

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

In the Matter of Transfer Application                    )  
T-10683, Washington County                            )  
  )  
  )     **FINAL ORDER APPROVING A  
CHANGE IN PLACE OF USE AND  
PARTIAL CANCELLATION OF A  
WATER RIGHT**

**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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or portion thereof, has been abandoned and to voluntarily request that it be cancelled.

**Applicant**  
METRO  
600 NE Grand Ave  
Portland, OR 97232

**Agent**  
Karen Starin  
600 NE Grand Ave  
Portland, OR 97232

**Findings of Fact**

**Background**

1. On July 28, 2008, METRO filed an application to change the place of use under the perfected portion of Permit S-35792. The Department assigned the application number T-10683.
2. The receiving landowners are Brian and Dee Moore. After the Final Order for this transfer is approved, Mr. and Mrs. Moore will be responsible for completion of the change.
3. The portion of the right to be transferred is as follows:  
**Order:** Special Order Volume 67, Pages 627 – 662 (Determination of Satisfactory Proof for Permit S-35792 in the name of The United States of America - Bureau of Reclamation)  
**Use:** Irrigation of 3.8 acres

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.

**Priority Date:** February 20, 1966

**Rate:** 0.05 cubic feet 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second per acre or its equivalent for each acre irrigated from direct flow and shall be further limited to a diversion of not to exceed 2.5 acre-feet for each acre irrigated during the irrigation season of each year from direct flow and storage from the reservoir constructed under R-5777 provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein and further limited to the use of stored water only on the lands as described as supplemental.

**Source:** Scoggins Creek and Henry Hagg Lake Reservoir (constructed under Permit R-5777), Gales Creek and Tualatin River, tributaries of the Willamette River

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	3 W	WM	8	SW SW	SPRINGHILL PUMPING PLANT: 600 FEET NORTH AND 400 FEET EAST FROM THE SW CORNER OF SECTION 8

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	3 W	WM	35	SE NE	1.2
1 N	3 W	WM	35	NE SE	2.6

4. Application T-10683 proposes to change the place of use from tax lot 1500 to tax lot 600, located as follows:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	3 W	WM	35	SE NE	3.8

5. The proposed lands are currently covered by an irrigation water right. On November 3, 2009, Brian and Dee Moore submitted an Affidavit for Partial Cancellation of Water Right Certificate 81455.
6. The authorized place of use involved in this transfer is currently covered by supplemental irrigation water rights. On October 7, 2009, METRO submitted Affidavits for Partial Cancellation of Water Right Certificates 81455 and 81456.
7. Notice of the application for transfer was published on August 5, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. On September 9, 2009, the Department mailed to the applicant a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10683. The draft Preliminary Determination letter set forth a deadline of October 9, 2009, 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.

9. On November 12, 2009, the Department issued a Preliminary Determination proposing to approve Transfer T-10683 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 November 24, 2009, 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)***

10. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
11. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-10683.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.

***Partial Cancellation of a Water Right***

14. On October 7, 2009, an affidavit certifying that a portion of the water right under Certificate 81455 has been abandoned and requesting cancellation of the right was received from METRO. On November 3, 2009, an affidavit certifying that a portion of the water right under Certificate 81455 has been abandoned and requesting cancellation of the right was received from Brian and Dee Moore. The right to be cancelled is as follows:

**Certificate:** 81455 in the name of DOUGLAS S. WETTER (perfected under Permit S-21634)  
**Use:** IRRIGATION of 2.9 ACRES and SUPPLEMENTAL IRRIGATION of 2.4 ACRES  
**Priority Date:** JULY 24, 1952  
**Rate:** 0.04 CUBIC FOOT PER SECOND for IRRIGATION; and 0.03 CUBIC FOOT PER SECOND for SUPPLEMENTAL IRRIGATION  
**Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, 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:** DAIRY CREEK, tributary to the TUALATIN RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	3 W	WM	35	SE NE	NONE GIVEN

**Authorized Place of Use to be Cancelled:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	3 W	WM	35	SE NE	2.9

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	3 W	WM	35	SE NE	1.2
1 N	3 W	WM	35	NE SE	1.2

15. On October 7, 2009, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right under Certificate 81456 was received from METRO. The right to be cancelled is as follows:

**Certificate:** 81456 in the name of DOUGLAS S. WETTER (perfected under Permit S-23430)  
**Use:** SUPPLEMENTAL IRRIGATION of 1.2 ACRES  
**Priority Date:** FEBRUARY 14, 1955  
**Rate:** 0.02 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, 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:** DAIRY CREEK, tributary to the TUALATIN RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	3 W	WM	35	SE NE	NONE GIVEN

**Authorized Place of Use to be Cancelled:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	3 W	WM	35	NE SE	1.2

**Conclusions of Law**

The change in place of use proposed in Transfer Application T-10683 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. and the abandoned rights will be cancelled.

**Now, therefore, it is ORDERED:**

1. The change place of use proposed in application T-10683 is approved. The portions of the rights that have been abandoned are cancelled.

2. Water Right Certificates 81455 and 81456 are cancelled. New certificates will be issued describing that portion of the rights not affected by this cancellation.
3. Special Order Volume 67, Pages 627 - 662 (Satisfactory Proof of Permit S-35792) is modified. The perfected portion of Permit S-35792 is reduced by 0.05 cubic foot per second and 3.8 acres of irrigation.
4. 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 the perfected portion of Permit S-35792 and any related decree.
5. The Director may require the water user to install a totalizing flow meter or other suitable measuring device at each point of diversion. If the Director notifies the water user to install a totalizing flow meter or other measuring device, the water user shall install such device specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meter or measuring device in good working order and shall allow the Watermaster access to the meter or measuring device.
6. The former place of use of the transferred right shall no longer receive water under the right.
7. The approved change 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 change and full beneficial use of the water.
8. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 29<sup>th</sup> day of December 2009.

*William E. Fruber*  
For Phillip C. Ward, Director

JAN 04 2010

Mailing Date: \_\_\_\_\_