

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

In the Matter of Transfer Application)
T-14123, Malheur County)
)
)
)

FINAL ORDER APPROVING A DISTRICT
PERMANENT TRANSFER FOR PLACE OF
USE AND PARTIAL CANCELLATION &
PARTIAL DIMINUTION OF A PERMIT

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
422 THUNDEREGG BLVD
NYSSA, OR 97913

Findings of Fact

1. On November 21, 2022, Owyhee Irrigation District (OID) filed a completed district transfer application to permanently change the place of use under Certificate 75691 and Permit G-17562. The Department assigned the application number T-14123.
2. In addition, OID requested the cancellation of a portion of Certificate 75708 for supplemental irrigation which is layered with primary irrigation on certain authorized places of use subject to this transfer.
3. On July 2, 2020, Permit G-17562 was assigned from Vaugh Schulthies, Barbara Schulthies, and Mountain Valley Enterprises, Inc. to SBWC, LLC and NORTHWEST FARM CREDIT SERVICES, FLCA.
4. Notice of the District Permanent Transfer Application was published on November 29, 2022, pursuant to ORS 540.580 and OAR 690-385-4400. No comments were filed in response to the notice.

This final order in a contested case and is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075(2) and OAR 137-003-0675, 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).

5. The U.S. Bureau of Reclamation was notified of the transfer application on December 8, 2022; no comments were received within 90 days of the notification.
6. On December 16 & 19, 2022, and February 9, 2023, OID submitted corrections and amendments to the application place of use tables and maps.
7. The portion of the 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 12.54 acres

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

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.

Sources: 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 | NW SW | TUNNEL 1: 495 FEET EAST AND 264 FEET SOUTH FROM THE COMMON CORNER TO SECTIONS 20 AND 21 |

Authorized Place of Use:

| IRRIGATION | | | | | | | | |
|------------|------|-----|-----|-------|-------|---------|-----------------|-----------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | Tax Lot | Water User | Notice |
| 17 S | 47 E | WM | 17 | NW NW | 1.00 | 200 | OLDENKAMP | 22-63000 |
| 17 S | 47 E | WM | 20 | NE NE | 0.20 | 600 | SUN EAGLE FARMS | 22-58500 |
| 17 S | 47 E | WM | 20 | SW NE | 1.06 | 600 | SUN EAGLE FARMS | 22-58500 |
| 17 S | 47 E | WM | 20 | SE NE | 0.76 | 600 | SUN EAGLE FARMS | 22-58500 |
| 18 S | 45 E | WM | 14 | NW NW | 3.40 | 300 | FLINT | 22-54701 |
| 18 S | 47 E | WM | 4 | NW NW | 0.8 | 1500 | STEELE | 22-146200 |
| 18 S | 47 E | WM | 4 | NW NW | 0.2 | 1601 | STEELE | 22-146200 |
| 18 S | 47 E | WM | 17 | NE NE | 1.00 | 3800 | HONDO | 22-145500 |
| 20 S | 45 E | WM | 13 | SE NE | 1.66 | 200 | SBWC LLC | 22-25300 |
| 20 S | 45 E | WM | 23 | NE SE | 0.60 | 2100 | DIMOCK | 22-25400 |
| 20 S | 45 E | WM | 35 | SE SE | 0.50 | 2800 | HATFIELD | 22-17300 |

| IRRIGATION | | | | | | | | |
|--------------|------|-----|-----|-------|--------------|---------|------------|----------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | Tax Lot | Water User | Notice |
| 20 S | 46 E | WM | 15 | NE SE | 0.56 | 700 | BUNKER | 22-33400 |
| 20 S | 46 E | WM | 15 | SE SE | 0.80 | 700 | BUNKER | 22-33400 |
| TOTAL | | | | | 12.54 | | | |

8. Transfer Application T-14123 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 S | 47 E | WM | 17 | NW NW | 1.00 | 200 | OLDENKAMP | 22-63000 |
| 17 S | 47 E | WM | 20 | NE NE | 2.41 | 600 | SUN EAGLE FARMS | 22-58500 |
| 18 S | 45 E | WM | 14 | NW NW | 3.40 | 300 | FLINT | 22-54701 |
| 20 S | 45 E | WM | 13 | SE NE | 3.27 | 200 | SBWC LLC | 22-25300 |
| 20 S | 45 E | WM | 23 | NE SE | 0.60 | 2100 | DIMOCK | 22-25400 |
| 20 S | 45 E | WM | 35 | NE SE | 0.50 | 2800 | HATFIELD | 22-17300 |
| 20 S | 46 E | WM | 15 | NW SE | 1.36 | 700 | BUNKER | 22-33400 |
| Total: | | | | | 12.54 | | | |

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

Partial Cancellation of Certificate 75708

15. The portion of the 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 1.0 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 |
| 18 S | 47 E | WM | 4 | NW NW | 0.8 | 1500 | STEELE | 22-146200 |
| 18 S | 47 E | WM | 4 | NW NW | 0.2 | 1601 | STEELE | 22-146200 |
| Total: | | | | | 1.0 | | | |

16. 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 #7. Water use is no longer authorized on the abandoned portion of the Certificate 75708 at the place of use described in Finding of Fact #17, above. The total quantity of water available under Certificate 75708 is reduced by 0.01cubic foot per second.

