

BEFORE THE WATER RESOURCES DIRECTOR OF
THE STATE OF OREGON

BAKER COUNTY

IN THE MATTER OF CORRECTING ORDER) FINAL ORDER
PC 93-9 AND THE O R D E R APPROVING)
TRANSFER APPLICATION T-7559) SUPERSEDING ORDER

STATEMENT OF FACTS

This order describes a series of events and Department actions requiring correction to the state record of water right certificates.

Water Right Certificate 52516 authorized irrigation of 21.4 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22, Township 6 South, Range 39 East, W. M. An order of the Department (PC 93-9), issued on May 20, 1994, and recorded at Special Order Volume 48, page 173, canceled 12.7 acres of the 21.4 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22. The remainder equaled 8.7 acres of authorized water right. The order canceled Certificate 52516 and directed issuance of a new certificate confirming the right remaining. The order canceling a portion of the water right was not protested. A remaining right certificate has yet to be issued.

The Department erred in canceling the water right appurtenant to 10.8 of the 21.4 acres of water right under Certificate 52516 in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22. In canceling the right appurtenant to 10.8 acres, the Department erroneously affirmed an affidavit by someone other than the record owner of land to which the water right was appurtenant. Research shows the affiant was not the record owner of property to which the water right was appurtenant. Thus, the affiant could not abandon and request cancellation of the water right, and the Department erred in canceling the portion of the water right at the affiant's request. The record owner of the property to which the water right was appurtenant was not notified of the cancellation proceeding and unaware of the opportunity to protest. The record owner has continued to apply water beneficially and irrigate these lands as authorized by Certificate 52516.

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is a final 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 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

Subsequently, on May 13, 1996, Elmer D. and Janis M. Hill submitted transfer application T-7559 to change the point of diversion for a portion of a water right confirmed by Water Right Certificate 52516. The Water Resources Department (Department) issued an order on September 30, 1996, recorded at Special Order Volume 50, page 630, approving the change in point of diversion to irrigate 14.0 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22, Township 6 South, Range 39 East, W. M. The order also directed cancellation of Certificate 52516, which had previously been canceled by Order PC 93-9, and the issuance of a remaining right certificate. A remaining right certificate has yet to be issued.

Water Right Certificate 52516 also authorized irrigation of 37.0 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, Township 6 South, Range 39 East, W. M. Order PC 93-9 canceled 5.4 acres of the 37.0 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27. The record on which the order was based incorrectly located Interstate Highway 84 as being constructed over 5.4 acres of water right. Map information and staff field inspection verifies Interstate Highway 84 is not located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27. Thus, the correct acreage remaining in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27 is 37.0 acres.

Order PC 93-9 contained an arithmetic scrivener's error in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22, Township 6 South, Range 39 East, W. M. The order canceled 7.5 acres of 13.0 acres authorized by Certificate 52516. The order identifies the remainder as 6.5 acres. The correct remainder is 5.5 acres.

Order PC 93-9 also contained a arithmetic scrivener's error in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22, Township 6 South, Range 39, East, W. M. The order canceled 1.9 acres of 17.0 acres authorized by Certificate 52516. The order identifies the remainder as 14.1 acres. The correct remainder is 15.1 acres.

CONCLUSIONS

1. Water Right Certificate 52516 was canceled by Order PC 93-9 recorded at Special Order Volume 48, Page 173 and the order approving Transfer Application 7559 recorded at Special Order Volume 50, Page 630. A water right certificate describing the water right remaining as a result of these orders has yet to be issued.
2. Water Right Certificate 52516 authorized 21.4 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22 and 37.0 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, Township 6 South, Range 39 East, W. M.
3. Order PC 93-9 incorrectly canceled 10.8 acres of Certificate 52516 located in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22, Township 6 South, Range 39 East, W. M., erroneously determined to have been abandoned and subject to voluntary cancellation. The water right certificate issued to reflect the water right as remaining, and not modified by Order PC 93-9, should include this acreage.

4. Order PC 93-9 incorrectly canceled 5.4 acres of Certificate 52516 located in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, Township 6 South, Range 39 East, W. M., erroneously determined to have been located under Interstate Highway 84. The water right certificate issued to reflect the water right as remaining, and not modified by Order PC 93-9, should include this acreage.
5. Order PC 93-9 contained an arithmetic scrivener's error in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 22, Township 6 South, Range 39 East, W. M. The water right certificate issued to reflect the remainder should list the correct remaining water right as 5.5 acres.
6. Order PC 93-9 contained an arithmetic scrivener's error in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22, Township 6 South, Range 39 East, W. M. The water right certificate issued to reflect the remainder should list the correct remaining water right as 15.1 acres.
7. The order approving Transfer Application 7559, recorded at Special Order Volume 50, Page 630, canceled Certificate 52516. Certificate 52516 previously had been canceled by Order PC 93-9 with a remainder of 8.7 acres. The remaining water right certificate issued as result of approval of Transfer Application 7559 should account for the change in point of diversion, and deduct 14.0 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22, Township 6 South, Range 39 East, W. M. The 14.0 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 22 thus deducted will be addressed in the water right certificate issued to confirm the change in point of diversion for Transfer Application 7559.
8. The water right certificate (remaining right) to be issued by the Department confirming the portion of Certificate 52516 not canceled by Order PC 93-9 (as corrected) and modified by Transfer Application 7559, for irrigation of 199.0 total acres, should list the acreage as follows:

1870 - Union County

SE $\frac{1}{4}$ SW $\frac{1}{4}$ 5.5 ACRES
 NE $\frac{1}{4}$ SE $\frac{1}{4}$ 37.0 ACRES
 NW $\frac{1}{4}$ SE $\frac{1}{4}$ 15.1 ACRES
 SW $\frac{1}{4}$ SE $\frac{1}{4}$ 5.5 ACRES
 SECTION 22

NE $\frac{1}{4}$ NW $\frac{1}{4}$ 27.9 ACRES
 NW $\frac{1}{4}$ NW $\frac{1}{4}$ 33.0 ACRES
 SW $\frac{1}{4}$ NW $\frac{1}{4}$ 37.0 ACRES
 SECTION 27

NE $\frac{1}{4}$ NE $\frac{1}{4}$ 1.0 ACRES
 SECTION 28

TOWNSHIP 6 SOUTH RANGE 39 EAST, W. M.

1884 - Baker County

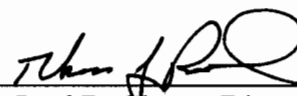
SE $\frac{1}{4}$ NW $\frac{1}{4}$ 37.0 ACRES
 SECTION 27

ORDER

IT IS ORDERED that errors in Order PC 93-9, as described above, stand corrected. A new certificate shall be issued to confirm that portion of Certificate 52516 not canceled by PC 93-9 recorded at Special Order Volume 48, Page 173, this correcting order, and the portion of the water right not modified by the order approving Transfer Application 7559 recorded at Special Order Volume 50, Page 630.

IT IS FURTHER ORDERED that this order corrects and supersedes Order PC 93-9, recorded at Special Order Volume 48, Page 173.

Dated JUN 13 2001.



Paul R. Cleary, Director
Oregon Water Resources Department