

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

In the Matter of Transfer Application)	FINAL ORDER RECONSIDERING
T-8418, Umatilla County)	AND MODIFYING APPROVAL OF A
)	CHANGE IN PLACE OF USE
)	

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. OAR 137-004-0080 describes the process for reconsideration of an order in other than contested case.

Applicant

CHESTER PRIOR
32327 OREGON TRAIL ROAD
ECHO, OREGON 97826

Findings of Fact

1. On December 29, 1999, Chester Prior filed a transfer application requesting to change the place of use under portions of Certificates 76050, 76051 and 79439 and to change the character of use for a portion of Certificate 76050. The Department assigned the application number T-8418.
2. Notice of the application for transfer was published on January 25, 2000, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 30, 2006, the applicant's agent (Mr. Bill Porfily) submitted additional information amending Transfer T-8418 to remove the proposed change in character of use under Certificate 76050.
4. On July 24, 2006, the Department issued a preliminary determination proposing approval of a change in place of use under Transfer T-8418 and mailed a copy to the applicant. Additionally, notice of the preliminary determination for the transfer application was

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an 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 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.

published on the Department's weekly notice on August 1, 2006, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the Department's weekly notice. However, the Bureau of Reclamation (BOR) did raise issue with the proposed place of use associated with Certificates 76050 and 79439. Specifically, the BOR indicated that the 46.2 acres of supplemental irrigation under Certificate 79439 was not authorized for transfer to the originally proposed place of use in Section 4, Township 2 north, Range 28 east, WM.

5. Due to the issue described in Finding #4 above, the applicant requested that the preliminary determination issued on July 24, 2006, be withdrawn so that Transfer T-8418 could be amended in order to resolve the issue raised by the BOR.
6. On September 29, 2006, the Department received an amendment to Transfer T-8418 from the applicant's agent that modified the proposed place of use for the 46.2 acres of primary and supplemental irrigation associated with Certificates 76050 and 79439.
7. The amended place of use for Transfer T-8418 would cover land that already has existing primary and supplemental irrigation rights under Certificates 76050 and 75121. In order to facilitate the approval of Transfer T-8418, Westland Irrigation District filed a Notice of District Permanent Transfer with the Department on September 29, 2006, proposing to remove the 46.2 acres of primary and supplemental irrigation rights from the location of the amended proposed place of use for Transfer T-8418.
8. On October 16, 2006, Westland Irrigation District filed an Application for District Permanent Transfer requesting to change the place of use under Certificates 76050 and 75121. The Department assigned the application number T-10251.
9. On November 24, 2006, the Department issued a revised preliminary determination, reflecting the amendment received on September 29, 2006, proposing to approve Transfer Application T-8418. A copy of the revised preliminary determination was mailed to the applicant. Additionally, notice of the revised preliminary determination for the transfer application was published on the Department's weekly public notice on December 5, 2006, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the Department's weekly notice.
10. On January 19, 2007, the Department issued a Final Order for the transfer, recorded at Special Order Volume 71, Pages 63 to 67. Shortly following issuance of the order, however, the Department discovered that the order contained a typographical error that incorrectly described the number of acres involved in the change in place of use for land proposed to be located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 27, Township 3 North, Range 28 East, W.M.. Instead of describing 23.6 acres, it should have described 13.6 acres.
11. The period in which the Department may, on its own initiative, reconsider a final order has not yet closed. Upon reconsideration, the Department has concluded that the order should be withdrawn and a new order reflecting the corrections should be issued.

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

Certificate: 76050 (Permit 25920), issued in the name of TEEL IRRIGATION DISTRICT
Use: IRRIGATION of 46.2 ACRES
Priority Date: APRIL 22, 1955
Rate: 0.55 CUBIC FOOT PER SECOND (cfs)
Limit/Duty: ONE-FORTIETH (1/40th) of one cfs per acre, not to exceed 4.5 acre feet per acre per year
Source: UMATILLA RIVER, tributary to COLUMBIA RIVER

Authorized Point of Diversion:

Township	Range	Meridian	Sec	¼	¼	Location Coordinates
3	N	29	E	W.M.	21	SW NE Westland Canal – North 76 Degrees 45 Minutes 56 Seconds East, 2913.19 feet from the West ¼ Corner of Section 21

Authorized Place of Use:

PRIMARY IRRIGATION								
Township	Range	Meridian	Sec	¼	¼	Tax Lot	Acres	
3	N	28	E	W.M.	26	NE SW	7400	21.5
3	N	28	E	W.M.	26	NW SW	7400	24.7
TOTAL:								46.2

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

Certificate: 79439 (Permit 7400), in the name of U.S. BUREAU OF RECLAMATION
Use: SUPPLEMENTAL IRRIGATION OF 46.2 ACRES
Priority Date: JULY 1, 1924
Rate/Duty: ONE-EIGHTIETH (1/80th) 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, tributary to the UMATILLA RIVER. Water is run down the natural channels of McKay Creek and the Umatilla River and is re-diverted at the Westland Irrigation District Canal.

Authorized Point of Diversion:

Township	Range	Meridian	Sec	¼	¼	Location Coordinates
2	N	32	E	W.M.	34	NW SE McKay Dam

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION								
Township	Range	Meridian	Sec	¼	¼	Tax Lot	Acres	
3	N	28	E	W.M.	26	NE SW	7400	21.5
3	N	28	E	W.M.	26	NW SW	7400	24.7
TOTAL:								46.2

14. Transfer Application T-8418, as amended on September 29, 2006, proposes to change the place of use for the above described rights (Certificates 76050 and 79439) to:

Proposed Place of Use:

PRIMARY AND SUPPLEMENTAL IRRIGATION									
Township		Range		Meridian	Sec	¼	¼	Tax Lot	Acres
3	N	28	E	W.M.	27	NE	SE	7404	7.2
3	N	28	E	W.M.	27	NW	SE	7404	9.4
3	N	28	E	W.M.	27	SW	SE	7404	16.0
3	N	28	E	W.M.	27	SE	SE	7404	13.6
TOTAL:									46.2

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

Certificate: 76051 (Permit 25924) in the name of TEEL IRRIGATION DISTRICT

Use: IRRIGATION of 27.8 ACRES

Priority Date: JUNE 27, 1958

Rate: 0.2 CUBIC FOOT PER SECOND (cfs)

Limit/Duty: ONE-FORTIETH (1/40th) of one cfs, not to exceed 4.5 acre feet per acre per year

Source: UMATILLA RIVER, tributary to COLUMBIA RIVER

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼	¼	Location
3	N	29	E	W.M.	21	SW	NE	Westland Canal – North 76 Degrees 45 Minutes 56 Seconds East, 2913.19 feet from the West ¼ Corner of Section 21

Authorized Place of Use:

PRIMARY IRRIGATION									
Township		Range		Meridian	Sec	¼	¼	Tax Lot	Acres
3	N	28	E	W.M.	26	SW	SW	7400	0.2
3	N	28	E	W.M.	26	SE	SW	7400	26.3
3	N	28	E	W.M.	35	NE	NW	7400	1.3
TOTAL:									27.8

16. Application T-8418 proposes to change the place of use for the above described right (Certificate 76051) to:

Proposed Place of Use:

PRIMARY IRRIGATION									
Township		Range		Meridian	Sec	¼	¼	Tax Lot	Acres
3	N	28	E	W.M.	25	SW	SW	7402	7.0
3	N	28	E	W.M.	26	SE	SE	7400	6.9
3	N	28	E	W.M.	35	NE	NE	7400	6.9
3	N	28	E	W.M.	36	NW	NW	7402	7.0
TOTAL:									27.8

17. Water has been used within the last five years 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.
18. A pump and pipe line distribution systems sufficient to use the full amount of water allowed under the existing rights are present.
19. The proposed changes would not result in enlargement of the rights.
20. The proposed changes would not result in injury to other water rights.


Conclusions of Law

The change in place of use proposed in Transfer Application T-8418 and described in this order is consistent with the requirements of ORS Chapter 540 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The order entered at Special Order Volume 71, Pages 63 to 67 is withdrawn and of no further force and effect.
2. The change in place of use proposed in Transfer Application T-8418 is approved.
3. 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 76050, 79439 and 76051.
4. The former place of use of the transferred water shall no longer receive water as part of these rights.
5. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2008**. 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 changes and full beneficial use of the water.
6. Certificates 76050, 76051 and 79439 are modified. The Department will issue superseding certificates describing the rights when it determines that is necessary for record keeping.

Dated at Salem, Oregon this 28th day of February, 2007.


Phillip C. Ward
Director

Mailing date: MAR 06 2007