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

17. 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 #7. Once transfer T-14123 is approved by this Final Order, in absence of a primary underlying water right, the lands listed below in Finding of Fact #20 will be subject to forfeiture and cancellation proceedings under ORS 540.610 if not used for five consecutive years.

18. The portion of the Certificate 75689 for supplemental irrigation used in conjunction with Certificate 75691 for primary irrigation involved in Transfer T-14123 is as follows:

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

Use: SUPPLEMENTAL IRRIGATION of 2.0 acres

Priority Date: OCTOBER 1, 1951

Rate: 0.03 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 | Rng | Mer | Sec | Q-Q | Acres | Tax Lot | Water User | Notice |
| 18 S | 47 E | WM | 4 | NW NW | 0.8 | 1500 | STEELE | 22-146200 |
| 18 S | 47 E | WM | 4 | NW NW | 0.2 | 1601 | STEELE | 22-146200 |
| 18 S | 47 E | WM | 17 | NE NE | 1.00 | 3800 | HONDO | 22-145500 |
| Total: | | | | | 2.00 | | | |

Partial Diminution of Permit G-17562

19. A portion of water right Certificate 75691 involved in this transfer is layered with a portion of the authorized place of use place of use under Permit G-17562. The application requests the water uses be transferred to the same proposed place of use under both water rights. Therefore, to avoid layering of two primary water rights for irrigation, the portion of layered lands under Permit G-17562 will be diminished to supplemental irrigation as a result of this order.
20. On January 27, 2023, Stoney Schulthies, on behalf of SBWC, LLC, and Alyse Armstrong, on behalf of NORTHWEST FARM CREDIT SERVICES, FLCA, owners of lands to which Permit G-17562 is appurtenant, submitted an affidavit requesting a portion of Permit G-17562 be diminished from primary irrigation to supplemental irrigation. The portion to be diminished is described as follows:

Permit: G-17562 in the names in the names of SBWC, LLC and NORTHWEST FARM CREDIT SERVICES, FLCA

Use: IRRIGATION on 3.27 acres

Priority Dates: FEBRUARY 23, 2015

Rate: 0.05 CUBIC FOOT PER SECOND

Source: A WELL within COW HOLLOW BASIN

Place of Use to be diminished:

| DIMINUTION FROM PRIMARY IRRIGATION TO SUPPLEMENTAL IRRIGATION ON PERMIT G-17562 | | | | | | |
|---|------|-----|-----|-------|-------|---------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | Tax Lot |
| 20 S | 45 E | WM | 13 | SE NE | 3.27 | 200 |

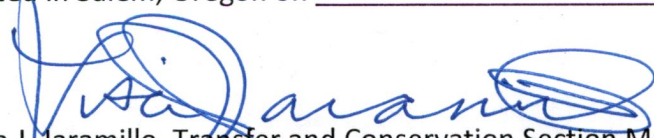
Conclusions of Law

The proposed changes in place of use as proposed in Transfer Application T-14123 comply with and satisfy the requirements of ORS 540.580 and OAR 690-385-4500, and the requested portion of Certificate 75708 should be diminished from primary irrigation to supplemental irrigation.

Now, therefore, it is ORDERED:

1. The proposed change in place of use to the water right evidenced by Certificate 75691 is approved.
2. The portion of Certificate 75708 appurtenant to the land described in Finding of Fact #17 is cancelled.
3. Certificate 75708 in the name of Owyhee Irrigation District is modified to reflect the cancellation of 1.0 acres, as described in Findings of Fact #17 and 18. A superseding water right certificate will be issued when the Department determines it is necessary for record keeping.
4. The portion of the Permit G-17562 for the use of 0.05 cfs of well water for irrigation on 3.27 acres, as described in Finding of Facts #21, and #22, above, is diminished from a right for primary irrigation to a right for supplemental irrigation. Permit G-17562, is hereby modified by this transfer. The water use shall be in accordance with the terms and conditions of Permit G-17562.
5. The place of use from which the water right is transferred off by Transfer T-14123 shall no longer be irrigated and are cancelled from Certificate 75691.
6. The right to the use of the water at the places of use NOT modified by this order is restricted to beneficial and is subject to all other conditions and limitations contained in Certificates 75691, 75708 and 75689.
7. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2024**. 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.
9. Water right Certificate 75691 is modified. After satisfactory proof of completion has been determined by the Department, a superseding water right certificate will be issued when the Department determines it is necessary for record keeping.

