BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-12366, Malheur County)	CHANGE IN POINTS OF DIVERSION
)	AND CHANGE IN PLACES OF USE

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

CHANDELE A. BOWEN PO BOX 287 ADRIAN, OR 97901

Findings of Fact

- 1. On May 2, 2016, EARL TURPEN filed an application to change the points of diversion and change the places of use under Certificates 4978 and 27852. The Department assigned the application number T-12366.
- 2. Notice of the application for transfer was published on May 10, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 3. On August 30, 2016, the agent for the applicant submitted an amended map.
- 4. On October 31, 2016, ODFW submitted an amended comment form approving the existing fish screen.
- 5. On September 1, 2016, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12366 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 3, 2016, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

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.

- 6. On March 5, 2020, received an assignment by proof of Transfer Application T-12366 from Earl Turpen to Chandele A. Bowen.
- 7. On March 12, 2020, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of deficiencies in the application. The revised application map submitted on January 21, 2020, identified acres located under a road, which are not subject to transfer, and the Department determined the proposed place of use is located within the Ridgeview Irrigation District, which requires the submittal of Supplemental Form D. The Department requested that the deficiencies be resolved by April 13, 2020.
- 8. On March 26, 2020, the applicant's agent submitted a revised application map, removing the acres located under the road.
- 9. On April 28, 2020, the Department received a Supplemental Form D, resolving all deficiencies.
- 10. On June 30, 2020, the Department issued a Preliminary Determination proposing to approve Transfer T-12366 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on June 30, 2020, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
- 11. The portion of the first right to be transferred is as follows:

Certificate:

4978 in the name of MARY H. NAPTON (perfected under Permit S-4668)

Use:

IRRIGATION OF 40.42 ACRES

Priority Date:

JUNE 26, 1920

Rate:

0.51 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 in

case of rotation.

Source:

SNAKE RIVER

Authorized Place of Use:

	IRRIGATION								
							Type of Change		
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Point of diversion only	Point of diversion and place of use	
22 S	47 E	WM	6	SW SW	6	25.54	14.00	11.54	
22 S	47 E	WM	6	SE SW	7	14.88	-	14.88	
					Total	40.42	-		

12. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 4978 as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
22 S	47 E	WM	6	sw sw	6	EXISTING POD - 1030 FEET NORTH AND 700 FEET EAST OF THE SW CORNER OF SECTION 6

13. Transfer Application T-12366 proposes to move the authorized point of diversion approximately 726 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
22 S	46 E	WM	1~	NE SE	10	PROPOSED POD - 170 FEET NORTH AND 230 FEET WEST OF THE M.C. BETWEEN SEC.1, T22S, R46E, WM AND SEC. 6, T22S, R47E, WM.

14. Transfer Application T-12366 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Twp Rng Mer Sec Q-Q Acres					
22 S	46 E	WM	1	SW SE	26.42	

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

Certificate:

27852 in the name of FAY M. AND BETTY JO METZER (perfected

under Permit S-16213)

Use:

IRRIGATION OF 34.2 ACRES AND SUPPLEMENTAL IRRIGATION

OF 9.0 ACRES

Priority Date:

MARCH 6, 1945

Rate:

1.08 CUBIC FEET 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-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated during the irrigation season of each year, and shall be further limited to a diversion of not to exceed 4.5 acre-feet per acre for

each acre irrigated during the irrigation season of each year.

Source:

SNAKE RIVER, a tributary of COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot
22 S	47 E	WM	6	SW SW	6

Authorized Place of Use:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres		
22 S	46 E	WM	1	SW SE		1.4		
22 S	46 E	WM	1	E ½ SE	10	32.8		
					Total	34.2		

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
22 S	47 E	WM	6	SW SW	6	9.0

16. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 27852 as follows:

ſ	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
	22 S	47 E	WM	6	sw sw	6	EXISTING POD - 1030 FEET NORTH AND 700 FEET EAST OF THE SW CORNER OF SECTION 6

17. Transfer Application T-12366 proposes to move the authorized point of diversion approximately 726 feet downstream to:

-	-						
	Twp_	Rng	Mer_	Sec	Q-Q	GLot	Measured Distances
	22 S	46 E	WM	1	NE SE	10	PROPOSED POD - 170 FEET NORTH AND 230 FEET WEST OF THE M.C. BETWEEN SECTION 1, T22S, R46E AND SECTION 6, T22S, R47E

18. Transfer Application T-12366 also proposes to change the place of use of a portion of the right to:

SUPPLEMENTAL IRRIGATION							
Twp	Rng _	Mer	Sec	Q-Q_	GLot	Acres	
22 S	47 E	WM	6	SW SW	6	1.5	

19. 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 currently equipped with an appropriate fish screen.

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

- 20. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
- 21. A pump, pipeline, and sprinkler system 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-12366.
- 22. The proposed changes would not result in enlargement of the rights.
- 23. The proposed changes would not result in injury to other water rights

Conclusions of Law

T-12366.kdd

The change in points of diversion and change in places of use proposed in Transfer Application T-12366 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

 The change in points of diversion and change in places of use proposed in Transfer Application T-12366 are approved.

- 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 4978 and 27852 and any related decree.
- 3. Water right Certificates 4978 and 27852 are cancelled. A new certificate will be issued describing that portion of Certificate 4978 not affected by this transfer.
- 4. The quantity of water diverted at the new point of diversion (Proposed POD), shall not exceed the quantity of water lawfully available at the original point of diversion (Existing POD).
- 5. The water user shall operate and maintain an approved fish screen at the new point of diversion. If Oregon Department of Fish and Wildlife (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.
- 6. The former place of use of the transferred rights shall no longer receive water under the rights.
- 7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2021**. 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 changes and full beneficial use of the water.
- 8. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this	AUG 1 1 2020 .
Lisa J. Jaramillo, Transfer and Conserv	vation Section Manager, for
THOMAS M BYLER, DIRECTOR	
Oregon Water Resources Department	

Mailing date: AUG 1 2 2020