

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

In the Matter of Transfer Application            )     FINAL ORDER APPROVING A  
T-10839, Umatilla County                    )     DISTRICT TEMPORARY TRANSFER

**Authority**

ORS 540.570 establishes the process in which a district may submit a request to temporarily transfer a water right within district boundaries. OAR Chapter 690, Division 385 implements the statutes and provides the Department’s procedures and criteria for evaluating district transfer applications.

**Applicant**

WESTLAND IRRIGATION DISTRICT (Mueller to Newman)  
Attn – STACEY WELLS  
PO BOX 944  
HERMISTON, OR 97838

**Findings of Fact**

**Background**

1. On April 3, 2009, Westland Irrigation District filed an application to temporarily change the place of use under Certificates 76715 and 79439 for a period of one year. The Department assigned the application number T-10839.
2. The portion of the primary right and its layered supplemental water right to be transferred are as follows:
  - Certificate:** 76715, issued in the name of Westland Irrigation District (confirmed by the Umatilla County decree)
  - Use:** Irrigation of 16.2 acres
  - Priority Date:** March 14, 1903
  - Rate & Duty:** ONE-EIGHTIETH of one cubic foot per second (or its equivalent) from MARCH 1 to NOVEMBER 1 and subject to the limitations of Paragraph 32 of the Umatilla River decree for each acre irrigated during the irrigation season of each year.
  - Source:** Umatilla River, tributary to the Columbia River

This is a final 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 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 Diversion:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
3 N	29 E	WM	21	SW NE	North 76 Degrees 45 Minutes 56 Seconds East 2913.19 feet from the W¼ corner of Section 21

**Certificate:** 79439, issued in the name of U. S. Bureau of Reclamation (perfected under Permit S-7400)

**Use:** Supplemental Irrigation of 16.2 acres

**Priority Date:** July 1, 1924

**Rate & Duty:** ONE-EIGHTIETH of one cubic foot per second, provided further that the right allowed herein for supplemental irrigation 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 therein.

**Source:** McKay Reservoir, a tributary of McKay Creek. Water is run down the natural channels of McKay Creek and the Umatilla River and is re-diverted at Westland Irrigation District Canal.

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
2 N	32 E	WM	34	NW SE	McKAY DAM
3 N	29 E	WM	21	SW NE	WESTLAND I. D.CANAL - North 76 Degrees 45 Minutes 56 Seconds East 2913.19 Feet from the W¼ Corner of Section 21

**Authorized Places of Use:**

IRRIGATION (IR) AND SUPPLEMENTAL IRRIGATION (IS)								
Twp	Rng	Mer	Sec	Q - Q	TL	CERTIFICATE (acres)		User
						76715 (IR)	79439 (IS)	
4 N	28 E	WM	28	SW SW	4300	11.95	11.95	FRANK MUELLER
4 N	28 E	WM	29	SE SE	4300	4.25	4.25	FRANK MUELLER
<b>TOTAL:</b>						<b>16.2</b>	<b>16.2</b>	

- As part of transfer application T-10839, Westland Irrigation District submitted an affidavit from Frank Muller, the landowner, which stated that the portions of water right Certificates 38388 and 76749, for supplemental irrigation, existing on the "FROM" lands will not be used or transferred during the term of this temporary transfer. The affected portions of the rights are as follows:

Supplemental Irrigation Under Certificate 38388 - Portion not to be used during 2009 Irrigation Season						
Twp	Rng	Mer	Sec	Q - Q	TL	Acres
4 N	28 E	WM	28	SW SW	4300	1.50
4 N	28 E	WM	29	SE SE	4300	4.25

Supplemental Irrigation Under Certificate 76749 - Portion not to be used during 2009 Irrigation Season						
Twp	Rng	Mer	Sec	Q - Q	TL	Acres
4N	28E	WM	28	SW SW	4300	11.95
4N	28E	WM	29	SE SE	4300	0.50

4. Transfer Application T-10839 proposes to TEMPORARILY change the place of use for the above described rights to:

IRRIGATION (IR) AND SUPPLEMENTAL IRRIGATION (IS)								
Twp	Rng	Mer	Sec	Q - Q	TL	CERTIFICATE (acres)		USER
						76715 (IR)	79439 (IS)	
4N	28E	WM	20	NE SW	100	16.2	16.2	MARY NEWMAN

