

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

In the Matter of Transfer Application)
T-9998, Washington County)
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)
)

FINAL ORDER APPROVING A
SUBSTITUTION OF A
SUPPLEMENTAL GROUND WATER
RIGHT FOR A PRIMARY SURFACE
WATER RIGHT

ORS 540.524 establishes the process in which a water right holder may submit a request to substitute a supplemental water right from a ground water source for a primary water right from a surface water source. OAR Chapter 690, Division 380 implements the statutes and provides the Department’s procedures and criteria for evaluating an application to substitute applications.

Applicant

Malensky Land Holding Co.
11335 SW Hillsboro Hwy
Hillsboro, OR 97123

Findings of Fact

- 1. On August 29, 2005, Malensky Land Holding Co. filed a transfer application to substitute a supplemental right to use ground water under Certificate 81412 for a primary right to use surface water under Certificate 81414. The Department assigned the application number T-9998.
- 2. The entirety of the supplemental ground water right to be substituted for the primary surface water right is as follows:

Certificate: 81412 in the name of Malensky Land Holding Co. (perfected under Permit G-5692)
Use: Supplemental Irrigation of 69.9 acres
Priority Date: May 7, 1973
Quantity: 0.77 CUBIC FOOT PER SECOND (CFS)
Rate/Duty: 1/80 cfs per acre, not to exceed 2.5 acre feet per acre per year
Source: A well in the Christensen Creek Basin

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, you may either 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.

Authorized Point of Appropriation:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
1	S	2	W	W.M.	31	SE SW	980 FEET SOUTH AND 980 FEET WEST FROM THE SW CORNER OF LANDERS DLC 52

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Lot	Acres
1	S	2	W	W.M.	31	SW NE	4	4.9
1	S	2	W	W.M.	31	SE NW	3	11.8
1	S	2	W	W.M.	31	NE SW		35.0
1	S	2	W	W.M.	31	NW SW		0.8
1	S	2	W	W.M.	31	NW SE	6	17.4

3. The portion of the surface water right to change from primary use to supplemental use under the substitution is as follows:

Certificate: 81414 in the name of Oregon Berry Packing Company (perfected under Permit S-38077)

Use: Irrigation of 69.9 acres

Priority Date: May 7, 1973

Quantity: 0.014 cubic foot per second

Rate/Duty: 1/80 cfs per acre, not to exceed 2.5 acre-feet per acre per year

Source: Drainage ditch and Reservoir 1, tributary to Christensen Creek.

Authorized Point of Appropriation:

Township		Range		Meridian	Sec	¼ ¼	Lot	Survey Coordinates
1	S	2	W	W.M.	31	NW SE	6	200 FEET SOUTH AND 670 FEET EAST FROM CENTER OF SECTION 31

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Lot	Acres
1	S	2	W	W.M.	31	SW NE	4	4.9
1	S	2	W	W.M.	31	SE NW	3	11.8
1	S	2	W	W.M.	31	NE SW		35.0
1	S	2	W	W.M.	31	NW SW		0.8
1	S	2	W	W.M.	31	NE* SE	6	17.4

4. There is an apparent scrivener's error in the description of the place of use in Certificate 81414 indicated by the asterisk in the above table. The listing of 29.3 acres (including the 17.4 acres affected by the substitution) in the NE SE, Lot 6, Section 31, Township 1 South, Range 2 West is in error. Based on the accompanying map and final proof survey of the original right, the location of the place of use should be listed as NWSE, Section 31, Township 1 South, Range 2 West.
5. Notice of the application for transfer was published September 20, 2005, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
6. Water has been used within the last five years according to the terms and conditions of the right, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
7. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
8. The water rights are located within the Chehalem Mountain Ground Water Limited Area but predate the area being classified as such. The applicant's well is in the basalt aquifer.
9. To monitor the effects of water use from other wells in the area, the Department requires the water users to make and report annual static water level measurements. The static water level shall be measured in the month of March and reports must be submitted to the Department within 30 days of measurement.
10. The proposed change would not result in enlargement of the rights.
11. The proposed change would not result in injury to other water rights if conditioned to require annual static water level measurements and to establish the conditions under which the substitution would be terminated as a result of the effects of the use on other ground water rights.
12. On May 17, 2006, the Department issued a preliminary determination proposing to approve substitution T-9998 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 May 23, 2006, and in The Hillsborough Argus newspaper on May 26 and June 2 and 9, 2006 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

Conclusions of Law

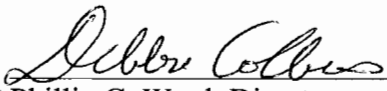
The substitution proposed in application T-9998, as conditioned, is consistent with the requirements of ORS 537.705 and 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The substitution of a supplemental ground water right for a primary surface water right proposed in T-9998 is approved.
2. Upon approval of T-9998, the portion of the primary surface water right under Certificate 81414 listed in Finding #3 shall be treated as a supplemental water right and the listed portion of the supplemental water right evidenced by Certificate 81412 and as described in Finding #2 above shall be treated as a primary water right.
3. The right to use 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 81412 and 81414 and any related decree.
4. The proposed change shall be effective upon issuance of the Final Order.
5. Within 60 days of issuance of the Final Order, the water user shall install and maintain an in-line flow meter or other suitable device for measuring and recording the quantity of water appropriated. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
6. The water user shall submit an initial water level measurement in March and annually thereafter during the duration of the substitution. All measurements shall be made by a certified water rights examiner, registered professional geologist, registered professional engineer, licensed well constructor or pump installer licensed by the Construction Contractors Board and shall be submitted to the Department on forms provided by the Department. The individual performing the measurement shall:
 - a) Identify each well with its associated measurement;
 - b) Measure and report water levels to the nearest tenth of a foot as depth-to-water below ground surface;
 - c) Specify the method used to obtain each well measurement; and
 - d) Certify the accuracy of all measurements and calculations submitted to the Department.
7. The substitution of a supplemental ground water right for a primary surface water right may be terminated upon a request by the water right holder. The substitution also may be terminated by an order of the Director if the Director determines the use of the ground water as the primary water right causes injury to other water rights. Upon termination, the substituted primary and supplemental water rights shall revert to their original status.

8. For purposes of determining whether the substitution is causing injury to other water rights, the Department shall consider whether:
- a) Annual water level measurements reveal an average water level decline of three or more feet per year for five consecutive years;
 - b) Annual water level measurements reveal a water level decline of 15 or more feet in fewer than five consecutive years;
 - c) Annual water level measurements reveal a water level decline of 25 or more feet; and
 - d) Hydraulic interference leads to a decline of 25 or more feet in any neighboring well with senior priority.
9. The reference level against which future measurements shall be compared is 40 feet below land surface as measured on October 31, 1979 as indicated on the well log identified WASH 10447.

Dated at Salem, Oregon this 14th day of July, 2006.


FDL Phillip C. Ward, Director

Mailing Date: JUL 21 2006