

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

In the Matter of the Completion of a Change) DETERMINATION OF SATISFACTORY PROOF
in Place of Use Under Transfer Application) OF COMPLETION FOR A PERMANENT
T-11673, Jackson County) DISTRICT TRANSFER
)
) LOSS OF RIGHTS and NOTICE of LOSS

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION DUE TO LOSS OF RIGHT

The district and affected water user have a period of 60 days from the date this DETERMINATION OF SATISFACTORY PROOF OF COMPLETION was sent within which to request the Department reconsider the contents of this order of DETERMINATION OF SATISFACTORY PROOF OF COMPLETION. If no request for reconsideration is received within the 60-day period, the Department may issue or modify the water right certificate pursuant to ORS 540.530(2)(a) and OAR 690-385-7600 consistent with the terms of this DETERMINATION OF SATISFACTORY PROOF OF COMPLETION.

Authority

Oregon Administrative Rule (OAR) 690-385-7400 describes the documentation the district must file with the Department in order to provide proof of use.

OAR 690-385-7600 provides in pertinent part that satisfactory proof shall be (a) a determination by the Department that application of water to beneficial use under the terms of the transfer final order was completed to the extent authorized, or (b) a determination by the Department that the application of water to a beneficial use under the terms of the transfer final order was completed to an extent less than authorized.

OAR 690-385-7100(2) provides that any part of a transferred water use that is not used beneficially under the terms of the transfer final order, or within any extension of time allowed for completion, is deemed lost and constitutes a loss of water right.

Oregon Revised Statute (ORS) 540.530(2)(a) and OAR 690-385-7600 authorize the Department to issue or modify a certificate of water right upon satisfactory proof of completion of the change or changes authorized by a final order approving a permanent district transfer.

Applicant

MEDFORD IRRIGATION DISTRICT
PO BOX 70
JACKSONVILLE, OR 97530

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482. Pursuant to ORS 183.482, ORS 536.075 and OAR 137-003-0675, you may petition for judicial review and 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.

Findings of Fact

1. On April 15, 2014, the Department signed a final order, which was mailed on April 23, 2014, and recorded in Special Order Volume 92, Pages 176-184, approving Transfer Application T-11673 involving Certificates 83381, 83383, 80578, 83728, and Permit S-4951. The final order established October 1, 2015, as the date for completion of the authorized changes in place of use.
2. On January 9, 2020, the Department signed a correcting superseding final order, which was mailed on January 9, 2020, and recorded in Special Order Volume 114, Pages 789-798, to correct errors in the final order recorded in Special Order Volume 92, Pages 176-184.
3. On November 14, 2019, the Department received a Claim of Beneficial Use (CBU) and associated maps from the applicant for Transfer Application T-11673.
4. On February 24, 2020, the Department received an amended Claim of Beneficial Use (CBU) and associated maps from the applicant for Transfer Application T-11673 satisfying the requirements for proof under OAR 6902-385-7400.
5. The Department reviewed the CBU and map(s) submitted by the applicant for Transfer Application T-11673.
6. The CBU did not contain a map of the point of diversion from the source. However, since the transfer involved the transfer of places of use only within an irrigation district and did not involve a change in the point of diversion, the existing maps on file with the Department are sufficient to identify the point of diversion from the source.
7. The proposed place of use for primary irrigation under Certificate 83381, and supplemental irrigation under Certificate 83383 and Permit S-4951, as approved the correcting superseding final order for Transfer Application T-11673, and as recorded in Special Order Volume 114, Pages 789-798 is shown in Table 1, below:

Table 1:

PRIMARY AND SUPPLEMENTAL IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Water User	Notice #
38S	1W	WM	15	NE NW	4.50	1400	ROGUE INOVATION LLC	13-03
36S	1E	WM	31	NE SE	7.65	13100	J & M RENTALS LLC	13-01
37S	2W	WM	27	NW SW	0.75	1401	JOHNSON	13-02
37S	2W	WM	8	NW NE	4.00	500	MITCHELL	13-04
Total:					16.90			

8. The proposed place of use for Certificate 80578 as approved the final order for Transfer Application T-11673, and as recorded in Special Order Volume 114, Pages 789-798 is shown in Table 2, below:

Table 2:

SUPPLEMENTAL IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Water User	Notice #
38S	1W	WM	15	NE NW	4.50	1400	ROGUE INOVATION LLC	13-03
36S	1E	WM	31	NE SE	1.30	13100	J & M RENTALS LLC	13-01
37S	2W	WM	27	NW SW	0.75	1401	JOHNSON	13-02
37S	2W	WM	8	NW NE	4.00	500	MITCHELL	13-04
Total:					10.55			

9. The proposed place of use for Certificate 83728 as approved the final order for Transfer Application T-11673, and as recorded in Special Order Volume 114, Pages 789-798 is shown in Table 3, below:

Table 3:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Water User	Notice #
36S	1E	WM	31	NE SE	0.70	13100	J & M RENTALS LLC	13-01
38S	1W	WM	15	NE NW	1.90	1400	ROGUE INOVATION LLC	13-03
37S	2W	WM	27	NW SW	0.75	1401	JOHNSON	13-02
37S	2W	WM	8	NW NE	4.00	500	MITCHELL	13-04
Total:					7.35			

Loss of Rights Determined

10. Information in the CBU indicates a portion of the transfer for Certificates 83381, 83383, 80578, and 83728 was completed to an extent less than authorized in the transfer. The portion of the proposed place of use in Transfer T-11673 not perfected and therefore not confirmed in this order is described in Table 4, below.

