

**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-11949, Deschutes County) DISTRICT TRANSFER
)
)
) LOSS OF RIGHT 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.

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.

Applicant

CENTRAL OREGON IRRIGATION DISTRICT
1055 SW LAKE COURT
REDMOND, OR 97756

Findings of Fact

1. On February 10, 2015, the Department signed a final order, which was mailed on February 13, 2015, and recorded in Special Order Volume 95, Pages 44-48, approving Transfer Application T-11949 involving Certificates 83571 and 76714. The final order established October 1, 2016, as the date for completion of the authorized changes in place of use.
2. On January 25, 2016, the Department signed a correcting final order, which was mailed on January 27, 2016, and recorded in Special Order Volume 98, Pages 618-619, to correct scrivener's errors in the place of use tables and the proposed place of use tables in the final order recorded in Special Order Volume 95, Pages 44-48.
3. On September 28, 2017, the Department signed a final order, which was mailed on October 3, 2017, and recorded in Special Order Volume 105, Pages 850-1851, extending the completion date of the authorized change in place of use to October 1, 2018.
4. On October 22, 2018, the Department received a Claim of Beneficial Use (CBU) and associated maps from the applicant for Transfer Application T-11949 satisfying the requirements for proof of use under OAR 690-385-7400.
5. The Department reviewed the CBU and map(s) submitted by the applicant for Transfer Application T-11949.
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 Certificates 83571 and 76714 as approved in the final order for Transfer Application T-11949, and as recorded in Special Order Volume 98, Pages 618-619, is shown in Table 1, below:

Table 1:

IRRIGATION and SUPPLEMENTAL IRRIGATION									
Twp	Rng	Mer	Sec	Q-Q	Acres ¹	Tax Lot	Water User ²	Notice	POD #
13S	13E	WM	33	SW NE	0.42	200	Knight, Philip & Penelope	T-2014-020	11
13S	13E	WM	33	SE NE	1.41	200	Knight, Philip & Penelope	T-2014-020	11
13S	13E	WM	33	NW SE	0.90	400	Knight, Philip & Penelope	T-2014-020	11

IRRIGATION and SUPPLEMENTAL IRRIGATION									
Twp	Rng	Mer	Sec	Q-Q	Acres ¹	Tax Lot	Water User ²	Notice	POD #
14S	13E	WM	04	SE NE	1.00	200	Knight, Philip & Penelope	T-2014-020	11
14S	13E	WM	34	NE NW	1.15	202	Ray Grim Family Trust	T-2014-020	11
15S	12E	WM	12	NE NW	1.00	301	Smith, Dean	T-2014-018	11
15S	12E	WM	12	SE NW	0.32	600	Springer, Todd & Andrea	T-2014-016	11
15S	14E	WM	25	NE NW	2.06	201	Pihl, Ivar & Jane	T-2014-023	1
15S	14E	WM	35	NW SW	0.40	400	Powell Butte Farmers Club, Inc.	T-2014-009	1
16S	12E	WM	35	SW SW	1.54	700	Aparicio, Andrea	T-2014-021	11
16S	14E	WM	17	NW SE	0.32	301	McLean, Scott & Helen	T-2014-021	1
16S	14E	WM	17	SW SE	3.07	301	Mc Lean, Scott & Helen	T-2014-014	1
16S	14E	WM	20	NE NW	0.70	401	Millin, Gary & Dana	T-2014-022	1
17S	12E	WM	02	NE SE	0.20	706	Brusett, Brent & Stephanie	T-2014-013	11
17S	14E	WM	28	SE SW	0.60	2701	Hull, Steven C	T-2014-017	1
TOTAL:					15.09				

¹ Beneficial use of water was made on the same number of acres listed in **bold** as authorized in the order, but the configuration of the place of use is slightly different.

² Water users listed in **bold** are different from the water user that was listed in the transfer final order. They have been updated here to reflect the changes as shown in the CBU.

- The reconfigured changes in place of use as documented in the CBU and associated maps are determined satisfactory because the reconfigured, completed uses are within the same quarter-quarters and tax lots, affect the same number of irrigated acres, and do not enlarge the rights.

Loss of Right Determined

- Information in the CBU indicates a portion of the transfer for Certificates 83571 and 76714 was completed to an extent less than authorized in the transfer. The portion of the proposed place of use in Transfer T-11949 not perfected and therefore not confirmed in this order is described in Table 3, below.

