

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING
T-6942, Clackamas County)	CHANGES IN POINT OF
)	APPROPRIATION AND PLACE OF
)	USE AND PARTIAL CANCELLATION
)	OF WATER RIGHTS

Authority

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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

THE CHILDREN'S COURSE
19825 RIVER ROAD
GLADSTONE, OR 97027

Findings of Fact

Background

1. On April 5, 1993, Rivergreens Golf Course filed an application, signed by Charles F. Thomas, Jr. and Buelah A. Thomas, to transfer the point of appropriation and place of use under Certificate 32511. The Department assigned the application number T-6942.
2. On February 23, 2011, the transfer application was assigned to The Children's Course.
3. On October 17, 2011, a revised map was submitted and on December 27, 2011, a revised application was submitted.
4. The portion of the right to be transferred is as follows:

Certificate: 32511 in the name of CHARLES F. THOMAS (perfected under Permit G-1862)

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.

Use: IRRIGATION of 16.7 ACRES

Priority Date: MAY 16, 1961

Rate: 0.21 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, 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: A WELL within the WILLAMETTE RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
2 S	2 E	WM	30	NW NE	41	300 FEET SOUTH AND 2150 FEET WEST FROM THE NE CORNER OF SECTION 30

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	Type of Change Proposed
2 S	2 E	WM	19	SW SE	41	2.7	POU & POA
2 S	2 E	WM	19	SW SE	41	2.9	POA
2 S	2 E	WM	19	SE SE	41	3.7	POU & POA
2 S	2 E	WM	19	SE SE	41	2.6	POA
2 S	2 E	WM	30	NE NE	41	0.2	POU & POA
2 S	2 E	WM	30	NW NE	41	0.1	POU & POA
2 S	2 E	WM	30	NW NE	41	4.5	POA
						Total	16.7

- The original water right description, based on a Final Proof Survey by the Department on August 11, 1964, indicated 7.6 acres of irrigation in SE SE of Section 19, T2S, R2E, W.M. However, re-measurement of the area of the Final Proof Survey map footprint using Geographic Information System software (GIS), measured only 6.3 acres within the SE SE of Section 19. The Department concludes that the 1.3 acre difference represents a discrepancy of measurement or calculation, rather than an actual elimination or shift in location of previously-irrigated acreage, and that the water right area should more accurately be described as 6.3 acres in the SE SE.
- The reduction of the place of use area by 1.3 acres results in a revised total place of use of 16.7 acres, as listed above. The rate of diversion for the 16.7 acres under this right (at the rate of 1/80 cfs per acre) will therefore become 0.21 cfs (94.3 gallons per minute).
- Transfer Application T-6942 proposes to move the authorized point of appropriation approximately 600 feet northeast from the existing point of appropriation to an existing well:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
2 S	2 E	WM	30	NW NE	41	SOUTH 79 DEGREES 25 MINUTES 52 SECONDS WEST, 1591.5 FEET FROM THE NE CORNER OF SECTION 30

8. Transfer Application T-6942 also proposes to change the place of use of 6.7 acres under the right, resulting in the following new description of the place of use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
2 S	2 E	WM	19	SW SE	41	7.1
2 S	2 E	WM	19	SE SE	41	2.6
2 S	2 E	WM	30	NW NE	41	7.0

9. Notice of the application for transfer was published on April 14, 1993, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
10. A surface water right for 0.07 cfs from the Clackamas River (priority date January 5, 1927) for irrigation of 5.2 acres is appurtenant to some of the lands proposed for transfer. Evidence is available to suggest that the right under Certificate 8441 is subject to forfeiture under ORS 540.610 and has not been exercised since approximately 1948. The slough from which water was pumped at the authorized point of diversion has been filled in and paved over, as evidenced by aerial photos dated 7/13/1948, 6/25/1970, and 6/20/1994.
11. On June 9, 1994, Charles and Beulah Thomas signed an affidavit of voluntary cancellation to cancel the portion of Certificate 8441 appurtenant to their lands.
12. On February 8, 2002, the Department sent a letter to the applicant, indicating that the signed affidavit of voluntary cancellation could not be processed because it did not specify the acreage to be cancelled and asking them to submit a new affidavit of voluntary cancellation. No response was received.
13. On June 25, 2004, the Department mailed a copy of the Preliminary Determination proposing to approve Transfer Application T-6942, provided several deficiencies were remedied, to the current landowner, Rivergreens Associates, LTD Partnership, at their Minneapolis, Minnesota address. The Preliminary Determination cover letter set forth a deadline of August 24, 2004, for the applicant to respond. Needed items included affidavits of consent from owners of the land proposed for transfer (the City of Gladstone and Rivergreens Associates, LTD Partnership), a completed Land Use Information Form, an affidavit of voluntary cancellation for Certificate 8441, and map changes to eliminate a water right conflict on the proposed "to" land. No response was received.
14. On April 28, 2006, the Department re-sent the Preliminary Determination, along with copies of the transfer application and map, and other explanatory information, to Rivergreens Golf Course c/o Beulah A. and Charles F. Thomas, Jr. at the original address listed in the transfer application. The Preliminary Determination cover letter set forth a deadline of May 29, 2006, for the applicant to respond. Needed items included affidavits of consent from owners of the land proposed for transfer (the City of Gladstone and Rivergreens Associates, LTD Partnership), a completed Land Use Information Form, an affidavit of voluntary cancellation for Certificate 8441, and map changes to eliminate a water right conflict on the proposed "to" land.

