

3. This Order is issued to supersede the Final Order recorded at Special Order Volume 95, Pages 428-432, to correct the scrivener's error in the number of acres in the NE NW of the portion of the right to be transferred. The acres in the NE NW erroneously said 0.50 acres instead of 1.31 acres. Correction appears in **Bold** in Finding of Fact No.13.
4. On March 17, 2014, HENRY AND MARIETTA NIGHTENGALE submitted an "Ownership Update" for Certificate 2334.
5. On September 24, 2014, the Department contacted the applicants' agent by written correspondence to notify the applicants of deficiencies in the application. The main deficiencies being that no documentation was submitted to support the Evidence of Use Affidavit and the acres the proposed change would affect needed correction. The Department requested that the deficiencies be resolved by October 30, 2014. On October 17 and November 5, 2014, the applicants' agent submitted documents resolving the deficiencies.
6. On November 24, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11764 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of December 29, 2014, for the applicants to respond. Upon the applicant's request the deadline was subsequently extended. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
7. On February 19, 2015, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11764 and sent a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on February 24, 2014, and in the Argus Observer newspaper on February 26, 2015 and March 5, 2015, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
8. The map depicting the place of use described by water right Certificate 2334 broadly defines the actual location of the irrigated lands. No final proof survey was performed by the Department and the original Application map (S-4934) for Certificate 2334 was used as the final proof map.
9. As part of the field inspection, the CWRE found the 74.0 acres of the place of use for Certificate 2334 located as follows:

| Twp | Rng | Mer | Sec | Q-Q | Acres |
|--------|------|-----|-----|-------|-------|
| 16 S | 47 E | WM | 36 | NE NW | 7.40 |
| 16 S | 47 E | WM | 36 | SW NW | 13.82 |
| 16 S | 47 E | WM | 36 | SE NW | 29.78 |
| 16 S | 47 E | WM | 36 | NW SW | 23.00 |
| Total: | | | | | 74.00 |

10. Aerial photos from the 1950-1960s era and 1994 show the irrigated lands as described by the CWRE on the transfer application map.

11. Based on the CWRE's field inspection and historic photos, the place of use for Certificate 2334 has always been located as follows:

| Twp | Rng | Mer | Sec | Q-Q | Acres |
|--------|------|-----|-----|-------|-------|
| 16 S | 47 E | WM | 36 | NE NW | 7.40 |
| 16 S | 47 E | WM | 36 | SW NW | 13.82 |
| 16 S | 47 E | WM | 36 | SE NW | 29.78 |
| 16 S | 47 E | WM | 36 | NW SW | 23.00 |
| Total: | | | | | 74.00 |

12. The following table lists the place of use as described in existing Certificate 2334 and a proposed re-description based on the above findings:

| Twp | Rng | Sec | Original Description of Place of Use | | Proposed Re-Description of Place of Use | |
|--------|------|-----|--------------------------------------|-------|---|-------|
| | | | Q-Q | Acres | Q-Q | Acres |
| 16 S | 47 E | 36 | NE NW | 11.00 | NE NW | 7.4 |
| 16 S | 47 E | 36 | SW NW | 12.00 | SW NW | 13.82 |
| 16 S | 47 E | 36 | SE NW | 28.00 | SE NW | 29.78 |
| 16 S | 47 E | 36 | NW SW | 23.00 | NW SW | 23.00 |
| Total: | | | | 74.00 | Total: | 74.00 |

13. The portion of the right to be transferred is as follows:

Certificate: 2334 in the name of JESSE H. NEWTON (perfected under Permit S-2945)
Use: IRRIGATION of 58.57 ACRES
Priority Date: MAY 29, 1916
Rate: 0.74 CUBIC FOOT PER SECOND
Source: DRAWS

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q |
|------|------|-----|-----|------------|
| 16 S | 47 E | WM | 36 | W1/2 NW1/4 |

Place of Use:

| Twp | Rng | Mer | Sec | Q-Q | Acres |
|--------|------|-----|-----|-------|-------------|
| 16 S | 47 E | WM | 36 | NE NW | 1.31 |
| 16 S | 47 E | WM | 36 | SW NW | 13.82 |
| 16 S | 47 E | WM | 36 | SE NW | 29.78 |
| 16 S | 47 E | WM | 36 | NW SW | 13.66 |
| Total: | | | | | 58.57 |

14. Certificate 2334 does not describe the measured distances of the authorized point of diversion. The applicant and their agent have provided information that further describes the authorized point of diversion as follows:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|------------|--------------------|
| 16 S | 47 E | WM | 36 | W1/2 NW1/4 | S20 57'E2063' |

15. Transfer Application T-11764 proposes to move the authorized point of diversion approximately 2.6 miles downstream to:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|--------------------|
| 16 S | 47 E | WM | 36 | SE NW | N44 55'W 3701' |

16. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

Transfer Review Criteria [OAR 690-380-4010(2)]

17. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
18. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-11764.
19. The proposed change would not result in enlargement of the right.
20. The proposed change would not result in injury to other water rights.

Partial Cancellation of a Water Right

21. On March 17, 2014, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from the applicants' agent.
22. The right to be cancelled is as follows:

Certificate: 2334 in the name of JESSE H. NEWTON (confirmed by Malheur River Decree)
Use: IRRIGATION of 6.09 ACRES
Priority Date: MAY 29, 1916
Rate: 0.07 CUBIC FOOT PER SECOND
Source: DRAWS

Authorized Points of Diversion:

| Twp | Rng | Mer | Sec | Q-Q |
|------|------|-----|-----|------------|
| 16 S | 47 E | WM | 35 | N1/2 SW1/4 |
| 16 S | 47 E | WM | 36 | W1/2 NW1/4 |

Authorized Place of Use to be Cancelled:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 16 S | 47 E | WM | 36 | NE NW | 6.09 |

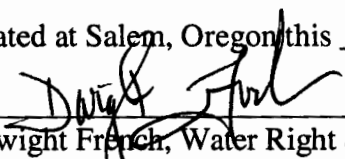
Conclusions of Law

The change in point of diversion proposed in Transfer Application T-11764 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled.

Now, therefore, it is ORDERED:

1. The Final Order recorded at Special Order Volume 95, Pages 428-432, is withdrawn and of no further force or effect and is superseded by this order.
2. The change in point of diversion proposed in Transfer Application T-11764 is approved. The portion of the right that has been abandoned is cancelled.
3. 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 2334 and any related decree.
4. Water Right Certificate 2334 is cancelled. Certificate 90162 was issued to describe the portion of the right not affected by this transfer and cancellation.
5. The quantity of water diverted at the new shall not exceed the quantity of water lawfully available at the original point of diversion.
6. Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.
7. The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.
8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2016**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the change and full beneficial use of the water.
9. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon, this 24 day of December, 2015.


Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director, Oregon Water Resources Department
Mailing Date: DEC 29 2015