

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

In the Matter of Transfer Application)
T-10879, Umatilla County)
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FINAL ORDER APPROVING
ADDITIONAL POINTS OF
APPROPRIATION, CHANGES 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 a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

ROBERT LEVY
822 S. HIGHWAY 395, # 423
HERMISTON, OR 97838

Findings of Fact

Background

1. On May 15, 2009, ROBERT LEVY filed an application for additional points of appropriation and to change the place of use under Certificates 79442, 76113, 79440, 54084, 53662, and 54753, and Permit S-86205. The Department assigned the application number T-10879.

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.

2. Additional documentation and revisions to the application and maps were received on August 12, 2009 and October 21, 2009.
3. On April 23, 2010, new certificates were issued to supersede the permit and three of the certificates involved in T-10879. The new certificate numbers are:

Original Number	New Certificate Number
Certificate 79442	86202
Certificate 76113	86203
Certificate 79440	86204 (superseded by Certificate 86377 on 6/17/10)
Permit S-54406	86205

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

Certificate: 86202 in the name of STANFIELD IRRIGATION DISTRICT (confirmed by Umatilla River (S) decree)

Use: IRRIGATION of 76.1 ACRES

Priority Date: MARCH 8, 1905

Rate: 0.95 CUBIC FOOT PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs (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 COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
3 N	30 E	WM	31	SW SW	4	380 FEET NORTH AND 650 FEET EAST FROM THE SW CORNER OF SECTION 31

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	29 E	WM	29	SE SW	30.2
4N	29 E	WM	29	SW SE	36.0
4 N	29 E	WM	29	SE SE	9.9

5. Application T-10879 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4N	29E	WM	29	SW SW	27.8
4N	29E	WM	29	SE SW	36.5
4N	29E	WM	29	SW SE	11.8

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

Certificate: 86203 in the name of STANFIELD IRRIGATION DISTRICT (perfected under Permit S-30789)

Use: IRRIGATION of 171.9 ACRES

Priority Date: JUNE 23, 1965

Rate: 4.3 CUBIC FEET PER SECOND

Limit/Duty: ONE-FORTIETH cfs (or its equivalent) per acre, not to exceed 4.5 acre-feet per acre per year. The irrigation season shall include any time between January 1 and November 1 of each year that water can be put to beneficial use by irrigation, either for immediate crop growth or for forecast requirements to raise the soil moisture to field capacity in the soil profile to be utilized by plant growth in the subsequent growing season. The use of water authorized shall be subsequent in priority and inferior to future irrigation project developments that provide a more efficient system through storage during the winter season and later use during the period of maximum crop demand.

Source: UMATILLA RIVER, tributary to COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 N	30 E	WM	31	SW SW	FURNISH CANAL - 380 FEET NORTH AND 650 FEET EAST FROM THE SW CORNER OF SECTION 31

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	29 E	WM	29	NE SW	34.9
4 N	29 E	WM	29	NW SW	35.5
4 N	29 E	WM	29	SW SW	29.5
4 N	29 E	WM	29	NE SE	34.2
4 N	29 E	WM	29	NW SE	34.3
4 N	29 E	WM	29	SE SE	3.5

7. Application T-10879 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4N	29E	WM	29	NE SW	34.5
4N	29E	WM	29	NW SW	30.5
4N	29E	WM	29	NE SE	34.7
4N	29E	WM	29	NW SE	35.9
4N	29E	WM	29	SW SE	22.7
4N	29E	WM	29	SE SE	13.6

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

Certificate: 86377 in the name of U.S. BUREAU OF RECLAMATION, PACIFIC NW REGION (perfected under Permit S-7400)

Use: SUPPLEMENTAL IRRIGATION of 109.1 ACRES

Priority Date: JULY 1, 1924

Limit/Duty: ONE-EIGHTIETH cfs per acre (or its equivalent), provided further that the right allowed 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 thereon.

Source: MCKAY RESERVOIR, tributary to MCKAY CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	32 E	WM	34	NW SE	MCKAY DAM
3 N	30 E	WM	31	SW SW	FURNISH CANAL - 380 FEET NORTH AND 650 FEET EAST FROM THE SW CORNER OF SECTION 31

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	29 E	WM	29	SW SW	29.5
4 N	29 E	WM	29	SE SW	30.2
4 N	29 E	WM	29	SW SE	36.0
4 N	29 E	WM	29	SE SE	13.4

9. Application T-10879 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4N	29E	WM	29	SW SW	27.8
4N	29E	WM	29	SE SW	36.5
4N	29E	WM	29	SW SE	31.2
4N	29E	WM	29	SE SE	13.6

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

Certificate: 54084 in the name of MAURICE L. KOESTER (perfected under Permit G-6555)

Use: SUPPLEMENTAL IRRIGATION of 240.3 ACRES

Priority Date: AUGUST 22, 1975

Rate: 2.67 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs (or its equivalent) per acre, not to exceed 3.0 acre-feet per acre per year

