie case.

DATED on this 2<sup>nd</sup> day of August 2019.

OREGON DEPARTMENT OF STATE LANDS

---

Christopher Castelli  
Northern Field Operations Manager  
Aquatic Resource Management Program  
Department of State Lands

**CERTIFICATE OF FILING/SERVICE**

I hereby certify that on August 5th, 2019, I posted the substance of this notice on a website maintained by the Department of State Lands

I further certify that on August 5th, 2019, I served the within Post Seizure Notice on John Saunders, by certified and first-class mail and by electronic mail to the addresses listed below:

JOHN SAUNDERS  
15515 SE WALLACE RD  
MILWAUKIE, OR 97267  
trydigitalone@yahoo.com

DATED this 5th day of August 2019.



---

signed