



Oregon

John A. Kitzhaber, MD, Governor

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Before the
House Agriculture and Natural Resources Committee
Representative Brad Witt, Chair

Testimony on House Bill 2257 “Authority to Change the Name and the Contact Information on a Water Right Certificate”

Presented by:
Oregon Water Resources Department
February 14, 2013

Thank you for the opportunity to present testimony on House Bill 2257, a Department bill that would grant the Department authority to change the name and contact information, upon request, on a water right certificate.

Background

Today, there are no statutory provisions that allow the name and contact information on a water right certificate to be changed, even if the holder of the certificate has passed away or sold off interests. Please see attached example certificates and advice from the Department of Justice on this matter.

There are about 85,000 water rights in Oregon today; about 71,000 of them are certificated. The state needs the ability to respond to customers who are asking to modify the contact information on these certificates, especially in light of recent court cases, favoring the name written on a water right certificate over other factors.

Such a change would facilitate other process efficiencies, such as communicating with water right holders, mapping water rights, and updating the water rights database.

This would be a voluntary program.

Development of the Bill

Water right holders have expressed interest in making use of such a program, and see the value in reconciling the name on their water certificates with the names of their current businesses or family members. Stakeholders of the Department have indicated that changing a certificate should be voluntary, at the customer's request.

The bill contains provisions to limit the changes on a water right certificate only to a change in name or address, and the issue date of the new certificate as amended. The priority date of the

water right itself may not be amended. Likewise, the bill does not authorize amendments to the terms, contents, or elements of the water right.

The bill would allow Water Resources Commission to adopt rules for carrying out these provisions, including rules related to the submission and processing of water right certificate amendment requests and for the charging of fees.

The Department proposes an amendment to clarify that an affidavit will be required, certifying that the water right has not been conveyed or withheld.

Further, irrigation districts, water districts, and municipal water providers have requested an amendment, clarifying that patrons and residents of their service territories are not eligible to change the name on district certificates to individual names.

Conclusion

This bill comports with Oregon's Integrated Water Resources Strategy Recommended Action #2.D: "Update water right records with contact information."

This bill has a fiscal impact, reflected in the Department's budget package #207, which would authorize the receipt of fees to cover the cost of administering the program.

STATE OF OREGON

COUNTY OF LANE

CERTIFICATE OF WATER RIGHT

This Is to Certify, That ROBERT W. STRAUB

of 2987 Orchard Heights Rd. NW, Salem , State of Oregon, 97304 , has made proof to the satisfaction of the Water Resources Director, of a right to the use of the waters of an unnamed slough

a tributary of Willamette River for the purpose of irrigation of 8.0 acres

under Permit No. 32515 and that said right to the use of said waters has been perfected in accordance with the laws of Oregon; that the priority of the right hereby confirmed dates from April 12, 1967 that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.10 cubic foot per second

or its equivalent in case of rotation, measured at the point of diversion from the stream. The point of diversion is located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, as projected within Magness DLC 50, Section 6, T. 18 S., R. 2 W., W. M., 470 feet North and 750 feet East from the SE Corner, Harper DLC 66.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to one-eightieth of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2 $\frac{1}{2}$ acre feet per acre for each acre irrigated during the irrigation season of each year;

and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the place of use under the right hereby confirmed, and to which such right is appurtenant, is as follows:

1.0 acre NW $\frac{1}{4}$ SW $\frac{1}{4}$
0.7 acre SW $\frac{1}{4}$ SW $\frac{1}{4}$
Both projected within Magness DLC 50
Section 5

3.7 acres NE $\frac{1}{4}$ SE $\frac{1}{4}$
2.6 acres SE $\frac{1}{4}$ SE $\frac{1}{4}$
Both projected within Magness DLC 50
Section 6
T. 18 S., R. 2 W., W. M.

The right to the use of the water for the purposes aforesaid is restricted to the lands or place of use herein described, and is subject to the existing minimum flow policies established by the Water Policy Review Board.