Source: WELLS 1 AND 3 in the UMATILLA BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 N	29 E	WM	29	NW SE	WELL 1 - 1370 FEET NORTH AND 1380 FEET WEST FROM THE SE CORNER OF SECTION 29
4 N	29 E	WM	29	SE SE	WELL 3 - 960 FEET NORTH AND 1220 FEET WEST FROM THE SE CORNER OF SECTION 29

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	29 E	WM	29	NE SW	34.9
4 N	29 E	WM	29	NW SW	35.4
4 N	29 E	WM	29	SW SW	25.9
4 N	29 E	WM	29	SE SW	29.7
4 N	29 E	WM	29	NE SE	34.2
4 N	29 E	WM	29	NW SE	34.3
4 N	29 E	WM	29	SW SE	36.0
4 N	29 E	WM	29	SE SE	9.9

11. Transfer Application T-10879 proposes additional points of appropriation approximately one-half to one mile from the existing points of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4N	29E	WM	20	SW SE	WELL 5 – 1050 FEET NORTH AND 50 FEET EAST FROM THE S 1/4 CORNER OF SECTION 20
4N	29E	WM	29	SE NW	WELL 4 – 1050 FEET NORTH AND 640 FEET WEST FROM THE C 1/4 CORNER OF SECTION 29

12. Transfer Application T-10879 also proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4N	29E	WM	29	NE SW	34.5
4N	29E	WM	29	NW SW	30.5
4N	29E	WM	29	SW SW	27.8
4N	29E	WM	29	SE SW	36.5
4N	29E	WM	29	NE SE	34.7
4N	29E	WM	29	NW SE	35.9
4N	29E	WM	29	SW SE	30.3
4N	29E	WM	29	SE SE	10.1

13. The fifth right to be transferred is as follows:

Certificate: 53662 in the name of TRAVELERS INSURANCE CO. (perfected under Permit G-7182)

Use: IRRIGATION of 222.8 ACRES

Priority Date: FEBRUARY 25, 1977

Rate: 2.79 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre-feet per acre per year

Source: A WELL in the UMATILLA RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 N	29 E	WM	20	SW SE	WELL 5 - 1050 FEET NORTH AND 50 FEET EAST FROM THE S 1/4 CORNER OF SECTION 20

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	29 E	WM	20	NE SW	33.3
4 N	29 E	WM	20	NW SW	1.7
4 N	29 E	WM	20	SW SW	22.3
4 N	29 E	WM	20	SE SW	32.6
4 N	29 E	WM	20	NE SE	33.9
4 N	29 E	WM	20	NW SE	35.0
4 N	29 E	WM	20	SW SE	30.9
4 N	29 E	WM	20	SE SE	33.1

14. Transfer Application T-10879 proposes additional points of appropriation approximately one-half to one mile from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4N	29E	WM	29	SE NW	WELL 4 - 1050 FEET NORTH AND 640 FEET WEST FROM THE C 1/4 CORNER OF SECTION 29
4N	29E	WM	29	NW SE	WELL 1 - 1370 FEET NORTH AND 1380 FEET WEST FROM THE SE CORNER OF SECTION 29
4N	29E	WM	29	SE SE	WELL 3 - 960 FEET NORTH AND 1220 FEET WEST FROM THE SE CORNER OF SECTION 29

15. The sixth right to be transferred is as follows:

Certificate: 54753 in the name of THE TRAVELERS INSURANCE CO. (perfected under Permit G-10429)

Use: IRRIGATION of 43.4 ACRES

Priority Date: JULY 12, 1984

Rate: 0.54 CUBIC FOOT PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3 acre-feet per acre per year, provided further that in the event of a request for a change in point of appropriation, an additional point of appropriation or repair of this well, the quantity of water allowed herein together with any other right from this point of appropriation shall not exceed the capacity of this well at the time of perfection of this right.

Source: A WELL in the UMATILLA RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 N	29 E	WM	20	SW SE	WELL 5 - 1050 FEET NORTH AND 50 FEET EAST FROM THE S 1/4 CORNER OF SECTION 20

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	29 E	WM	20	NE SW	0.2
4 N	29 E	WM	20	NW SW	33.2
4 N	29 E	WM	20	SW SW	10.0

16. Transfer Application T-10879 proposes additional points of appropriation approximately one-half to one mile from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4N	29E	WM	29	SE NW	WELL 4 - 1050 FEET NORTH AND 640 FEET WEST FROM THE C 1/4 CORNER OF SECTION 29
4N	29E	WM	29	NW SE	WELL 1 – 1370 FEET NORTH AND 1380 FEET WEST FROM THE SE CORNER OF SECTION 29
4N	29E	WM	29	SE SE	WELL 3 – 960 FEET NORTH AND 1220 FEET WEST FROM THE SE CORNER OF SECTION 29

17. The portion of the seventh right to be transferred is as follows:

Certificate: 86205 in the name of U.S. BUREAU OF RECLAMATION

Use: SUPPLEMENTAL IRRIGATION of 138.9 ACRES

Priority Date: MARCH 14, 2007

Duty: Not to exceed 3.0 acre-feet per acre per year

Source: MCKAY RESERVOIR, tributary to MCKAY CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 N	30 E	WM	31	SW SW	380 FEET NORTH AND 650 FEET EAST FROM THE SW CORNER OF SECTION 31

