

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-11017, Jackson County) CHANGE IN POINT OF DIVERSION
) 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 a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

WILLIAM C. DRIVER AND MARY C. DRIVER
PO BOX 1027
JACKSONVILLE OR 97530

Findings of Fact

Background

1. On February 11, 2010, WILLIAM C. DRIVER AND MARY C. DRIVER filed an application to change the point of diversion under Certificate 81152. The Department assigned the application number T-11017.
2. On May 12, 2010, the applicant submitted a revised map, identifying 3.0 acres for transfer and 1.1 acres to be cancelled.
3. The portion of the right to be transferred is as follows:
Certificate: 81152 in the name of A. S. KLEINHAMMER (confirmed by Rogue River (F) State Water Board decree, Vol. 4, Page 1)
Use: IRRIGATION, and LIVESTOCK on 3.0 ACRES
Priority Date: 1857
Rate: 0.07 CUBIC FOOT PER SECOND

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.

Limit/Duty: The amount of water TO WHICH THIS RIGHT IS ENTITLED IS LIMITED TO AN AMOUNT ACTUALLY BENEFICIALLY USED, SUBJECT TO THE TERMS OF THE DECREE.

Source: LITTLE APPLGATE RIVER, tributary to the APPLGATE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
39 S	2 W	WM	29	NE NW

Authorized Place of Use:

IRRIGATION AND STOCK USE					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	2 W	WM	19	NE SW	3.0

- Certificate 81152 was confirmed by the Rogue River Decree. The decree entitles an owner of a water right to divert and use such an amount of water as shall be reasonably necessary for domestic and stock use all year. During the irrigation season, the amount of water allowed and diverted for irrigation purposes shall include the water used for stock and domestic purposes. The T-11017 transfer application, however, does not mention domestic use under the transferred portion of the right.
- Transfer Application T-11017 proposes to move the authorized point of diversion approximately 1.4 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	2 W	WM	19	NE SW	590 FEET NORTH AND 200 FEET WEST FROM THE SE CORNER OF THE NE1/4 NW1/4 OF SECTION 19

- Notice of the application for transfer was published on February 23, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.
- On June 15, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11017 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of July 16, 2010, for the applicants to respond. On August 2, 2010, Norm Daft emailed the Department on behalf of the applicants and observed that the priority date for this portion of the right should be 1857 and not 1898, and pointed out that the draft included a condition to require a headgate that would be inappropriate for the situation, as the diversion will be by pump and not by a ditch. The Department agrees, and these changes have been made in this document.

9. On August 2, 2010, Clint Driver indicated by phone and email the intention to voluntarily cancel the domestic use for the transferred portion of the right and requested that the Department proceed with issuance of a Preliminary Determination. He had previously provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
10. On August 6, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11017 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on August 10, 2010, and in the Medford Mail Tribune newspaper on August 24, 31 and September 7, 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)]

11. 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.
12. 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-11017.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.

Partial Cancellation of a Water Right

15. On February 11, 2010, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from William C. Driver and Mary C. Driver. The right to be cancelled is as follows:

Certificate: 81152 in the name of A. S. KLEINHAMMER (confirmed by Rogue River (F) State Water Board decree, Vol. 4, Page 1)
Use: DOMESTIC, LIVESTOCK, AND IRRIGATION on 1.1 ACRES
Priority Date: 1857
Rate: 0.03 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water TO WHICH THIS RIGHT IS ENTITLED IS LIMITED TO AN AMOUNT ACTUALLY BENEFICIALLY USED, SUBJECT TO THE TERMS OF THE DECREE.
Source: LITTLE APPLGATE RIVER, tributary to the APPLGATE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
39 S	2 W	WM	29	NE NW

Authorized Place of Use to be Cancelled:

IRRIGATION AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	2 W	WM	19	NE SW	1.1

16. On August 16, 2010, an affidavit certifying that the domestic portion of a water right has been abandoned and requesting cancellation of that use for the portion of the right was received from William C. Driver and Mary C. Driver. The domestic use to be cancelled is as follows:

Certificate: 81152 in the name of A. S. KLEINHAMMER (confirmed by Rogue River (F) State Water Board decree, Vol. 4, Page 1)

Use: DOMESTIC USE on 3.0 ACRES

Priority Date: 1857

Source: LITTLE APPLGATE RIVER, tributary to the APPLGATE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
39 S	2 W	WM	29	NE NW

Authorized Place of Use to be Cancelled:

DOMESTIC USE ONLY					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	2 W	WM	19	NE SW	3.0

Conclusions of Law

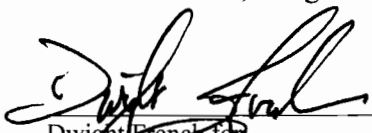
The change in point of diversion proposed in Transfer Application T-11017 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned portions of the right should be cancelled.

Now, therefore, it is ORDERED:

1. The change in point of diversion proposed in Transfer Application T-11017 is approved. The portions of the right that have been abandoned are cancelled.
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 Certificate 81152 and any related decree.
3. Water right certificate 81152 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation.
4. The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.
5. Water use measurement conditions:

- a. Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of diversion.
 - b. The water user shall maintain the meter or measuring device in good working order.
 - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device are located within a private structure, the Watermaster shall request access upon reasonable notice.
6. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.
 7. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2012**. A Claim of Beneficial Use prepared by a Certified Water Right 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 8th day of October 2010.



 Dwight French for
 PHILLIP C. WARD, DIRECTOR

Mailing date: OCT 11 2010