BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application)	FINAL ORDER APPROVING
T-12849, Malheur County)	A DISTRICT PERMANENT TRANSFER
•)	FOR PLACE OF USE AND PARTIAL
	ŕ	CANCELLATION OF A WATER RIGHT

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.

Applicant

OWYHEE IRRIGATION DISTRICT 17 SOUTH FIRST STREET NYSSA, OR 97913

Findings of Fact

- 1. On February 9, 2018, Owyhee Irrigation District (OID) filed a completed district transfer application to permanently change the places of use under Certificates 75691, 75671, 75708, and 75689. The Department assigned the application number T-12849.
- 2. In addition, OID requested the cancellation of the portion of Certificates 75708 and 75689 for supplemental irrigation which are layered with primary irrigation on certain authorized places of use subject to this transfer.
- 3. Notice of the District Permanent Transfer Application was published on February 20, 2018, pursuant to ORS 540.580 and OAR 690-385-4400. No comments were filed in response to the notice.
- 4. The U.S. Bureau of Reclamation was notified of the transfer application on February 20, 2018; no comments were received within 60 days of the notification.
- 5. On April 2, 2018, the applicant provided clarification to the transfer application.
- 6. 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 20.41 acres

This is an order in other than a 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 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).

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

Rate / Duty: The amount of water from direct flow of the Owyhee River used for irrigation shall be limited to 1/60th 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.

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 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 TO SECTIONS 20 AND 21
22 S	45 E	WM	21		TUNNEL 1: 495 FEET EAST AND 264 FEET SOUTH FROM THE COMMON CORNER TO SECTIONS 20 AND 21

Authorized Place of Use:

					IRI	RIGATION	V	
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Water User	Notice
17 S	46 E	WM	26	SW SE	2.33	7000	JOYCE	17-60202
17 S	46 E	WM	26	SE SE	2.63	7100	JOYCE	17-60202
17 S	47 E	WM	3	NW NW	0.30	100	RANDALL TRUST	17-75101
17 S	47 E	WM	8	SE SW	0.60	1000	TSCHIDA	17-77200
17 S	47 E	WM	16	NW NW	4.10	700	WALKER	17-77701
18 S	47 E	WM	4	NW NW	1.40	1600	LEBOUTILLIER	17-152301
19 S	46 E	WM	24	SW NE	3.00	700	MITCHELL	17-83701
20 S	45 E	WM	13	NW NE	2.50	1300	BANCROFT	17-24200
20 S	46 E	WM	17	SW SE	0.30	201	CLEAVER	17-24501
20 S	46 E	WM	17	SE SE	1.9	201	CLEAVER	17-24501
20 S	46 E	WM	17	SE SE	0.9	200	CLEAVER	17-24501
21 S	46 E	WM	11	SE SW	0.45	1600	MARTIN	17-6500
				Total	20.41			

7. Transfer Application T-12849 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				
17 Ş	46 E	WM	26	SE SW	1.80	7000	JOYCE	17-60202				
17 S	46 E	WM	26	SW SE	3.16	7000	JOYCE	17-60202				
17 S	47 E	WM	3	NW NW	0.30	100	RANDALL TRUST	17-75101				
17 S	47 E	WM	8	NE SW	0.60	1000	TSCHIDA	17-77200				
20 S	45 E	WM	12	SW SE	2.50	1300	BANCROFT	17-24200				

Page 2 of 6

IRRIGATION											
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Water User	Notice			
20 S	45 E	WM	13	NE NE	4.00	1300	BANCROFT	17-24200			
20 S	45 E	WM	13	NW NE	4.50	1300	BANCROFT	17-24200			
20 S	46 E	WM	17	NE SE	1.20	201	CLEAVER	17-24501			
20 S	46 E	WM	17	SW SE	1.90	201	CLEAVER	17-24501			
21 S	46 E	WM	11	SE SW	0.45	1600	MARTIN	17-6500			
	•			Total:	20,41						

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

Partial Cancellation of Two Water Rights

14. The portion of the first right to be partially canceled is as follows:

Certificate: 75708 in the name of OWYHEE IRRIGATION DISTRICT (perfected under

Permit S-1786)

Use: SUPPLEMENTAL IRRIGATION of 1.4 acres

Priority Date: JULY 8, 1913

Limit / Duty: The amount used for irrigation together with the amount secured under any

other right existing for the same lands, is limited to a diversion of ONE-

EIGHTIETH of one cubic foot per second (or its equivalent)

Source: The SNAKE RIVER, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	G-Lot	Measured Distances
20 S	47 E	WM	18	NE SW	3	DUNAWAY PUMPING PLANT; River Mile 394.2

Authorized Place of Use:

	SUPPLEMENTAL IRRIGATION											
Twp	Twp Rng Mer Sec Q-Q Acres Tax Lot Water User Notice											
18 S	18 S 47 E WM 4 NW NW 1.4 1600 LEBOUTILLIER 17-152301											

