

## STATE OF OREGON

COUNTY OF UMATILLA

## CERTIFICATE OF WATER RIGHT

This Is to Certify, That WM. NICHOLS

of Milton, State of Oregon, has a right to the use of  
the waters of Walla Walla River  
for the purpose of Irrigation

and that said right has been confirmed by decree of the Circuit Court of the State of Oregon for  
Umatilla County, and the said decree entered of record at Salem, in the Order  
Record of the STATE ENGINEER, in Volume 12, at page 9; that the priority  
of the right thereby confirmed dates from 1868 for Tract No. 1; 1898 for Tract No. 2, and  
1906 for Tract No. 3;

that the amount of water to which such right is entitled, for the purposes aforesaid, is limited to an  
amount actually beneficially used for said purposes, and shall not exceed one and one-half  
miner's inches per acre measured at the point of diversion.

A description of the lands irrigated under such right, and to which the water is appurtenant (or,  
if for other purposes, the place where such water is put to beneficial use), is as follows:

TRACT No. 1 -	0.34 acre in SW <del>1</del> <sup>4</sup> SE <del>4</del> <sup>4</sup> 3.10 acres in SE <del>4</del> <sup>4</sup> SE <del>4</del> <sup>4</sup> Section 12, 5.35 acres in NE <del>1</del> <sup>4</sup> NE <del>1</del> <sup>4</sup> Section 13, T. 5 N., R. 35 E. W. M.
TRACT No. 2 -	2.49 acres in NE <del>1</del> <sup>4</sup> NE <del>1</del> <sup>4</sup> Section 13, T. 5 N., R. 35 E. W. M.
TRACT No. 3 -	5.0 acres in NE <del>1</del> <sup>4</sup> NE <del>1</del> <sup>4</sup> Section 13, T. 5 N., R. 35 E. W. M.

AND said right shall be subject to all other conditions and limitations  
contained in said decree.

The right to the use of the water for irrigation purposes is restricted to the lands or place of use  
herein described.

WITNESS the signature of the State Engineer,

affixed this 5th day

of April, 1940.

CHAS. E. STRICKLIN

State Engineer.

Recorded in State Record of Water Right Certificates, Volume 11, page 13014.

**BEFORE THE WATER RESOURCES DEPARTMENT  
OF THE  
STATE OF OREGON**

In the Matter of Clarifying the Description    )  
of the Place of Use for Certificate 13014,    )  
Umatilla County                                    )    **FINAL ORDER CLARIFYING THE  
PLACE OF USE FOR WATER RIGHT  
CERTIFICATE 13014**

**Authority**

ORS 540.560 establishes the process in which a water right description may be changed if the Water Resources Commission considers that a certificate of water right does not identify the lands to which the right is appurtenant with sufficient specificity for management, delivery or transfer of that right, the commission may issue an order clarifying and refining the description of the land to which the water right is appurtenant.

**Findings of Fact**

**Background**

1. On May 16, 1932, the Circuit Court of the State of Oregon for Umatilla County, Oregon completed the determination of the relative rights to the use of the waters of the Walla Walla River and its tributaries, a tributary of the Columbia River, in Umatilla County and issued the Walla Walla River Decree. The decree is entered in the order record of the Water Resources Department in Volume 12, Page 9.

2. The water right record reflects the following:

**Certificate:** 13014 in the name of WM. NICHOLS (confirmed by Walla Walla River decree)

**Use:** IRRIGATION of 16.28 ACRES

**Priority Dates:** 1868, 1898 and 1906

**Rate:** One and one-half miner's inches per acre

**Source:** WALLA WALLA RIVER, tributary to COLUMBIA RIVER

**Authorized Point of Diversion:**

Not listed on certificate

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

**Authorized Place of Use:**

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tract #	Priority	Acres
5 N	35 E	WM	12	SW SE	1	1868	0.34
5 N	35 E	WM	12	SE SE	1	1868	3.10
5 N	35 E	WM	13	NE NE	1	1868	5.35
5 N	35 E	WM	13	NE NE	2	1898	2.49
5 N	35 E	WM	13	NE NE	3	1906	5.00
<b>Total acres</b>							<b>16.28</b>

