

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

In the Matter of Transfer Application) CORRECTIVE ACTION ON REMAND
T-8366, Josephine County) BY SUPREME COURT IN THE *FORT*
) *VANNOY IRRIGATION DISTRICT V.*
) *WATER RESOURCES COMMISSION*
) AND WITHDRAWAL OF SPECIAL
) ORDER VOLUME 65, PAGES 480 – 487

Authority

ORS 183.482 establishes the process by which an order of the agency remanded by the courts shall be further acted upon under a correct interpretation of statutory provision.

Applicant

KEN-WAL FARMS, INC.
5630 UPPER RIVER ROAD
GRANTS PASS, OR 97526

Findings of Fact

Background

1. On November 30, 1999, Robert J. Crouse, Agent, on behalf of Ken-Wal Farms, Inc., submitted a transfer application to change the points of diversion under Certificates 2803, 3247, 8942, 8943, and 15340. The Department assigned the transfer application number T-8366.
2. On July 29, 2005, the Department approved Transfer Application T-8366 and recorded the order in Volume 65, Pages 480 – 487.
3. The approval of Transfer Application T-8366 was appealed.
4. On July 10, 2008, on review from the Oregon Court of Appeals, the Supreme Court of the State of Oregon affirmed the lower court’s decision thereby remanding Transfer Application T-8366 to the Department for continued processing consistent with Supreme Court’s opinion in the *Fort Vannoy Irrigation District v. Water Resources Commission* case.
5. As confirmed by the Supreme Court order, Certificates 8942 and 8943 were not authorized to be included in Transfer Application T-8366. Certificates 8942 and 8943 should be removed from Transfer Application T-8366. Furthermore, any subsequent order and/or certificate issued as a result of the original approval may require additional clarification.

This final order 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 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.

6. Consistent with the Supreme Court order and to address the necessary specificity for water management and water right administration, the Department has determined withdrawal of Special Order Volume 65, Pages 480 – 487 is necessary.
7. Subsequent to the original approval of Transfer Application T-8366 approval of Transfer Application T-8459 occurred and was recorded in Special Order Volume 77, Pages 178 -182.
8. Consistent with the Supreme Court order and to address the necessary specificity for water management and administration Special Order Volume 77, Pages 178 - 182 (approval of Transfer Application T-8459) and the resulting remaining rights must be re-visited.


Conclusions of Law

The Department has concluded in order to implement the changes required by the Supreme Court and to address the necessary specificity for water right management and administration the certificates involved in Transfer Application T-8366 and all subsequent orders and certificates shall be re-issued.

Now, therefore, it is ORDERED:

1. Special Order Volume 65, Pages 480 – 487, subsequent certificates and orders issued as a result of the original approval of Transfer Application T-8366, are withdrawn and of no further force or effect.
2. A superseding order approving Transfer Application T-8366 excluding Certificates 8942 and 8943 shall be issued.
3. Superseding orders and certificates documenting the order of the Supreme Court in the case of *Fort Vannoy Irrigation District v. Water Resources Commission*, 345 Or 56, 188 P3d 277 (2008) shall be issued.

Dated at Salem, Oregon this 5 day of December, 2014.



Dwight French, Water Right Services Administrator, for
THOMAS M. BYLER, DIRECTOR

Mailing date: DEC 05 2014