

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

JEFFERSON COUNTY

IN THE MATTER OF CANCELLATION OF A)
PORTION OF A PERFECTED AND DEVELOPED) FINAL ORDER
WATER RIGHT, CLARIFICATION OF POINT OF)
DIVERSION AND CORRECTION OF)
CERTIFICATE 68373)

ORS 540.621 directs the Commission to enter an order canceling a water right whenever the owner of a perfected and developed water right certifies under oath to the Commission that the water right has been abandoned and the owner desires to cancel the right. ORS 540.560 allows the Commission to enter an order to clarify the description of the water right in a certificate to assist with management and delivery of the water under the right.

Findings of Fact

1. On August 17, 2005, the Department received an affidavit from Cecil W. and Sally A. Drinkward, 01920 SW Greenwood R., Portland, Oregon 97219, stating that they are the owners of land in Township 13 South, Range 9 East, Section 15, W.M., to which 19.0 acres of the water right evidenced by Certificate 68373, State Record of Water Right Certificates, is appurtenant. The affidavit further states that a portion of the water right appurtenant to 11.3 acres of the property has been abandoned and requests that that portion of the right be canceled.
2. Pursuant to OAR 690-017-002(a), the Department has determined that Cecil W. and Sally A. Drinkward are the owners of record, as established by county deed records, of property to which a portion of the water right evidenced by Certificate 68373 is appurtenant in current tax lots 300, 302 and 304 in T13S, R9E, Section 15.
3. The portion of Certificate 68373 which has been abandoned is for the use of 0.19 cfs for irrigation, domestic and stock use on 11.3 acres located as follows:

Township	Range	Meridian	Section	¼ ¼	Tax Lot	Acres
13 S	9 E	W.M.	15	NW NW	300, 302, 304	11.3

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either 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.

Clarification of Point of Diversion (POD)

4. The Deschutes River Decree and decree map do not specifically identify a particular POD for this property. Claim #59 of Martin Hansen (Deschutes River Modified Findings and Decree, Vol 9, page 448) simply describes that the land is irrigated "by means of a small ditch from Lake Creek". The original certificate 13625 for this land did not specify a POD location.
5. Certificate 49695 was issued as a remaining right certificate to describe the lands not cancelled by Special Order Vol. 33, p. 60, and affected by the POD change in T-3821 (Special Order Vol. 33, pp. 608-609). Certificate 49695 specified a POD located in the SE¼ SE¼, Section 16, T13S, R9E, W.M.; 2320 feet South and 1120 feet West from the NE Corner of Section 16, for the remaining lands. That POD location was then carried forward on superseding Certificate 68373, that was issued for the portion of the right not cancelled by Special Order Volume 45, page 55, and Volume 47, page 283.
6. The point of diversion location specified in Certificate 68373 appears not to be physically suitable for irrigating acreage in the NW¼ NW¼ of Section 15, T13S, R9E, WM owned by the Drinkwards.
7. Because the portion of the right on the Drinkwards' lands was not considered during the proceedings which resulted in the cancellations and previous transfer, and the water right holder was not offered an opportunity to request reconsideration of remaining right certificates 49695 and 68373 when they were issued, the POD listed on Certificate 68373 is not binding upon the portion of the right affected by this order.
8. Department records do not contain sufficient information about the original POD for lands in the NW¼ NW¼ of Section 15 to conclude that it was significantly different from the POD location shown in the map submitted with the affidavit of partial cancellation. Therefore, this order clarifies the location of the authorized POD for the remaining 7.7 acres of the right on the Drinkward property as:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
13	S	9	E	W.M.	15	NW NW	270 feet South and 700 feet East of the NW Corner of Section 15

Correction of Scrivener's Error

9. Certificate 68373 allows the use of 1/60 cubic foot per second (cfs) per acre of water from Lake Creek, tributary to Metolius River, for irrigation, domestic and stock use on 30 acres in Section 15, and 39.41 acres in Section 16, T13S, R9E, WM. The date of priority is 1888.
10. Certificate 68373 states the total acres under the right to be 39.41, however the certificate lists a place of use that encompasses 69.41 acres. The correct number of acres allowed by the water right evidenced by Certificate 68373 is 69.41. This order corrects the error in total acreage allowed under the right.

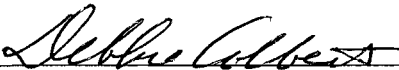
Conclusions of Law

The Director of the Water Resources Department concludes that a portion of the right evidenced by Water Right Certificate 68373 has been abandoned, and in accordance with the provisions of ORS 540.621 shall be canceled. The point of diversion location for 7.7 acres in Section 15 may be clarified as stated in Finding #8 above, and the scrivener's error in the statement of acreage under the right may be corrected by issuance of a new certificate.

Now, therefore, it is ORDERED:

1. Certificate 68373 is canceled.
2. The portion of the right appurtenant to 11.3 acres listed in Finding #8 is cancelled.
3. Certificate 81535 is issued to describe the remaining portion of the perfected and developed water right NOT canceled by the provisions of this order and the provisions of an order of the Water Resources Director entered at Special Order Volume 66, Pages 146-149 approving T-9807, to clarify the locations of the points of diversion, and to correct the total number of acres remaining under the right.

Dated at Salem, Oregon this 16th day of September, 2005.

FOR 
Phillip C. Ward, Director