WITNESS the signature of the Water Resources Director, affixed

this date. July 26, 1976

-----James E. Saxson-----
Water Resources Director

STATE OF OREGON

WATER DIVISION NO. 2 COUNTY OF CROOK

CERTIFICATE OF WATER RIGHT

(For Rights which have been confirmed by the Courts)

This is to Certify, That WM. FRENCH of Prinsville State of Oregon has a right to the use of the waters of McKay Creek, a tributary of Crooked River,

for the purpose of the irrigation of five acres of land, and domestic and stock use,

and that said right has been confirmed by decree of the Circuit Court of the State of Oregon for Crook County, and the said decree entered of record at Salem, in the Order Record of the STATE WATER BOARD of the State of Oregon, in Volume 1, at page 449; that the priority of the right hereby confirmed dates from the year 1905,

that the amount of water to which such right is entitled and hereby confirmed for the purposes aforesaid, is limited to an amount actually beneficially used for said purpose, and shall not exceed a reasonable amount for domestic and stock use, and 7/100 cubic foot per second for irrigation, the total quantity being limited to four acre feet per acre during each year. The use hereunder shall conform to any reasonable rotation system ordered by the proper state officer.

A description of the lands irrigated under such right, and to which the water hereby confirmed is appurtenant, or, if for other purposes, the place where such water is put to beneficial use, is as follows:

5 acres in the SW 1/4 of NW 1/4; 2 acres in the NW 1/4 of SW 1/4; Section Thirty-three (33), Township Thirteen (13) South Range Sixteen (16) East of Willamette Meridian, in Crook County, Oregon.

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described.

WITNESS the seal and signature of the State Water Board of Oregon affixed this 21st day

of September 19 14

STATE WATER BOARD

(SEAL OF STATE WATER BOARD)

By JOHN H. LEWIS State Engineer, President

Attest:

M. F. MERS Secretary



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

February 7, 2013

Brenda Ortigoza Bateman, Ph.D.
Senior Policy Coordinator
Water Resources Department
725 Summer St., NE
Salem, OR 97301-1271

Re: Authority of the Water Resources Department to Issue Amended Certificates
DOJ File No: 690101 GN0427-12

Dear Dr. Bateman:

You have asked whether there currently exist any provisions in statute authorizing the Water Resources Commission or the Water Resources Department ("Department") to issue new water right certificates that change the certificate only to identify the current owner of the certificate. We have found only one statutory provision allowing the certificate to be reissued to change the designation of the holder. The Department is authorized to cancel certificates and reissue them in the name of a new holder when it has received notice of a merger or consolidation of municipal water supply entities or the formation of a water authority under ORS chapter 450. ORS 540.530(3). That express statutory authorization is limited to mergers of municipal water supply entities or new water authorities and is therefore not generally applicable.

In Oregon, water rights are personal usufructory rights that are appurtenant to land but not tied to the ownership of land. *Wilber v. Wheeler*, 273 Or 855, 862, 543 P2d 1052 (1975); *Ft. Vannoy Irrigation District v. Water Resources Commission*, 345 Or 56, 92, 188 P3d 277 (2008). Water rights may be acquired through appropriation, may be acquired in any way that personal property may be acquired, and may be acquired through the sale of land upon which appurtenant water rights remain absent an express reservation of the right from the sale. *Id.*, *Vaughan v. Kolb*, 130 Or 506, 511-12, 280 P 518 (1929)(after water has been appropriated and diverted from a natural stream into artificial works, it becomes personal property); ORS chapters 537 and 539; ORS 537.330; ORS 540.510; *Teel Irrigation District v. Water Resources Department*, 323 Or 663, 668, 919 P2d 1172 (1996).

However, even though the ownership interest in a water right may be transferred to a new holder, there is no authority for the Department to issue a new certificate that reflects the new holder's name. In fact, with the possible exception of clerical errors, the Oregon Supreme Court

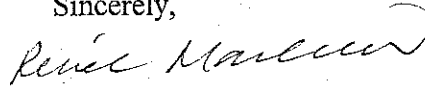
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has held that there exists no statutory or common law authority for the Department to issue a new certificate even where a certificate reflects an incorrect description of the water right. *Wilber v. Wheeler*, 273 Or 855, 865, 543 P2d 1052 (1975).

In conclusion, current Oregon statutes do not expressly authorize the Department to reissue a water right certificate in order to change the name of the person or entity that holds the legal title to the certificate by merit of acquiring the water right by some means.

Sincerely,



Renee Moulun
Assistant Attorney General
Natural Resources Section