

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

In the Matter of Transfer Application)
T-12809, Morrow and Umatilla Counties))
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FINAL ORDER APPROVING
A DISTRICT PERMANENT TRANSFER FOR
NON-USE AND PARTIAL CANCELLATION OF
A WATER RIGHT

Authority

Oregon Revised Statutes (ORS) 540.572 through 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

WEST EXTENSION IRRIGATION DISTRICT
P.O. BOX 100
IRRIGON, OR 97844

Findings of Fact

1. On March 8, 2017, West Extension Irrigation District (WEID) sent letters advising five water users that Oregon Law requires water to be put to beneficial use one year out of every five. Each letter included a map outlining their parcel of land for which the district's water right was potentially in jeopardy due to lack of beneficial use. On September 11, 2017, WEID sent by certified mail, notices advising these five water users that WEID'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 notice meet the requirements of ORS 540.572(2) and OAR 690-385-5100.
2. On March 10, 2017 WEID sent by certified mail, notices advising eight different water users that WEID'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

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).

the appurtenant lands were also notified. The contents of the notice meet the requirements of ORS 540.572(2) and OAR 690-385-5100.

3. On October 20th, 24th, 25th, or 30th, 2017, WEID sent by certified mail, a notice to each of the thirteen water users (referenced in Findings of Facts 1 and 2, above) stating WEID's intent to confiscate the water right appurtenant to their lands 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 the date the certified letter was mailed. All persons holding a recorded security interest in the affected lands were also notified. The contents of the notice meet the requirements of ORS 540.572(3)-(4) and OAR 690-385-5100.
4. On December 19, 2017, WEID 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 WEID 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 19, 2017.
5. On December 22, 2017, the Department received WEID's district transfer application to permanently change the place of use under Certificate 87799. The Department assigned the application number T-12809.
6. Notice of the District Permanent Transfer Application for Non-Use was published on January 9, 2018, 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. On November 21, 2018, the Department issued remaining right Certificate 94120 to describe lands not modified by Transfer T-12808. Certificate 94120 superseded Certificate 87799, which was cancelled by Special Order Volume 109 Pages 1039-1042.
8. The portion of the first right to be transferred is as follows:
Certificate: 94120 in the name of WEST EXTENSION IRRIGATION DISTRICT (perfected under Permit S-45999)
Use: IRRIGATION of 8.65 acres
Priority Dates: JUNE 15, 1981
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 a diversion of ONE-FORTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 4.5 acre-feet for each acre irrigated during the irrigation season of each year.
Source: COLUMBIA RIVER, a tributary to the PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	26 E	WM	23	SE NE	800 FEET NORTH AND 200 FEET WEST FROM THE E1/4 CORNER OF SECTION 23

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Water User
5 N	26 E	WM	23	SW NW	0.90	1800	KIESEL
5 N	26 E	WM	23	SW NW	1.00	1801	KIESEL
5 N	26 E	WM	23	SW SE	1.10	1905	STEWART
5 N	26 E	WM	23	SW SE	1.20	1909	CORNEJO/NIETO
5 N	26 E	WM	23	SW SE	1.00	1911	CORNEJO/NIETO
5 N	26 E	WM	23	SW SE	1.30	1907	TORRES/VASQUEZ
5 N	26 E	WM	24	SE SW	0.15	109	MADRIGAL
5 N	26 E	WM	25	SW NE	0.20	2003	VICKERY
5 N	26 E	WM	25	NE NW	0.50	302	ROCK, C.
5 N	26 E	WM	25	NE NW	0.30	303	ROCK, C.
5 N	26 E	WM	25	NE NW	0.30	304	ROCK, S.
5 N	26 E	WM	25	NE SW	0.10	1304	FLEMING
5 N	26 E	WM	25	NE SW	0.20	303	CUNNINGHAM
5 N	26 E	WM	26	NW NW	0.10	324	YODER
5 N	26 E	WM	26	NW NW	0.30	325	MENDOZA
Total					8.65		

9. Transfer Application T-12809 proposes to change the place of use to:

Proposed Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Water User
5 N	26 E	WM	26	NW NW	0.30	306	LUNA
5 N	26 E	WM	26	SW NW	2.00	200	SUCHY
5 N	26 E	WM	26	SW NW	1.20	201	SUCHY
5 N	26 E	WM	26	SW NW	1.15	202	PLUEARD
5 N	26 E	WM	26	NE SW	3.80	400	MCNAMEE
5 N	26 E	WM	26	SE SW	0.20	400	MCNAMEE
Total:					8.65		

Transfer Review Criteria for Non-Use (ORS 540.572-540.580; OAR 690-358-5000 through 690-385-5800)

10. WEID is managed by a full-time manager. *ORS 540.572(1)(a) and OAR 690-385-5000(1).*
11. WEID is implementing an approved water conservation plan. *ORS 540.572(1)(b) and OAR 690-385-5000(2).*
12. Transfer T-12809 involves the use of water on lands located within the boundaries of WEID. *ORS 540.572(1) and OAR 690-385-5000(3).*
13. WEID determined the users had not made beneficial use of water for four successive years as shown in Findings of Facts 1 and 2. *OAR 690-385-5000(4).*

14. Based on the evidence contained in the letters and required notices, water was not put to beneficial use on the authorized lands shown in Finding of Fact #8, above, during the 2013, 2014, 2015, 2016, and 2017 irrigation seasons. *OAR 690-385-5000(4)*. The authorized places of use are “no longer irrigated” as defined in ORS 540.572(7)
15. 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)*.
16. WEID filed Transfer Application T-12809 prior to the end of the fifth year of non-use as required by OAR 690-385-5600(5).
17. Transfer application T-12809 meets the application standards of ORS 540.574 and OAR 690-385-5200.
18. The maps meet the standards of ORS 540.574(1) and OAR 690-385-5300.
19. The water rights are subject to transfer as defined in OAR 690-385-0100(17). *OAR 690-385-5600(1)*.
20. The proposed change 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)*.
21. The proposed change 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)*.