- 15. The portion of the water right as evidenced by Water Right Certificate 75708 which has been abandoned is for supplemental irrigation on certain lands described in Finding of Fact #6. Water use is no longer authorized on the abandoned portion of the Certificate 75708 at the place of use described in Finding of Fact #14, above. The total quantity of water available under Certificate 75708 is reduced by 0.02 cubic foot per second.
- 16. The portion of the second right to be partially canceled is as follows:

Certificate: 75671 in the name of OWYHEE IRRIGATION DISTRICT (perfected under

Permit S-1233)

Use: SUPPLEMENTAL IRRIGATION of 3.0 acres

Priority Date: JULY 8, 1913

Limit /- Duty: The amount used for irrigation together with the amount secured under any

other right existing for the same lands, is limited to a diversion of ONE-

EIGHTIETH of one cubic foot per second (or its equivalent)

Source: The SNAKE RIVER, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	G-Lot	Measured Distances	
20 S	47 E	WM	18	NE SW	3	DUNAWAY PUMPING PLANT; River Mile 394.2	

Authorized Place of Use:

	SUPPLEMENTAL IRRIGATION											
Twp Rng Mer Sec Q-Q Acres Tax Lot Water User Notice												
19 S	46 E	WM	24	SW NE	3.0	700	MITCHELL	17-83701				

17. The portion of the water right as evidenced by Water Right Certificate 75671 which has been abandoned is for supplemental irrigation on certain lands described in Finding of Fact #6. Water use is no longer authorized on the abandoned portion of the Certificate 75671 at the place of use described in Finding of Fact #16, above. The total quantity of water available under Certificate 75671 is reduced by 0.04 cubic foot per second.

Regarding Certificate 75689 for Supplemental Irrigation; Forfeiture for Non-use

- 18. As stated in OAR 690-385-0100(15) "[a] supplemental water right is an additional appropriation of water to make up a deficiency in supply from an existing water right. A supplemental water right is used in conjunction with a primary right." Certificate 75689 has been used in conjunction with primary irrigation under Certificate 75691 on certain lands described in Finding of Fact #6. Once transfer T-12849 is approved by this Final Order, in absence of a primary underlying water right, the lands listed below in Finding of Fact #19 will be subject to forfeiture and cancellation proceedings under ORS 540.610 if not used for five consecutive years.
- 19. The portion of the Certificate 75689 for supplemental irrigation used in conjunction with Certificate 75691 for primary irrigation involved in Transfer T-12553.

Certificate: 75689 in the name of the UNITED STATES OF AMERICA; BUREAU OF RECLAMATION (perfected under Permit S-24285)

Use: SUPPLEMENTAL IRRIGATION of 1.4 acres

Priority Date: OCTOBER 1, 1951

Rate: 0.04 CUBIC FOOT PER SECOND

Limit / Duty: The amount of water used for irrigation, together with the amount secured

under any other right existing for the same lands, is limited to ONE-FORTIETH of one cubic foot per acre, or its equivalent for each acre

irrigated, and shall be further limited to a diversion of not to exceed 6.7 acre-

feet for each acre irrigated during the irrigation season of each year.

Source: The SNAKE RIVER, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	G-Lot	Measured Distances
20 S	47 E	WM	18	NE SW	3	DUNAWAY PUMPING PLANT; River Mile 394.2

Authorized Place of Use:

	SUPPLEMENTAL IRRIGATION											
Twp	Twp Rng Mer Sec Q-Q Acres Tax Lot Water User Notice											
18 S	47 E	WM	4	NW NW	1.40	1600	LEBOUTILLIER	17-152301				

Conclusions of Law

The proposed changes in place of use as proposed in Transfer Application T-12849 comply with and satisfy the requirements of ORS 540.580 and OAR 690-385-4500, and the abandoned portions of Certificates 75671 and 75708 should be cancelled.

Now, therefore, it is ORDERED:

- 1. The portions of Certificates 75671 and 75708 appurtenant to the lands described in Finding of Fact #14 and 16, respectively, are cancelled.
- 2. Certificates 75671 and 75708 shall be modified to reflect the cancellation of 3.0 and 1.4 acres, respectively, as described in Finding of Facts #14, #15, #16 and #17.
- 3. The proposed change in place of use to the water rights evidenced by Certificate 75691 is approved.
- 4. The right to the use of the water is restricted to beneficial use at the place of use not modified in this order and is subject to all other conditions and limitations contained in Certificates 75691, 75671, 75708, and 75689.
- 5. The place of use from which the water right is removed by T-12849 shall no longer be irrigated under the transferred right.
- 6. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
- 7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2019**. 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.

8. Water right Certificates 75691, 75671, 75708, and 75689 are modified. The Department will issue superseding certificates describing the rights when it determines it is necessary for record keeping.

Signed at Salem, Oregon on SEP 1 9 2018

Dwight French, Water Right Services Administrator for

THOMAS M. BYLER, DIRECTOR Oregon Department of Water Resources

Mailing Date: **SEP 2 0** 2018