5. The land described in the table above contains an existing water right for primary irrigation. Pursuant to 690-385-3130, the applicant requested that the portion of water right Certificate 79893 (IR) on the "TO" lands be diminished to supplemental irrigation to the incoming District water rights during the 2009 irrigation season. The portion of Certificate 79893 that shall be supplemental to Certificate 76715 is as follows:

**Certificate:** 79893 in the name of BENJAMIN J. NEWMAN (Perfected under Permit G-6785)

**Use:** Irrigation (IR) of 16.2 acres

**Priority Date:** NOVEMBER 29, 1972

**Rate & Duty:** ONE-EIGHTIETH of one cubic foot per second or its equivalent for each acre irrigated and shall further be limited to a diversion of not to exceed 3.0 acre feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** the BEN NEWMAN WELL within the Umatilla River Basin

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4N	28E	WM	20	NE SW	20 FEET SOUTH AND 2380 FEET EAST FROM THE W¼ CORNER OF SECTION 20

**Authorized Place of Use:**

DIMINISHED TO SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	TL	Acres
4 N	28 E	WM	20	NE SW	100	16.2

6. Notice of the application for transfer was published on April 28, 2009, pursuant to ORS 540.570 and OAR 690-385-3400. No comments were filed in response to the notice.
7. Water has been used within the last five years according to the terms and conditions of the rights and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.

8. Diversion structures, pumps, pipeline, and pivot sprinkler systems sufficient to use the full amount of water allowed under the existing rights are present.
9. The water rights are subject to transfer as defined in OAR 690-385-0100(17).
10. The proposed changes would not result in enlargement of the rights.
11. The proposed changes would not result in injury to other water rights. This finding is made through an abbreviated review recognizing that the transfer may be revoked under ORS 540.570(6) if the Department later finds that the transfer is causing injury to any existing water right.
12. The district temporary transfer application satisfies the criteria of OAR 690-385-3000, contains the information required under OAR 690-385-2000, and includes a map meeting the requirements of OAR 690-385-2200.

#### **Conclusions of Law**


The temporary changes in place of use proposed in Transfer Application T-10839 are consistent with the requirements of ORS 540.570 and OAR 690-385-3000.

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

1. The proposed temporary changes to the water rights evidenced by Certificates 76715 and 79439 are approved.
2. The temporary transfer is effective for the 2009 irrigation season.
3. The former places of use **shall not** be irrigated as part of these water rights during the 2009 irrigation season. Water use under Certificates 38388 and 76749 ("FROM" lands) shall not be exercised during the 2009 irrigation season at the authorized place of use as described in Findings of Fact #3.
4. Pursuant to OAR 690-385-3130 the use of water for supplemental irrigation at the proposed place of use under Certificate 79893 as described in Findings of Fact #5, is restricted to the total rate and duty described by Certificate 76715 and may be used only to make up a deficiency of supply.
5. At the end of the 2009 irrigation season all use of water under this temporary transfer shall automatically revert to the terms and conditions of the original water right permit, certificates or adjudication as evidenced by a court decree.
6. The use of water under this temporary transfer may be conditioned or revoked at any time to the extent necessary to avoid injury if the Department finds the transfer causes injury to any existing water right

7. The use of water on both the lands from which the water right is transferred and at the new temporary place of use during the same irrigation season or calendar year is prohibited and may subject the district and landowner to civil penalties.
8. A subsequent application for permanent transfer of Certificates 76715 and 79439 shall be subject to a full and complete review to determine consistency with the requirements of OAR Chapter 690, Division 380. Approval of this temporary transfer does not establish a precedent for approval of a subsequent application filed for a permanent transfer.
9. The use of water at the temporary place of use authorized by this transfer shall be in accordance with the terms and conditions of Certificates 76715 and 79439.
10. The use of the remaining water rights described by Certificates 76715 and 79439 shall continue to be in accordance with the terms and conditions of Certificates 76715 and 79439.
11. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.
12. The water user shall maintain and operate the existing measurement devices and shall make such improvements as may be required by the Department.

Dated at Salem, Oregon this 11<sup>th</sup> day of June, 2009.

  
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Phillip C. Ward, Director *pc*

Mailing Date: JUN 22 2009