3. The decree map depicting the place of use described by water right Certificate 13014 is of poor quality. Surveying and mapping done as a part of the Finis Decree, issued by the Circuit Court of Umatilla County in 1910, was used to resolve a dispute regarding the relative rights to use the Walla Walla and Little Walla Walla Rivers. The Finis Decree map was used in drafting the water right map for Certificate 13014 and described the place of use in relation to Township, Range, Section and Quarter-Quarter lines.
4. The lands with the water right confirmed by Certificate 13014 are now owned by several different persons and a question has arisen regarding the location of the acres and the priority dates associated with those acres.
5. The Walla Walla Irrigation District has ceased to use and maintain the Milton Ditch point of diversion and delivery system.
6. Substantial research of the decree records and ownership records has been completed by the Watermaster to determine conclusively the location of the acres, priority dates and ownership associated with the appurtenant water right.
7. The original survey used to locate the right evidenced by Certificate 13014 established the place of use. This information was verified by court decree.
8. A new map, drafted in 2004 by the Watermaster and Brent Stevenson, Manager of the Little Walla Walla Irrigation District, shows the right corresponded in shape and size to that of the previous surveys, but in slightly different locations than the authorized places of use. The actual location of the places of use as they are found on the ground remains the same. The only material difference is the manner in which they have been referenced to the public land survey. The total acreage remains the same.
9. Both the original survey and the 2004 mapping are true and accurate and both describe the water right evidenced by Certificate 13014.
10. On May 26, 2004, the owners of the lands or their representatives were given an opportunity to meet with the Watermaster in Milton-Freewater. Those in attendance were briefed regarding the information currently available. Those in attendance were asked to provide any information that may assist in clarifying the record. No information has been provided.
11. On December 20, 2004, a letter outlining the issue, a copy of Certificate 13014 and a water right map developed by the Watermaster and Brent Stevenson, Manager of the Little Walla

Walla Irrigation District, were sent to the owners of the affected properties. The landowners were asked to respond with any comments by January 14, 2005. To date, there have been no comments received.

12. On December 23, 2004, the Wastermaster met with James Goodenough, a new land owner since the May 2004 meeting, to answer his questions and explain the water right issues.
13. On January 11, 2008, a *proposed* Final Order was mailed, pursuant to 540.560(3), to the legal owner of the land to which the water right is appurtenant.
14. The mailings, as described in Finding of Fact #13, were received and the legal owners of the lands were given an opportunity to file a written request for a hearing.
15. No written request for a hearing was received by the Department.
16. In accordance with ORS 540.560, the clarified location of the water right and associated priority dates are as follows:

**Clarified Place of Use:**

Twtp	Rng	Mer	Sec	Q-Q	Tract #	Priority	Acres	Tax Lot(s)	Name
5 N	35 E	WM	12	SE SE	1	1868	1.95	5400-6100	
5 N	35 E	WM	13	NE NE	1	1868	0.20	100	Biloff, Gladys & Hagen
5 N	35 E	WM	13	NE NE	3	1906	.11	100	Biloff, Gladys & Hagen
5 N	35 E	WM	13	NE NE	1	1868	4.65	300	Goodenough, James
5 N	35 E	WM	13	NE NE	3	1906	1.33	300	Goodenough, James
5 N	35 E	WM	13	NE NE	1	1868	1.16	200-600	Charlo, Millar, Wyrick, Lyford & Schnell
5 N	35 E	WM	13	NE NE	1	1868	0.10	201	Waggoner, Lawrence & Betty
5 N	35 E	WM	13	NE NE	3	1906	0.26	201	Waggoner, Lawrence & Betty
5 N	35 E	WM	13	NE NE	1	1868	0.73	301	Anlicker, Manford, E.
5 N	35 E	WM	13	NE NE	2	1898	2.49	301	Anlicker, Manford, E
5 N	35 E	WM	13	NE NE	3	1906	3.30	301	Anlicker, Manford, E
<b>Total acres</b>							<b>16.28</b>		


**Conclusions of Law**

The clarification to the place of use of Certificate 13014 is consistent with ORS 540.560.

**Now, therefore, it is ORDERED:**

1. The clarification of the place of use of Certificate 13014, as listed in Finding of Fact #16 provides an accurate and clarified accounting of the place of use of Certificate 13014.
2. This order shall become an addendum to and shall be filed with water right Certificate 13014.
3. This addendum shall constitute the description of the land to which the water right is appurtenant.
4. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 13014 and any related decree.
5. The issuance of this final order does not confirm the status of the water right in regard to the provisions of ORS 540.610 pertaining to forfeiture or abandonment.

Dated at Salem, Oregon this 21<sup>st</sup> day of February, 2008.

  
Phillip C. Ward, Director

Mailing Date: FEB 22 2008