Table 3:

IRRIGATION and SUPPLEMENTAL IRRIGATION									
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Water User	Notice	POD #
17S	12E	WM	02	NE SE	0.20	706	Brusett, Brent & Stephanie	T-2014-013	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.
- The equivalent portion of the water right evidenced by Certificate 83571 lost for failure to fully prove up on the use of water from the Deschutes River for irrigation on the place of use described in Table 3 is 0.2 acres. Certificate 83571 is a deficient water right. If water

were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed, the total rate and duty for the water right would be exceeded. In the event water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed at the points of diversion (POD), the portion of the right not proved up on would be limited as described in the table below. The quantities of water for irrigation of 0.2 acres by which Certificate 83571, at POD #11, shall be reduced upon issuance of this order are shown in the table below.

PRIORITY DATE	SEASON 1	SEASON 2	SEASON 3	DUTY
	April 1 – April 30 and October 1 – October 31	May 1 – May 14 and September 15 – September 30	May 15 – September 14	
October 31, 1900	0.002 cfs	0.003 cfs	0.004 cfs	1.89
December 2, 1907			0.002 cfs	AF

- The equivalent portion of the water right evidenced by Certificate 76714 lost for failure to fully prove up on the use of water from storage for supplemental irrigation on the place of use described in Table 3 is 0.2 acres. However, the total quantity of water available for supplemental irrigation shall not be reduced.

Summary Findings of Fact

- Based on information in the CBU and on the final proof maps, beneficial use under T-11949 has been demonstrated for the place of use for Certificates 83571 and 76714 as shown in Table 4, below:

Table 4:

IRRIGATION and SUPPLEMENTAL IRRIGATION									
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Water User	Notice	POD #
13S	13E	WM	33	SW NE	0.42	200	Knight, Philip & Penelope	T-2014-020	11
13S	13E	WM	33	SE NE	1.41	200	Knight, Philip & Penelope	T-2014-020	11
13S	13E	WM	33	NW SE	0.90	400	Knight, Philip & Penelope	T-2014-020	11
14S	13E	WM	04	SE NE	1.00	200	Knight, Philip & Penelope	T-2014-020	11
14S	13E	WM	34	NE NW	1.15*	202	Ray Grim Family Trust	T-2014-020	11
15S	12E	WM	12	NE NW	1.00*	301	Smith, Dean	T-2014-018	11
15S	12E	WM	12	SE NW	0.32*	600	Springer, Todd & Andrea	T-2014-016	11
15S	14E	WM	25	NE NW	2.06	201	Pihl, Ivar & Jane	T-2014-023	1
15S	14E	WM	35	NW SW	0.40*	400	Powell Butte Farmers Club, Inc.	T-2014-009	1
16S	12E	WM	35	SW SW	1.54	700	Aparicio, Andrea	T-2014-021	11
16S	14E	WM	17	NW SE	0.32	301	McLean, Scott & Helen	T-2014-021	1
16S	14E	WM	17	SW SE	3.07	301	McLean, Scott & Helen	T-2014-014	1
16S	14E	WM	20	NE NW	0.70	401	Millin, Gary & Dana	T-2014-022	1
17S	14E	WM	28	SE SW	0.60	2701	Hull, Steven C	T-2014-017	1
TOTAL:					14.89				

* As reconfigured according to Finding of Facts 7 and 8.

14. 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- 11949 was completed to an extent less than authorized in the transfer. The Department finds that beneficial use was made to the extent shown in Table 4, 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 Table 4, above.
3. The portions of the rights not perfected, as described in Finding of Facts #9, 10, 11 and 12, are lost.
4. The applicant has demonstrated proof of completion under T-11949, 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-11949 consistent with this determination of satisfactory proof of completion.

Now, therefore, it is ORDERED:

1. Water right Certificates 83571 and 76714 are modified as described in Table 4. The Department will issue superseding certificates describing these rights when it determines it is necessary for record keeping.

Signed at Salem, Oregon on DEC 18 2018.



Dwight French, Water Right Services Administrator for
THOMAS M. BYLER, DIRECTOR
Oregon Department of Water Resources

Mailing date: DEC 19 2018