

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

In the Matter of Transfer Application)
T-7636, Deschutes County, Oregon)
)
)
)

FINAL ORDER APPROVING A
SUBSTITUTION OF A
SUPPLEMENTAL GROUNDWATER
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 for a water right substitution.

Applicant

JAMES AND BETTY DUNN
9695 LOWER BRIDGE ROAD
TERREBONNE, OREGON 97760

Findings of Fact

1. On October 18, 1996, James and Betty Dunn filed an application to change the character of use for the right under Certificate 66868 from supplemental to primary irrigation. The Department assigned the application number T-7636. Subsequently the application was amended to substitute a supplemental right to use ground water under Certificate 66868 for a portion of a primary right to use surface water under Certificate 53612.
2. On June 20, 2006 the applicant further amended the application to include the entirety of the primary surface water right under Certificate 53612, and to add a second supplemental ground water right under Permit G-13137.
3. The first supplemental ground water right to be substituted for the primary surface water right is as follows:

Certificate: 66868 in the name of James and Betty Dunn (perfected under Permit G-10662)
Use: Supplemental Irrigation of 42.4 acres
Priority Date: July 21, 1986
Quantity: 0.52 cfs
Rate/Duty: 1/80 cfs per acre, not to exceed 3.0 acre-feet per acre per year
Source: A well in the Deschutes River Basin

This is a final order in other than 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
14	S	12	E	W.M.	15	NW	NW	900 feet South and 300 feet East from the NW corner of Section 15

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼		Acres
14	S	12	E	W.M.	10	NW	SW	19.6
14	S	12	E	W.M.	10	SW	SW	20.0
14	S	12	E	W.M.	15	NW	NW	2.8

4. The portion of the primary surface water right to be used as a supplemental right under the substitution with Certificate 66868 is as follows:

Certificate: 53612 in the name of Deschutes Farmers Co-op (perfected under Permit S-19418)

Use: Primary Irrigation

Priority Date: May 15, 1950

Quantity: 0.768 cfs, subject to the terms and conditions of a waiver recorded on pages 440 and 441, Volume 3, Miscellaneous Records of the State Engineer.

Rate/Duty: 1/40 cfs per acre, not to exceed 4.0 acre-feet per acre per year

Acres: 42.4

Source: Deschutes River, tributary to Columbia River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼		Location
14	S	12	E	W.M.	15	NW	NW	Not specified on certificate

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼		Acres
14	S	12	E	W.M.	10	NW	SW	19.6
14	S	12	E	W.M.	10	SW	SW	20.0
14	S	12	E	W.M.	15	NW	NW	2.8

5. The second supplemental ground water right to be substituted for the primary surface water right is as follows:

Permit: G-13137 in the name of James and Betty Dunn (submitted as Application G-12402)

Use: Supplemental Irrigation of 55.6 acres

Priority Date: January 30, 1991

Quantity: 0.695 cfs

Season: April 1 through November 1 of each year

Rate/Duty: 1/80 cfs per acre, not to exceed 3.0 acre-feet per acre per year

Source: A well in the Deschutes River Basin

Authorized Point of Appropriation:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
14	S	12	E	W.M.	15	NW NW	400 feet South and 300 feet East from the NW corner of Section 15

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Acres
14	S	12	E	W.M.	10	SW NW	3.1
14	S	12	E	W.M.	10	SE NW	4.3
14	S	12	E	W.M.	10	NE SW	13.8
14	S	12	E	W.M.	10	NW SW	15.2
14	S	12	E	W.M.	10	SW SW	14.6
14	S	12	E	W.M.	10	SE SW	1.4
14	S	12	E	W.M.	15	NW NW	3.2

6. The portion of the primary surface water right to be used as a supplemental right under the substitution with Permit G-13137 is as follows:

Certificate: 53612 in the name of Deschutes Farmers Co-op (perfected under Permit S-19418)

Use: Primary Irrigation

Priority Date: May 15, 1950

Quantity: 1.006 cfs, subject to the terms and conditions of a waiver recorded on pages 440 and 441, Volume 3, Miscellaneous Records of the State Engineer.

Rate/Duty: 1/40 cfs per acre, not to exceed 4.0 acre-feet per acre per year

Acres: 55.6

Source: Deschutes River, tributary to Columbia River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Location
14	S	12	E	W.M.	15	NW NW	Not specified on certificate

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Acres
14	S	12	E	W.M.	10	SW NW	3.1
14	S	12	E	W.M.	10	SE NW	4.3
14	S	12	E	W.M.	10	NE SW	13.8
14	S	12	E	W.M.	10	NW SW	15.2
14	S	12	E	W.M.	10	SW SW	14.6
14	S	12	E	W.M.	10	SE SW	1.4
14	S	12	E	W.M.	15	NW NW	3.2

7. Notice of the application for transfer was published on October 29, 1996, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
8. On June 22, 2006, the Department issued a preliminary determination proposing to approve Transfer T-7636 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 June 27, 2006, and in the Redmond Spokesman newspaper on July 12, 19 and 26, 2006 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
9. Water has been used within the five years prior to filing of the application according to the terms and conditions of the rights, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
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.

Conclusions of Law

The substitution of two supplemental ground water rights for portions of a primary surface water right proposed in application T-7636, is consistent with the requirements of 540.524 and OAR 690-380-5000.


Now, therefore, it is ORDERED:

1. The substitution of two supplemental ground water rights for portions of a primary surface water right proposed in application T-7636 is approved, and is effective upon issuance of this order.
2. The portion of the supplemental ground water right perfected under Permit G-10662 described in Finding of Fact #2 may be substituted for the portion of the primary right perfected under Permit S-19418, listed in Finding of Fact #3, which may in turn be exercised as supplemental irrigation on the lands therein described.
3. The portion of the supplemental groundwater right under Permit G-13137 described in Finding of Fact #4 may be substituted for the portion of the primary right perfected under Permit S-19418, listed in Finding of Fact #5, which may in turn be exercised as supplemental irrigation on the lands therein described.
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 Certificates 53612 and 66868, Permit G-13137, and any related decree.
5. When required by the Department, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and 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 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.

Dated at Salem, Oregon this 7th day of September, 2006.


Phillip C. Ward, Director *PCW*

Mailing date: SEP 14 2006

Resent: SEP 18 2006