Dated in Salem, Oregon on MAR 01 2023



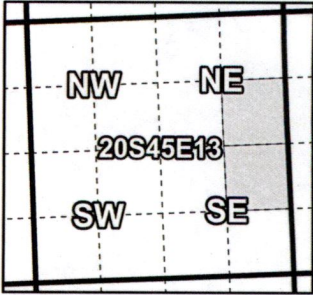
Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Douglas E. Woodecock, Acting Director
Oregon Water Resources Department

Mailing Date: MAR 02 2023

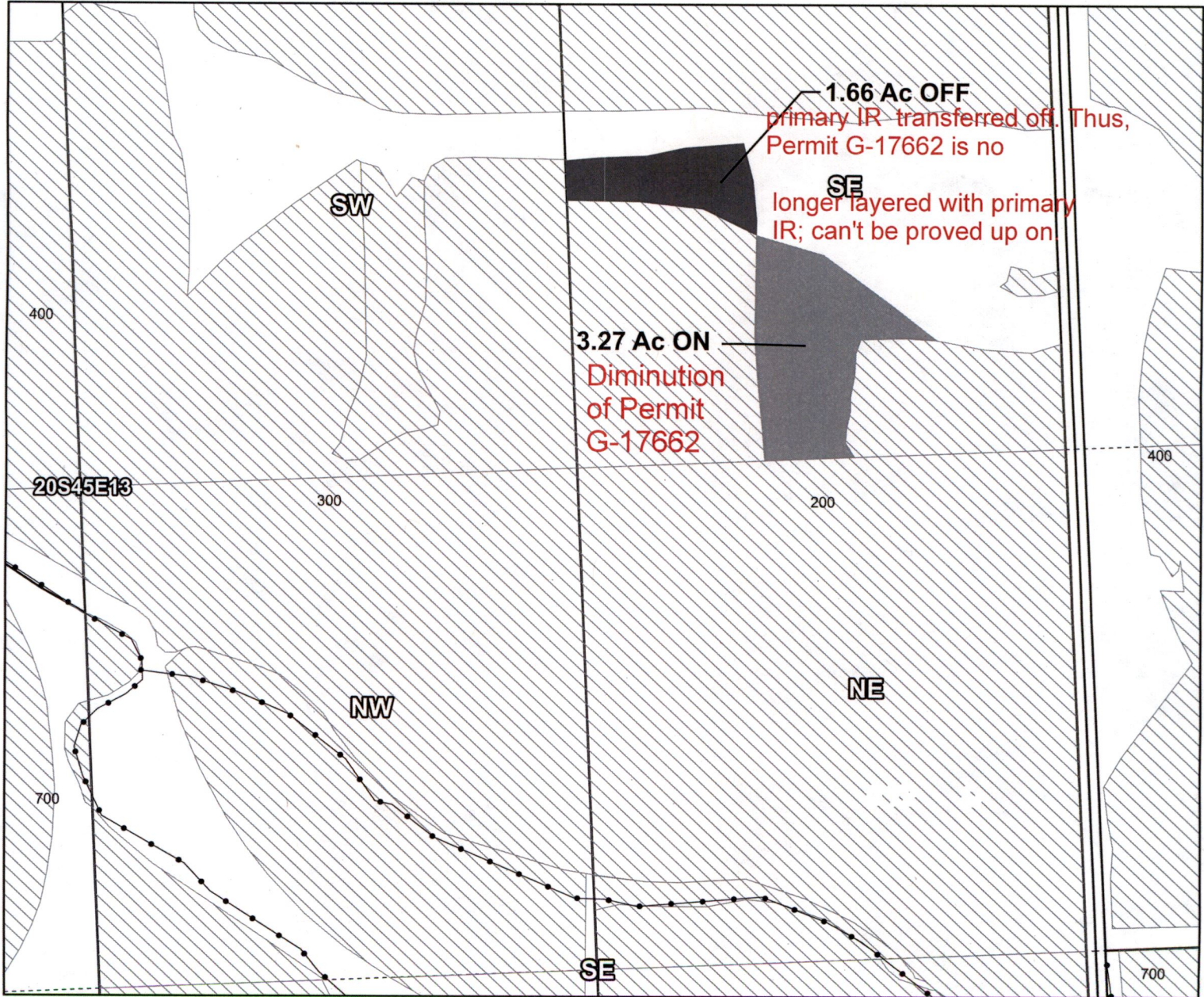
Owyhee Irrigation District

2022 District Transfer Application "On/Off" Map

E-RECEIVED
12/19/2022
OWRD



Certificates: 75691
for SBWC, LLC



Taxlot -0200, 20S45E13 SE/NE: 3.27 Acres On, 28.71 Acres Total (Cert 75691 IR)
Taxlot -0200, 20S45E13 SE/NE: 1.66 Acres Off, 27.05 Acres Remaining (Cert 75691 IR)

- Pipelines and Canals
- Transfer - ON
- Transfer - OFF
- Taxlots
- ▨ Primary Water Right



1 inch = 400 feet

Prepared by Owyhee Irrigation District | November 2022