

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

In the Matter of Transfer Application                    )  
T-14375, Malheur County                                    )  
  )  
  )  
  )  
  )

FINAL ORDER APPROVING A DISTRICT  
PERMANENT TRANSFER FOR CHANGES IN  
PLACE OF USE AND PLACE OF USE CHANGE  
DUE TO NON-USE

**Authority**

Oregon Revised Statutes (ORS) 540.570 to 540.580 establish the process in which a district may submit a request to transfer a water right within district boundaries. Oregon Administrative Rule (OAR) Chapter 690, Division 385 implements the statutes and provides the Department’s procedures and criteria for evaluating district transfer applications.

Oregon Revised Statutes (ORS) 540.572 to 540.580 establish the process in which a district may submit a request to permanently transfer a water right within district boundaries whenever land within the legal boundaries of a district is no longer irrigated or susceptible of irrigation. Oregon Administrative Rules (OAR) 690-385-5000 to 690-385-5900 implement the statutes and provide the Department’s procedures and criteria for evaluating district permanent transfer applications for non-use.

**Applicant**

OWYHEE IRRIGATION DISTRICT  
422 THUNDEREGG BLVD  
NYSSA, OR 97913

**Findings of Fact**

1. On October 28, 2022, and November 10 & 17, 2022, Owyhee Irrigation District (OID) sent by certified mail, notices advising five (5) water users that OID’s records show that a portion or all of the user’s water right had not been beneficially used for the previous four consecutive years, and furthermore, if the user does not use the water for a fifth consecutive year, the district may petition the Department for a transfer of water right due to non-use. All persons holding a recorded security interest in the appurtenant lands were also notified. The contents of the notices meet the requirements of ORS 540.572(2) and OAR 690-385-5100.

This final order in a contested case and 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(2) 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.

Within 20 days after this final order is issued (i.e., mailing date), the district or any protestant may file with the commission exceptions to the final order. The commission shall issue an order granting or denying the exceptions within 30 days after receiving the exceptions. ORS 540.580(10).



2. On October 30, 2023, OID sent by certified mail, notices to the same five (5) water users stating OID's intent to confiscate the water right appurtenant to their lands due to five consecutive years of non-use and file a petition with the Department to transfer the unused portions of the water right to other lands in the district. The notice also advised the water users of their opportunity to object in writing within a 30-day period that began October 30, 2023. All persons holding a recorded security interest in the affected lands were also notified. The contents of the notices meet the requirements of ORS 540.572(3)-(4) and OAR 690-385-5100.
3. OID did not submit to OWRD any written objections received by the district from any water user within 30 days of the notice described in Finding of Fact #2.
4. On December 27, 2023, OID sent by certified mail, notices to the water users of the district whose right of record is to be transferred and to those who are to receive the transferred right. The notice informed them that OID filed a petition with the Department to remove water rights due to five consecutive years of non-use. Copies of the permanent transfer application (petition) and maps submitted to the Department were included in the notice. The notice also informed the water users of their opportunity to submit to the Department, a protest consistent with OAR 690-385-5700 against approval of the permanent transfer. The contents of the notice meet the requirements of ORS 540.576 and OAR 690-385-5400. No protests were received within the 60-day protest period that began December 27, 2023.
5. OID sent the district transfer application to the Department by certified mail on December 27, 2023, and it was date-stamped by the Department on January 2, 2024. The district filed the transfer application to permanently change the place of use under Certificate 75691. The application includes lands to be evaluated under ORS 540.572 (3.61 acres) for non-use, and lands not involved in a non-use process (28.87 acres) to be evaluated under ORS 540.580. The Department assigned the application number T-14375.
6. Notice of the District Permanent Transfer Application for Non-Use for 3.61 acres was published on January 9, 2024, pursuant to ORS 540.580 and OAR 690-385-5500 with a 30-day comment period. No comments were filed in response to the notice.
7. Notice of the District Permanent Transfer Application for 25.87 acres not involved in a non-use process was published on January 9, 2024, pursuant to ORS 540.580 and OAR 690-385-4400. No comments were filed in response to the notice.
8. The U.S. Bureau of Reclamation was notified of the transfer application on January 9, 2024, no comments were received within 90 days of the notification.
9. On January 10 & 15, 2024, and February 5, & 27, 2024, OID submitted revised place of use tables and a map to reflect the withdrawal of 2.7 acres from the transfer and to correct scrivener's errors on maps.
10. The portion of the first right to be transferred is as follows:  
**Certificate:** 75691 in the name of the UNITED STATES OF AMERICA; BUREAU OF RECLAMATION (perfected under Permit S-8171)  
**Use:** IRRIGATION of 29.48 acres



**Priority Date:** FEBRUARY 15, 1916, for stored water and AUGUST 19, 1924, for direct flow

**Rate / Duty:** The amount of water from direct flow of the Owyhee River used for irrigation shall be limited to 1/60<sup>th</sup> of one cubic foot per second (cfs) per acre, or its equivalent for each acre irrigated and shall be further limited to 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year. The amount of water from direct flow of the Owyhee River together with water stored in Owyhee Reservoir and with the amount secured under any other water right existing for the same lands, shall be limited to a diversion of not to exceed 6.7 acre-feet for each acre irrigated during the irrigation season of each year and shall conform to any reasonable rotation system as may be ordered by the proper state officer.