Table 4:

IRRIGATION and SUPPLEMENTAL IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Water User	Notice
37S	2W	WM	8	NW NE	4.00	500	MITCHELL	13-04

11. Pursuant to OAR 690-385-4580, issuance of a final order approving a permanent change in place of use terminates the right to use water at the previously authorized place of use. Thus, failure to make proof in a CBU on a proposed place of use results in loss of an equivalent portion of the right that was completed to an extent less than authorized in the transfer.
12. Certificates 83381 and 83383 are a deficient water rights; they each authorize a rate of water that is less than the full rate allowed at 1/100 cubic foot per second (cfs) per acre. The

total rate of water on each certificate (88.87 cfs) divided by the number of remaining acres (12,198 ac) after loss of 4.0 acres (as described in Findings of Fact 10 and 11, above) does not exceed the authorized limit of 1/100 (.01) cfs per acre. Therefore, the loss of 4.0 acres does not reduce any rate of water on Certificates 83381 and 83383.

13. Certificate 80578 is a deficient water right; it authorizes a rate of water that is less than the full rate allowed at 1/80 cubic foot per second (cfs) per acre. The total rate of water on the certificate (60.0 cfs) divided by the number of remaining acres (7,681.7 ac) after loss of 4.0 acres (as described in Findings of Fact 10 and 11, above) does not exceed the authorized limit of 1/80 (.0125) cfs per acre. Therefore, the loss of 4.0 acres does not reduce any rate of water on Certificate 80578.
14. The combined uses of water under Permits S-25915 (now Certificates 83727, 83728 and 83729 all for irrigation), and S-25916 (now Certificate 92917 for generation of electric power) are limited to a combined maximum of 446 cfs from several sources. The irrigation uses are limited to a diversion of 1/40 of one cubic foot per second per acre. The total number of combined remaining acres under the three certificates for irrigation, after the loss of 4.0 acres on Certificate 83728 (as described in Findings of Fact 10 and 11, above) is 24,330.37 acres, being 3413.0 acres for primary irrigation and 13,207.77 acres for supplemental irrigation under Certificate 83727, 4165.5 acres for supplemental irrigation under Certificate 83728, and 3513.1 acres for supplemental irrigation under Certificate 83729. The total rate of water on the three combined water rights (446 cfs) divided by the number of combined remaining acres (24,330.37 acres) not exceed the authorized limit of 1/40 (0.025) cfs per acre. Therefore, the loss of 4.0 acres does not reduce any rate of water under Certificate 83728.

Summary Findings of Fact

15. Based on information in the CBU and on the final proof maps, beneficial use under T-11673 has been demonstrated for the place of use for primary irrigation under Certificate 83381, and supplemental irrigation under Certificate 83383 and Permit S-4951, as shown in Table 5, below.

Table 5:

PRIMARY AND SUPPLEMENTAL IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Water User	Notice #
38S	1W	WM	15	NE NW	4.50	1400	ROGUE INOVATION LLC	13-03
36S	1E	WM	31	NE SE	7.65	13100	ANDERSON	13-01
37S	2W	WM	27	NW SW	0.75	1401	JOHNSON	13-02
Total:					12.90			

16. Based on information in the CBU and on the final proof maps, beneficial use under T-11673 has been demonstrated for the place of use for supplemental irrigation under Certificate 80578, as shown in Table 6, below:

Table 6:

SUPPLEMENTAL IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Water User	Notice #
38S	1W	WM	15	NE NW	4.50	1400	ROGUE INOVATION LLC	13-03
36S	1E	WM	31	NE SE	1.30	13100	J & M RENTALS LLC	13-01
37S	2W	WM	27	NW SW	0.75	1401	JOHNSON	13-02
Total:					6.55			

17. Based on information in the CBU and on the final proof maps, beneficial use under T-11673 has been demonstrated for the place of use for supplemental irrigation under Certificate 83728, as shown in Table 7, below:

Table 7:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Water User	Notice #
36S	1E	WM	31	NE SE	0.70	13100	J & M RENTALS LLC	13-01
38S	1W	WM	15	NE NW	1.90	1400	ROGUE INOVATION LLC	13-03
37S	2W	WM	27	NW SW	0.75	1401	JOHNSON	13-02
Total:					3.35			

18. Based on the review of evidence submitted by the applicant, the Department finds the application of water to a beneficial use under the terms of the transfer final order for T-11673 was completed to an extent less than authorized in the transfer. The Department finds that beneficial use was made to the extent shown in Tables 5, 6, and 7, above.

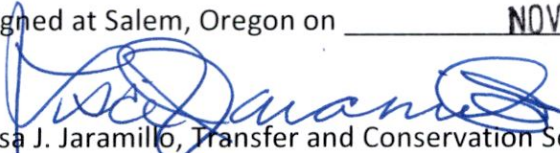
Conclusions of Law

1. The Applicant has submitted proof of use pursuant to OAR 690-385-7400.
2. Application of water to a beneficial use under the terms of the transfer final order has been completed to an extent less than authorized in the transfer, but made to the extent shown in Tables 5, 6 and 7, above.
3. The portions of the rights not perfected, as described in Finding of Facts #10, 11, 12, 13, and 14 are lost.
4. The applicant has demonstrated proof of completion under T-11673, except for the portion identified in Conclusion of Law #3, to the satisfaction of the Department.
5. The Department is authorized to issue or modify certificates of water rights involved in Transfer T-11673 consistent with this determination of satisfactory proof of completion.

Now, therefore, it is ORDERED:

Water right Certificates 83381, 83383, 80578, 87328, and Permit S-4951 are modified as shown in Tables 5, 6 and 7, above. The Department will issue superseding certificates describing these rights when it determines it is necessary for record keeping.

Signed at Salem, Oregon on NOV 04 2020.



Lisa J. Jaramillo, Transfer and Conservation Section Manager for
THOMAS M. BYLER, DIRECTOR
Oregon Water Resources Department

Mailing Date: NOV 05 2020