15. On May 24, 2006, an attorney for the applicant responded and initiated communications between the Department and personnel at the golf course. Numerous phone communications continued.
16. On June 27, 2008, Jason Smesrude, CWRE called to discuss the mapping issues. Revised transfer maps were received in August of 2008 via email.
17. On January 7, 2009, Jeff Campbell submitted questions regarding the relation of the authorized well to water use and water rights associated with the City of Gladstone's Meldrum Bar Park.
18. On September 23, 2010, the Department responded by email to re-start the communication with T-6942 stakeholders (including the golf course, the City of Gladstone and Rivergreens Associates) regarding the issues that needed to be resolved to continue processing the transfer application.
19. On February 23, 2011, the transfer application was assigned to The Children's Course that owns part of the original place of use, as well as the proposed place of use.
20. On July 20, 2011, the City of Gladstone submitted an affidavit of consent to the transfer of some of the water right off of land now owned by the City.
21. On August 8, 2011, the Department sent an email message to the applicant, laying out the remaining issues and a suggested timeline for the steps in processing.
22. On October 17, 2011, revised transfer maps were received.
23. On November 29, 2011, CSM Corporation submitted affidavits of consent for transfer of parts of the right off of land developments owned by them and known as Rivergreens Associates Limited Partnership and Rivergreens Associates II Limited Partnership.
24. On December 27, 2011, the applicant submitted a revised application, as reflected by this document.
25. On January 11, 2012, the Department mailed a copy of a revised draft Preliminary Determination proposing to approve Transfer Application T-6942 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of February 10, 2012, 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.
26. On March 5, 2012, the Department issued a Preliminary Determination proposing to approve Transfer Application T-6942 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 March 6, 2012, 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)

27. Water has been used within the last five years prior to the submittal of Transfer Application T-6942 according to the terms and conditions of the right. There is no information in the record that would demonstrate that this right is subject to forfeiture under ORS 540.610.
28. 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-6942.
29. The proposed change would not result in enlargement of the right.
30. The proposed change would not result in injury to other water rights.

Partial Cancellation of Water Rights

31. Groundwater Permit G-12026 with a priority date of April 5, 1993, and season of March 1 through June 30, is appurtenant to the lands to which the earlier priority right under Certificate 32511 is proposed to be moved. Additionally, the proposed well is the authorized well for groundwater registration GR-871/Certificate GR-844.
32. The revised Transfer Application T-6942 states that upon approval of T-6942, the applicant, who is also the water user and landowner, authorizes cancellation of Permit G-12026 and groundwater registration GR-871/Certificate GR-844.
33. A surface water right (Certificate 8441) for 0.07 cfs from the Clackamas River (priority date January 5, 1927) for irrigation of 5.2 acres is appurtenant to some of the lands proposed for transfer. Evidence is available to suggest that the right under Certificate 8441 is subject to forfeiture under ORS 540.610 and has not been exercised since sometime prior to 1948. The slough from which water was pumped at the authorized point of diversion has been filled in and paved over, as evidenced by aerial photos dated 7/13/1948, 6/25/1970 and 6/20/1994, so the Point of Diversion became inaccessible.
34. On August 9, 1994, Charles and Beulah Thomas, landowners of most, if not all, of the place of use for Certificate 8441, submitted an affidavit of voluntary cancellation stating that they had abandoned any and all interest in the water right and requesting that it be cancelled. The Department requested the Thomases to submit a revised affidavit, listing the acreages per quarter quarter that were abandoned. No response was received, and the Department did not act on the cancellation affidavit.
35. The water right evidenced by Certificate 8441 was perfected by submission of a Proof of Appropriation form by the water user on October 17, 1929. Certificate 8441 was issued December 10, 1929, for 5.2 acres, of the original 7.6 acres. The Department did not perform a survey or produce a Final Proof map, though the number of acres "proved up on" was less than the acreage shown in the original application map. Therefore, the precise location of the certificated acres in each quarter-quarter section within the original footprint of the right is unknown.