**Sources:** The OWYHEE RIVER and water stored in OWYHEE RESERVOIR, constructed under Permit R-599, tributaries of the SNAKE RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
22 S	45 E	WM	20	NW SE	OWYHEE DAM: 200 FEET SOUTH AND 2010 FEET WEST FROM THE COMMON CORNER CORNER OF SECTIONS 20 AND 21
22 S	45 E	WM	20	NW SE	GLORY HOLE SPILLWAY: 200 FEET SOUTH AND 1680 FEET WEST FROM THE COMMON CORNER CORNER TO SECTIONS 20 AND 21
22 S	45 E	WM	21	NW SW	TUNNEL 1: 495 FEET EAST AND 264 FEET SOUTH FROM THE COMMON CORNER CORNER TO SECTIONS 20 AND 21

**Authorized Place of Use:**

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax	Water User	Notice
16 S	47 E	WM	34	NW NW	0.51	700	ALLEN	23-71800
17 S	46 E	WM	26	SW NE	2.43	6300	DAVIS	23-66600
17 S	46 E	WM	26	SE NE	3.57	6300	DAVIS	23-66600
17 S	47 E	WM	8	SE NE	0.50	700	ANDEL	23-72302
* 17 S	47 E	WM	17	SW NW	0.67	700	GROVE	23-64505
* 17 S	47 E	WM	20	SW SW	0.40	500	NUNGARAY	23-62512
* 17 S	47 E	WM	31	NE NE	0.40	1400	PLACE	23-59100
18 S	46 E	WM	32	NE SE	0.09	800	ENSZ	23-44900
18 S	46 E	WM	32	SE SE	0.15	800	ENSZ	23-44900
18 S	46 E	WM	33	NW NW	1.08	600	TSCHIDA	23-48100
18 S	46 E	WM	33	SW NW	2.83	700	HUSSEY	23-50000
18 S	46 E	WM	34	NW SW	0.15	900	HALL	23-43400
18 S	46 E	WM	34	SW SW	1.63	900	HALL	23-43400
18 S	46 E	WM	35	NW NW	3.96	300	VAN ENGEN	23-41800
18 S	46 E	WM	35	SW NW	1.62	300	VAN ENGEN	23-41800
18 S	46 E	WM	35	NW SW	6.65	300	VAN ENGEN	23-41800
18 S	46 E	WM	35	SW SW	0.70	300	VAN ENGEN	23-41800
* 20 S	46 E	WM	4	SE SW	1.70	800	MCCLAIN	23-35400
* 20 S	46 E	WM	9	NE NW	0.44	200	GRIMALDO	23-34100
<b>Total</b>					<b>29.48</b>			

\* Lands totaling 3.61 acres involved in transfer due to non-use



11. Transfer Application T-14375 proposes to change the place of use to:

**Proposed Place of Use:**

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Water User	Notice
16 S	47 E	WM	34	NW NW	0.51	700	ALLEN	23-71800
17 S	46 E	WM	26	NE SE	6.00	6500	DAVIS	23-62900
* 17 S	47 E	WM	29	NE NW	1.07	1107	KING	23-58201
* 18 S	46 E	WM	27	NW NW	0.94	400	POUNDS	23-41500
18 S	46 E	WM	32	SE SE	0.24	800	ENSZ	23-44900
18 S	46 E	WM	33	NW NW	1.08	600	TSCHIDA	23-48100
18 S	46 E	WM	33	SW NW	2.83	700	HUSSEY	23-50000
18 S	46 E	WM	34	NW SW	1.27	900	HALL	23-41800
* 18 S	46 E	WM	34	SW SW	0.91	900	HALL	23-43400
18 S	46 E	WM	35	NW NW	1.56	300	VAN ENGEN	23-41800
18 S	46 E	WM	35	SW NW	1.69	300	VAN ENGEN	23-41800
18 S	46 E	WM	35	NE SW	3.05	300	VAN ENGEN	23-41800
18 S	46 E	WM	35	NW SW	6.63	300	VAN ENGEN	23-41800
* 20 S	46 E	WM	5	SE SW	1.70	801	JONES	23-23003
<b>Total</b>					<b>29.48</b>			

