

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-10705, Clackamas County) CHANGE IN PLACE OF USE

Authority

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant/ Receiving Landowner

VICTOR SCHNEIDER
37485 S HWY 213
MOUNT ANGEL OR 97326

Agent

JEANNE OR CORBEY BOATWRIGHT
2613 12TH ST SE
SALEM OR 97302

Landowner/Receiving Landowner

PHYLLIS SCHNEIDER
36612 S FARM RD
MOUNT ANGEL OR 97326

Receiving Landowner

DONA DEE BURNS
8141 S DRAKE RD
MOUNT ANGEL, OR 97326

Findings of Fact

Background

1. On August 27, 2008, VICTOR SCHNEIDER filed an application to change the place of use under Certificates 23256, 41481, 51427, and 51428. The Department assigned the application number T-10705.
2. On February 2, 2009, the agent amended the application pertaining to Certificate 41481 reducing the number of acres to be transferred.

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.

3. The portion of the first right to be transferred is as follows:

Certificate: 23256 in the name of ALBERT BARTH (perfected under Permit S-21806)
Use: IRRIGATION OF 1.0 ACRE
Priority Date: SEPTEMBER 30, 1952
Rate: 0.01 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, 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 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year.
Source: BUTTE CREEK, a tributary of the PUDDING RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC
6 S	1 E	WM	8	SW NE	41

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	1 E	WM	8	SE NE	41	1.0

4. Transfer Application T-10705 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 E	WM	5	NE SE	1.0

5. The portion of the second right to be transferred is as follows:

Certificate: 41481 in the name of VICTOR H. SCHNEIDER (perfected under Permit G-3394)
Use: IRRIGATION OF 11.6 ACRES
Priority Date: AUGUST 8, 1966
Rate: 0.08 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, 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL, within the BUTTE CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 E	WM	5	NE SE	320 FEET SOUTH AND 1300 FEET WEST FROM THE E¼ CORNER OF SECTION 5

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 E	WM	5	NE SE	11.6

6. Transfer Application T-10705 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 E	WM	4	NE SW	2.0
6 S	1 E	WM	4	SE SW	9.6

7. The portion of the third right to be transferred is as follows:

Certificate: 51427 in the name of VICTOR A. SCHNEIDER (perfected under Permit S-41538)

Use: IRRIGATION OF 11.2 ACRES

Priority Date: MARCH 2, 1977

Rate: 0.14 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, 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: BUTTE CREEK, tributary of the PUDDING RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	1 E	WM	8	SW NE	41	2110 FEET SOUTH AND 1120 FEET EAST FROM THE N¼ CORNER OF SECTION 8

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	1 E	WM	8	NE NE	41	2.2
6 S	1 E	WM	8	NW NE	41	1.8
6 S	1 E	WM	8	SW NE	41	4.2
6 S	1 E	WM	8	SE NE	41	3.0

8. Permit S-54100, in the name of Victor Schneider, authorizes Supplemental Irrigation for the acreage listed in Finding of Fact No. 7. The applicant will not prove up on this portion of the permit.
9. Transfer Application T-10705 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 E	WM	5	NE SE	11.2

10. The portion of the fourth right to be transferred is as follows:

Certificate: 51428 in the name of VICTOR H. SCHNEIDER (perfected under Permit G-7291)
Use: SUPPLEMENTAL IRRIGATION OF 12.2 ACRES
Priority Date: MARCH 2, 1977
Rate: 0.15 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, 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL, within the BUTTE CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 E	WM	5	NE SE	320 FEET SOUTH AND 1300 FEET WEST FROM THE E $\frac{1}{4}$ CORNER OF SECTION 5

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 E	WM	8	NE NE	2.2
6 S	1 E	WM	8	NW NE	1.8
6 S	1 E	WM	8	SW NE	4.2
6 S	1 E	WM	8	SE NE	4.0

11. Transfer Application T-10705 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 E	WM	5	NE SE	12.2

12. Notice of the application for transfer was published on September 2, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

13. On February 9, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10705 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 11, 2010, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

14. On April 19, 2010, the Department issued a preliminary determination proposing to approve Transfer T-10705 and mailed a copy to the applicant. Additionally, notice of the preliminary determination for the transfer application was published on the Department's weekly notice on April 27, 2010, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

Transfer Review Criteria [OAR 690-380-4010(2)]

15. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
16. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-10705.
17. The proposed changes would not result in enlargement of the rights.
18. The proposed changes would not result in injury to other water rights.

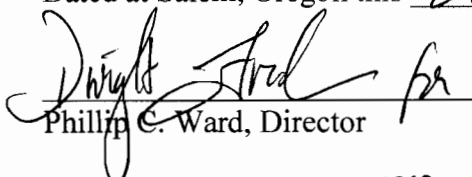
Conclusions of Law

The change in places of use proposed in Transfer Application T-10705 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in places of use proposed in Transfer Application T-10705 is approved.
2. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 23256, 41481, 51427, 51428, and any related decree.
3. Water right certificates 23256, 41481, 51427, and 51428 are cancelled. New certificates will be issued describing the portions of the rights not affected by this transfer.
4. The water user shall maintain and operate the existing measurement devices and shall make such improvements as may be required by the Department.
5. The former place of use of the transferred rights shall no longer receive water under the rights.
6. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.
7. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 28 day of May 2010.


Phillip C. Ward, Director

Mailing date: JUN 01 2010