

# E – O u t L o o k

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*Editor's Note: Steve Shropshire discusses Ft. Vannoy Irrigation District v. Water Resources Comm'n., in which the Oregon Supreme Court ruled that an irrigation district, rather than an individual irrigator, has the right to apply for a change in the point of water diversion. Mr. Shropshire co-authored the amicus brief of the Oregon Water Resources Congress, which is the trade association representing Oregon irrigation districts. He is a shareholder at Jordan Schrader Ramis PC, where he practices in the areas of water rights and natural resources law.*

## **Oregon Supreme Court Renders Decision in Landmark Water Rights Case**

On July 10, 2008, the Oregon Supreme Court issued its decision in *Ft. Vannoy Irrigation District v. Water Resources Comm'n.* (Oregon Supreme Court Case No. S055356).<sup>1</sup> The court upheld a prior Court of Appeals decision by holding that an irrigation district has the exclusive right to apply for a change in point of diversion for a certificated water right acquired by the irrigation district. The decision reversed a prior finding of the Oregon Water Resources Commission, and the case was remanded to the Commission for further proceedings consistent with the opinion.

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<sup>1</sup> The decision is available at <http://www.publications.ojd.state.or.us/S055356.htm>.

The *Ft. Vannoy* case raised the question as to whether an irrigation district or a district landowner/irrigator has the statutory right to apply for a water right transfer to change the point of diversion on water right certificates issued to the irrigation district. Stated another way, the question before the court was whether the district or the landowner is the “holder of a water use subject to transfer.”

The court found that the phrase, “holder of a water use subject to transfer,” as used in the transfer statute (ORS 540.510), refers to a party with an ownership interest in the certificated water right. It further found that where an irrigation district initiates and completes the statutory steps to appropriate and certificate a water right, the district holds the ownership interest in right to use water evidenced by the certificate, and therefore, is the holder of the water use subject to transfer. The court further clarified this ownership interest by stating that water rights acquired by an irrigation district pursuant to ORS 545.239 (authorizing a district to acquire property—including water rights), are trust property. Thus, the court said, the district holds legal title to the certificated water rights as the trustee, and the patrons hold equitable title as the beneficiaries. As trustee, the District has the obligation to manage the trust property, including the exclusive right to apply for a change in point of diversion.

As part of its holding, the court specifically rejected two primary contentions by the landowner and the Oregon Water Resources Commission. First, the court rejected the notion that the landowner who places water to beneficial use is the “holder” of the water right. Instead, the court found that the landowner, as the beneficial user, simply acts as the district's agent by helping to complete the initial appropriation and then maintaining the right through continued use. Second, the court rejected the argument that the landowner is the “holder” of a water right simply because it owns a portion of the land to which the water right is appurtenant. This has been the underlying assertion by individual landowners who have sought the unimpeded right to modify, transfer, or sell the district-supplied water appurtenant to their lands. In this opinion, the Oregon Supreme Court has unequivocally stated that ownership of irrigated land does not equate with ownership of the appurtenant certificated water rights within irrigation districts.

This question of “who owns a district-served water right” has been circulating within the irrigation community for several years. Districts assert that they need to have the ability to manage and control water rights in order to fulfill their role as trustees for their patrons. By contrast, some of those patrons assert that water, as an appurtenance to their land, is an individual property interest, subject to their exclusive control.

While the *Ft. Vannoy* case is based on a specific circumstance pertaining to the transfer of a water right certificate held in the name of an irrigation district, the court rendered its opinion as to the broader

“ownership” question as well. While most future cases will likely need to be evaluated on a case-by-case basis, this broader holding should help put some of these questions to rest.

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