

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

| | | |
|---------------------------------------|---|------------------------------|
| In the Matter of Transfer Application |) | FINAL ORDER APPROVING A |
| T-11558 Yamhill County |) | CHANGE IN POINT OF DIVERSION |
| |) | AND 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.

Applicants

ROBERT MAY, RUSSELL MAY,
AND JERRY MAY
11465 SE WEBFOOT RD
DAYTON, OR 97114

Receiving Landowner

SLEGERS FARMS, INC.
ARIE SLEGERS
18345 SE NICHOLS
DAYTON, OR 97114

Findings of Fact

1. On March 28, 2013, ROBERT MAY, RUSSELL MAY, AND JERRY MAY filed an application to change the point of diversion and place of use under Certificate 37662. The Department assigned the application number T-11558.
2. SLEGERS FARMS, INC., ARIE SLEGERS is the receiving landowner who will be responsible for completion of the changes.
3. Notice of the application for transfer was published on April 9, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On March 24, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11558 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of April 24, 2014, for the applicants to respond. The applicants requested that the Department proceed with issuance of a

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.

Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.

5. On June 20, 2014, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11558 and sent a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on July 1, 2014, and in the McMinnville News-Register newspaper on July 4 and 11, 2014, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

Certificate: 37662 in the name of ZANE MAY (perfected under Permit S-25444)
Use: IRRIGATION of 78.2 ACRES
Priority Date: APRIL 15, 1958
Rate: 0.984 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: WILLAMETTE RIVER, tributary of the COLUMBIA RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | GLot | Measured Distances |
|-----|-----|-----|-----|-------|------|---|
| 5 S | 3 W | WM | 1 | NW NW | 8 | NORTH 3 DEGREES 20 MINUTES EAST 2250 FEET FROM THE WEST 1/4 CORNER OF SECTION 1 |

Authorized Place of Use:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|------|-------|
| Twp | Rng | Mer | Sec | Q-Q | GLot | Acres |
| 4 S | 3 W | WM | 35 | SE SE | 4 | 6.3 |
| 5 S | 3 W | WM | 1 | NW NW | 8 | 15.0 |
| 5 S | 3 W | WM | 1 | SW NW | 7 | 13.3 |
| 5 S | 3 W | WM | 1 | SE NW | 7 | 3.9 |
| 5 S | 3 W | WM | 2 | NE NE | 8 | 23.8 |
| 5 S | 3 W | WM | 2 | SE NE | 7 | 15.9 |

7. Transfer Application T-11558 proposes to move the authorized point of diversion approximately 3.5 miles upstream to:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|-----|-----|-----|-----|-------|-----|--|
| 5 S | 3 W | WM | 3 | NW NE | 52 | 940 FEET NORTH AND 2100 FEET WEST FROM THE EASTERLY SE CORNER OF DLC 52 |

8. Transfer Application T-11558 also proposes to change the place of use of the right to:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 4 S | 3 W | WM | 33 | SE NE | 60 | 0.1 |
| 4 S | 3 W | WM | 33 | NE SE | 60 | 0.2 |
| 4 S | 3 W | WM | 33 | NW SE | 60 | 0.5 |
| 4 S | 3 W | WM | 33 | SE SE | 60 | 16.6 |
| 4 S | 3 W | WM | 34 | NW SW | 60 | 12.2 |
| 4 S | 3 W | WM | 34 | SW SW | 60 | 32.6 |
| 4 S | 3 W | WM | 34 | SE SW | 60 | 16.0 |

9. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

Transfer Review Criteria [OAR 690-380-4010(2)]

10. 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.
11. 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-11558.
12. The proposed changes would not result in enlargement of the right.
13. The proposed changes would not result in injury to other water rights.
14. There is an instream water right in this reach of the Willamette River. The Department found that the best available information and historic streamflow measurements indicate that the flows within the reach exceed the levels allocated under the instream water right. Thus, the instream water right would not be injured as a result of the proposed change in point of diversion.
15. All other application requirements are met.

Partial Cancellation of a Water Right

On March 28, 2013, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Robert May, Russell May, and Jerry May. The right to be cancelled is as follows:

Certificate: 37662 in the name of ZANE MAY (perfected under Permit S-25444)
Use: IRRIGATION of 2.1 ACRES
Priority Date: APRIL 15, 1958

Rate: 0.026 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: WILLAMETTE RIVER, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | GLot | Measured Distances |
|-----|-----|-----|-----|-------|------|---|
| 5 S | 3 W | WM | 1 | NW NW | 8 | NORTH 3 DEGREES 20 MINUTES EAST 2250 FEET FROM THE WEST 1/4 CORNER OF SECTION 1 |

Authorized Place of Use to be Cancelled:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|------|-------|
| Twp | Rng | Mer | Sec | Q-Q | GLot | Acres |
| 5 S | 3 W | WM | 2 | SE NE | 7 | 2.1 |

Conclusions of Law

The change in point of diversion and place of use proposed in Transfer Application T-11558 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 change in point of diversion and change in place of use proposed in Transfer Application T-11558 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 Certificate 37662 and any related decree.
3. Water Right Certificate 37662 is cancelled.
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 new 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 is located within a private structure, the Watermaster shall request access upon reasonable notice.
6. Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

7. The former place of use of the transferred right shall no longer receive water under the right.
8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2015**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicants to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.
9. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 20 day of August, 2014.



Dwight French
Water Right Services Administrator, for
Director
Oregon Water Resources Department

Mailing Date: SEP 04 2014