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Division of Water Rights

To: Water Rights Division Staff

From: Kent L. Jones, P.E. 
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Date: December 28, 2018

Subject: **POLICY FOR ISSUING CORRECTED CERTIFICATES**

In past meetings a topic of discussion has been the permanence and finality of certificates issued by the Division of Water Rights. This document is to help clarify the position of the Division when dealing with certificates.

In Section 73-3-17, Certificate of Appropriation, it is stated:

“Upon the satisfaction of the state engineer that an appropriation, a permanent change of point of diversion, place or purpose of use, or a fixed time change authorized by 73-3-30 has been perfected in accordance with the application, and that the water appropriated or affected by the change has been put to a beneficial use, as required by Section 73-3-16 or 73-3-30, the state engineer shall issue a certificate ...” That certificate has specific information that needs to be included in it “that defines the extent and conditions of actual application of the water to a beneficial use.” “A certificate... does not extend the rights described in the application.” Further, “the certificate issued under this section is prima facie evidence of the owner’s right to use the water in the quantity, for the purpose, at the place, and during the time specified therein, subject to prior rights.”

When a certificate is issued by the State Engineer, the certificate sets the limitations of the right in both diversion and depletion based on the beneficial use of water. In any future change application, the limits established by a certificate issued will be used to set limits on what can be approved under the new change application.

There are times, however, when errors or omissions occur in the proof and certificate process that, in my opinion, can be remedied by the issuance of a corrected certificate. Having stated that, our primary effort should be to issue Certificates accurately and carefully to reflect what the water is actually being used for. Examples of errors and omissions encountered include a city filing a change application to add a new well to its existing well. The new well is completed and used and the proof engineer submits proof under the change for the new well only. Staff reviewed the proof and issued a certificate for only the new



well. A few years later, it was discovered that the city's certificated right did not include the old well which was in use at the time of proof and was still a main source of supply. The division had the proof engineer correct the proof and submit it to the division. The division then issued the Corrected Certificate which included both wells as sources of supply. This reflected the actual usage of water at the time the proof was originally submitted and was consistent with the change approved by the State Engineer.

Another example involved an irrigator operating a farm where proof was submitted declaring the acreage irrigated with the right. Many years later, when the farmer discovered that he was irrigating more acres than the certificate allowed, but was only irrigating what had always been irrigated, the farmer requested that the proof documents be reviewed for accuracy. After looking through historical photography, histories, individual remembrances, and news articles, it was determined that, in fact, more acres were being irrigated at the time of proof than were actually represented on the proof submittal and that clearly an error had occurred. The applicant was allowed to have the proof revised with an amended proof prepared by a proof engineer and a new certificate was issued to reflect the actual amount of acres irrigated at the time the proof was submitted and for what was within the limits of the underlying approved application as represented by the acreage actually historically irrigated.

Another certificate was issued for a domestic connection with a small amount of irrigation and some stock water. The proof came in correctly but the certificate was issued listing a wrong township. When it was discovered a few years later, a corrected certificate was issued to reflect the correct township.

There are many other examples where corrected certificates have been issued to reflect the actual point of diversion, place of use, and purpose of use where errors or omissions have been discovered. We are not obligated under statute to reissue certificates based on those errors or omissions but it seems the appropriate thing to do to reflect the actual beneficial use of water at the time proof was submitted. A Corrected Certificate should only be issued to reflect the actual beneficial uses, places of use, and points of diversion that existed at the time of proof where such uses were consistent with the application being certificated. Such corrections should only occur on a showing of clear error. Where there is documentation on the file that the features submitted in the proof were purposely not included in the Certificate based on the State Engineer's evaluation of the proof at the time it was submitted, such corrections should only occur on a showing of clear error. Admittedly, the applicant has the burden under statute to request reconsideration or appeal any decision, including Certificates, issued by the state engineer. But there are times when errors are made and critical details missed that I think could and should be amended by the issuance of a Corrected Certificate. Be aware that since Certificates are prima facie evidence of a right, Corrected Certificates are not preferred and may lead to problems. Issuing correct Certificates the first time should remain our aim.