36. Multiple irrigation rights appurtenant to the same land are considered “layered” as per OAR 690-380-0100(4). Therefore, the transferred right under Certificate 32511 and the old Certificate 8441 right are layered. OAR 690-380-5120 states that when multiple irrigation rights have been issued for the same land, only one right may be considered as primary irrigation and all other rights must be diminished to supplemental (or cancelled).
37. On December 1, 2011, affidavits certifying that portions of Certificate 8441 have been abandoned and requesting cancellation of the right were received from Bradley Kittleson, Vice President of CSM Corporation, a Minnesota corporation, the General Partner of Rivergreens Associates Limited Partnership and Rivergreens Associates II Limited Partnership, both Oregon limited partnerships. These partnerships own land in Tax Lots 601, 900, 5200 and 5300 in the quarter-quarter sections listed below.
38. On February 29, 2012, Benjamin G. Lenhart, secretary of The Children’s Course, submitted an affidavit of partial cancellation for a portion of Certificate 8441 appurtenant to golf course property in Tax Lot 2 2E 19D 600 and 2 2E 19DD 5400.

39. The portions of the right to be cancelled are as follows:

Certificate: 8441 in the name of L. E. SICKLER (perfected under Permit S-7727)
Use: IRRIGATION of APPROXIMATELY 3.26 ACRES
Priority Date: JANUARY 5, 1927
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, or its equivalent in case of rotation.
Source: CLACKAMAS RIVER, tributary to the WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
2 S	2 E	WM	19	SE SE

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Approximate Acres
2 S	2 E	WM	19	SE SE	4.24
2 S	2 E	WM	30	NE NE	0.20
2 S	2 E	WM	30	NW NE	1.50

40. On January 20, 2012, the Water Resources Department issued a Notice of Proposed Partial Cancellation of Water Right to A-1Hawk, Inc., owner of Tax Lot 2 2E 19DD 5501, to which approximately 0.26 acre of Certificate 8441 in SE SE of Section 19 is appurtenant. No response to the notice was filed. On April 12, 2012, the 0.26 acre portion of Certificate 8441 in Tax Lot 2 2E 19DD 5501 was cancelled by a Final Order of Partial Cancellation recorded at Special Order Volume 87, pages 263-265.
41. There is no map in the water right record that shows precisely the location of the certificated acres within the larger original place of use in the water right application map. The

combination of acres to be cancelled under Certificate 8441 is therefore greater than the number of acres authorized by the water right, in order to ensure that all acres of water right are cancelled.

Conclusions of Law

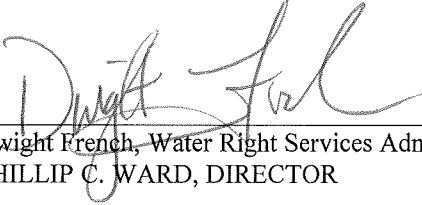
The change in point of appropriation and change in place of use proposed in Transfer Application T-6942 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the abandoned rights should be cancelled.

Now, therefore, it is ORDERED:

1. The change in point of appropriation and change in place of use proposed in application T-6942 are approved.
2. Permit G-12026 and groundwater registration GR-871/Certificate GR-844 are cancelled.
3. The portions of Certificate 8441 not cancelled by the Final Order of Partial Cancellation recorded at Special Order Volume 87, pages 263-265, that are listed in Finding of Fact #39 have been abandoned and are cancelled. Therefore, the entire right evidenced by Certificate 8441 is cancelled.
4. The right to the use of the water under Certificate 32511 is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 32511 and any related decree.
5. Water right certificate 32511 is cancelled, but the right to use of water continues in effect, under the terms and conditions of this order.
6. The quantity of water diverted at the new point of appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation.
7. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
8. The Director may require the water user to install a totalizing flow meter or other suitable measuring device at the point of appropriation. If the Director notifies the water user to install a totalizing flow meter or other measuring device, the water user shall install such device specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meter or measuring device in good working order and shall allow the Watermaster access to the meter or measuring device.
9. The former place of use of the transferred right shall no longer receive water under the right.
10. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2013**. 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.

11. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 12 day of April, 2012.



Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing Date APR 13 2012