Partial Cancellation of Water Right Certificate 79963

Portions of water right Certificate 79963 are appurtenant to certain authorized and proposed lands involved in T-12809.

22. On March 8, 2019, Marita Vallarreal Rodriguez, owner of lands to which a portion of Certificate 94120 is appurtenant, submitted an affidavit meeting the requirements of ORS 540.621. The affiant requested a portion of Certificate 79963 be cancelled as it will not be transferred along with the associated primary. The abandoned portion to be cancelled is described as follows:

Certificate: 79963 in the name of Robert V. Gillett (perfected under Permit G-7749)
Use: IRRIGATION of 4.03 ACRE
Priority Date: AUGUST 10, 1977
Rate: 0.050 CUBIC FOOT PER SECOND
Source: A WELL with the COLUMBIA RIVER BASIN

Place of Use to be cancelled

Twp	Rng	Mer	Sec	Q-Q	Tax lot	Acres
5 N	26 E	WM	26	SW NW	200	4.03

23. On December 2, 2019, Jack and Edwinna Hurst, owner of lands to which a portion of Certificate 94120 is appurtenant, submitted an affidavit meeting the requirements of ORS 540.621. The affiant requested a portion of Certificate 79963 be cancelled as it will not be

transferred along with the associated primary. The abandoned portion to be cancelled is described as follows:

Certificate: 79963 in the name of Robert V. Gillett (perfected under Permit G-7749)
Use: IRRIGATION of 2.22 ACRE
Priority Date: AUGUST 10, 1977
Rate: 0.028 CUBIC FOOT PER SECOND
Source: A WELL with the COLUMBIA RIVER BASIN

Place of Use to be cancelled

Twp	Rng	Mer	Sec	Q-Q	Tax lot	Acres
5 N	26 E	WM	26	SW NW	201	2.22

24. On March 8, 2019, Shannon and Karen Plueard, owners of lands to which a portion of Certificate 94120 is appurtenant, submitted an affidavit meeting the requirements of ORS 540.621. The affiant requested a portion of Certificate 79963 be cancelled as it will not be transferred along with the associated primary. The abandoned portion to be cancelled is described as follows:

Certificate: 79963 in the name of Robert V. Gillett (perfected under Permit G-7749)
Use: IRRIGATION of 2.14 ACRES
Priority Date: AUGUST 10, 1977
Rate: 0.027 CUBIC FOOT PER SECOND
Source: A WELL with the COLUMBIA RIVER BASIN

Place of Use to be cancelled

Twp	Rng	Mer	Sec	Q-Q	Tax lot	Acres
5 N	26 E	WM	26	SW NW	202	2.14

25. On March 8, 2019, two authorized agents for Morrow County, owner of lands to which a portion of Certificate 94120 is appurtenant, submitted an affidavit meeting the requirements of ORS 540.621. The affiant requested a portion of Certificate 79963 be cancelled as it will not be transferred along with the associated primary. The abandoned portion to be cancelled is described as follows:

Certificate: 79963 in the name of Robert V. Gillett (perfected under Permit G-7749)
Use: SUPPLEMENTAL IRRIGATION of 2.02 ACRE
Priority Date: AUGUST 10, 1977
Rate: 0.025 CUBIC FOOT PER SECOND
Source: A WELL with the COLUMBIA RIVER BASIN

Place of Use to be cancelled

Twp	Rng	Mer	Sec	Q-Q	Tax lot	Acres
5 N	26 E	WM	26	SW NW	ROW	2.02

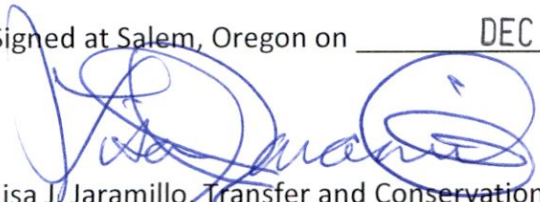
Conclusions of Law

The proposed changes in place of use as proposed in Transfer Application T-12809 satisfy the requirements of ORS 540.572 to 540.580 and OAR 693-385-5000 & 690-385-5600, and the abandoned rights should be cancelled.

Now, therefore, it is ORDERED:

1. The proposed changes in place of use to the water rights evidenced by Certificate 94120 is approved.
2. 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 94120.
3. The portions of the water right as evidenced by Certificates 79963 as requested to be canceled are canceled. A new certificate will be issued confirming the balance of the right not modified by this Final Order.
4. The place of use from which the water right is removed by T-12809 shall no longer be irrigated under the transferred right.
5. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2021**. A Claim of Beneficial Use shall be submitted by WEID to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.
7. Water right Certificate 94120 is modified. The Department will issue a superseding certificate describing the right when it determines it is necessary for record keeping.

Signed at Salem, Oregon on DEC 05 2019.


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

Mailing Date: DEC 06 2019