Portions of these Lands totaling 3.61 acres are involved in transfer due to non-use

**Transfer Review Criteria for Lands Subject to Non-Use (3.61 acres) Transferred under ORS 540.572-540.580; OAR 690-358-5000 through 690-385-5800**

12. OID is managed by a full-time manager. *ORS 540.572(1)(a) and OAR 690-385-5000(1).*
13. OID is implementing an approved water conservation plan. *ORS 540.572(1)(b) and OAR 690-385-5000(2).*
14. Transfer T-14375 involves the use of water on lands located within the boundaries of OID. *ORS 540.572(1) and OAR 690-385-5000(3).*
15. OID determined the users had not made beneficial use of water for four successive years as shown in Findings of Fact #1. *OAR 690-385-5000(4).*
16. Based on the evidence contained in the letters and required notices, water was not put to beneficial use during the 2019, 2020, 2021, 2022, and 2023 irrigation seasons on the authorized lands designated in Finding of Fact # 10, above, as lands involved in the transfer due to non-use. *OAR 690-385-5000(4).* These authorized places of use are “no longer irrigated” as defined in *ORS 540.572(7).*
17. The district provided notice to the users of their intent to transfer and provided opportunity to resolve the matter in the manner described by *ORS 540.272* and *OAR 690-385-5400* and *690-385-5600*. *OAR 690-385-5000(5).* [See Findings of Facts 1-4.]
18. OID filed Transfer Application T-14375 prior to the end of the fifth year of non-use as required by *OAR 690-385-5600(5).*
19. Transfer application T-14375 meets the application standards of *ORS 540.574* and *OAR 690-385-5200*.
20. The maps meet the standards of *ORS 540.574(1)* and *OAR 690-385-5300*.



21. The water rights are subject to transfer as defined in OAR 690-385-0100(17). *OAR 690-385-5600(1).*
22. The proposed changes in place of use will not result in enlargement of the rights as defined in OAR 690-385-0100(4). *OAR 690-385-5600(2).*
23. The proposed changes in place of use will not result in injury to other water rights as defined in OAR 690-385-0100(6). *OAR 690-385-5600(3).*

***Transfer Review Criteria for Lands (25.87 acres) Transferred under ORS 540.580 and OAR 690-385-4000.***

24. The Department finds that the portion of the district permanent transfer application submitted according to ORS 540.580 and OAR 690-385-4000, contains the information required under OAR 690-385-4200 and OAR 690-385-2000, and includes maps meeting the requirements of OAR 690-385-4300 and OAR 690-385-2200.
25. The Department finds that the proposed district permanent transfer meets all the criteria set forth in ORS 540.580 and OAR 690-385-4000.
26. The water right is subject to transfer as defined in OAR 690-385-0100(17).
27. The proposed change in place of use will not result in enlargement of the rights as defined in OAR 690-385-0100(4).
28. The proposed change in place of use will not result in injury to other water rights as defined in OAR 690-385-0100(6).
29. Any other applicable requirements for district permanent water right transfers are met as required in OAR 690-385-4500.

**Conclusions of Law**

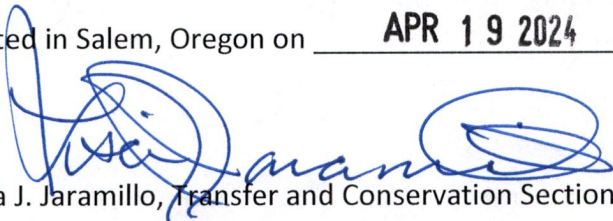
The proposed changes in place of use as proposed in Transfer Application T-14375 satisfy the requirements of ORS 540.572 to 540.580, OAR 690-385-4500, OAR 693-385-5000, and 690-385-5600.

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

1. The proposed change in place of use to the water right evidenced by Certificate 75691 is approved.
2. The place of use from which the water right is transferred off by Transfer T-14375 shall no longer be irrigated and is cancelled from Certificate 75691.
3. The right to the use of the water at the place of use NOT modified by this order is restricted to beneficial and is subject to all other conditions and limitations contained in Certificate 75691, and any related decree.
4. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
5. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2025**. A Claim of Beneficial Use shall be submitted by OID to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.

6. Water right Certificate 75691 is modified. After satisfactory proof of completion has been determined by the Department, a superseding water right certificate will be issued when the Department determines it is necessary for record keeping.

Dated in Salem, Oregon on APR 19 2024



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
Douglas E. Woodcock, Acting Director  
Oregon Water Resources Department

Mailing Date: APR 22 2024