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	29 E	WM	29	NE SW	34.9
4 N	29 E	WM	29	NW SW	35.5
4 N	29 E	WM	29	NE SE	34.2
4 N	29 E	WM	29	NW SE	34.3

18. Application T-10879 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	29 E	WM	29	NE SW	34.5
4 N	29 E	WM	29	NW SW	30.5
4 N	29 E	WM	29	NE SE	34.7
4 N	29 E	WM	29	NW SE	35.9
4 N	29 E	WM	29	SW SE	3.3

19. Notice of the application for transfer was published on May 26, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
20. On August 10, 2009, the Department contacted the agent for the applicant by written correspondence to notify the agent of deficiencies in the application. The Department requested that the deficiencies be resolved by September 11, 2009.
21. A response to the Department's request was submitted by the applicant's agent in an e-mail message dated August 12, 2009. The e-mail message addressed some of the issues raised in the deficiency letter and included amended transfer application maps and revised pages for Supplemental Form A for each right.
22. On October 21, 2009, the Department contacted the agent for the applicant by written correspondence to notify the agent of additional deficiencies in the application and to request additional information to document the relationship between the power use records (submitted as supporting evidence of use) with the existing irrigation system.
23. On October 21, 2009, the agent for the applicant submitted additional information by e-mail to document the connection between the power use records and the existing irrigation system. This information included an amended power billing summary which identified the wells and surface water pumps which were associated with various power meters, and copies of the July 2008 power bills with hand-written labels indicating which well or surface water pump was associated with each bill.
24. On November 4, 2009, the Department mailed to the applicant a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10879, provided additional information was received to more adequately tie the documentation of use to the right, and to correct some clerical errors in the application. The draft Preliminary Determination cover letter set forth a deadline of December 16, 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 address the requests and to demonstrate that the applicant is authorized to pursue the transfer.
25. On February 5, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10879 and mailed a copy to the applicant and to the Bureau of Reclamation. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on February 9, 2010, and in the East Oregonian newspaper on February 17 and 24 and on March 3, 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)]

- 26. 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 rights are subject to forfeiture under ORS 540.610.
- 27. Pumps, pipelines, and sprinkler systems 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-10879.
- 28. The proposed changes would not result in enlargement of the rights.
- 29. The proposed changes would not result in injury to other water rights.

Partial Cancellation of a Water Right

- 30. On November 30, 2009, the applicant submitted an affidavit authorizing cancellation of a portion of the following right:

Certificate: 54084 in the name of MAURICE L. KOESTER (perfected under Permit G-6555)

Use: SUPPLEMENTAL IRRIGATION of 10.0 ACRES

Priority Date: AUGUST 22, 1975

Rate: 0.111 CUBIC FOOT PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs (or its equivalent) per acre, not to exceed 3.0 acre-feet per acre per year

Source: WELLS 1 AND 3 in the UMATILLA BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 N	29 E	WM	29	NW SE	WELL 1 - 1370 FEET NORTH AND 1380 FEET WEST FROM THE SE CORNER OF SECTION 29
4 N	29 E	WM	29	SE SE	WELL 3 - 960 FEET NORTH AND 1220 FEET WEST FROM THE SE CORNER OF SECTION 29

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	29 E	WM	29	NE SW	1.5
4 N	29 E	WM	29	SW SW	0.4
4 N	29 E	WM	29	SE SW	2.3
4 N	29 E	WM	29	NE SE	1.2
4 N	29 E	WM	29	NW SE	2.7
4 N	29 E	WM	29	SW SE	0.8
4 N	29 E	WM	29	SE SE	1.1

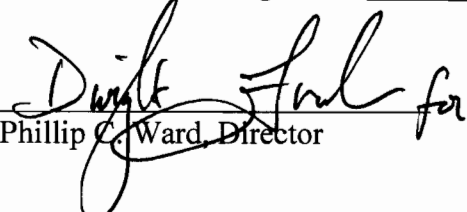
Conclusions of Law

The additional points of appropriation and changes in place of use proposed in Transfer Application T-10879 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled.

Now, therefore, it is ORDERED:

1. The additional points of appropriation and changes in place of use proposed in application T-10879 are approved. The portion of the right that has been abandoned is 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 Certificates 86202, 86203, 86377, 54084, 53662, 54753 and 86205, and any related decree.
3. Water right certificates 54084, 53662, and 54753 are cancelled.
4. Water right certificates 86202, 86203 and 86377 and 86205 are modified. The Department will issue superseding certificates describing the rights when it determines that is necessary for record keeping.
5. The quantity of water diverted at the additional points of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.
6. The water user shall maintain and operate the existing measurement devices and shall make such improvements as may be required by the Department.
7. The former place of use of the transferred rights shall no longer receive water under the rights.
8. 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.
9. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 17 day of June 2010.


Phillip C. Ward, Director

Mailing date: 6/22/2010