

STATE OF OREGON

COUNTY OF YAMHILL

ORDER APPROVING A CHANGE IN PLACE OF USE,  
A CHANGE IN POINT OF DIVERSION,  
AND A PARTIAL CANCELLATION OF A WATER RIGHT

Pursuant to ORS 540.510 to 540.530, after notice was given and no objections were filed, and finding that no injury to existing water rights would result, this order approves, as conditioned or limited herein, TRANSFER 8741 submitted by

CARLTON PLANTS  
P.O. BOX 398  
DAYTON, OREGON 97114-0398.

The first right to be modified, as evidenced by a portion of Certificate 51227, was perfected under Permit 13847 with a date of priority of MAY 23, 1939. The right allows the use of LAMBERT SLOUGH, a tributary of the WILLAMETTE RIVER, for IRRIGATION OF 24.1 ACRES. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.30 cubic foot per second, if available at the authorized point of diversion: NW¼ NW¼, AS PROJECTED WITHIN COOPER DLC 53, SECTION 10, T 5 S, R 3 W, W.M., or its equivalent in case of rotation, measured at the point of diversion from the source.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-EIGHTIETH of one cubic foot per second per acre or its equivalent for each acre irrigated and shall be further

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 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

limited to a diversion of not to exceed 2½ acre-feet for each acre irrigated during the irrigation season of each year.

The authorized place of use is located as follows:

NE¼ NE¼ 13.0 ACRES  
AS PROJECTED WITHIN  
COOPER DLC 53  
SECTION 9

NW¼ NW¼ 11.1 ACRES  
AS PROJECTED WITHIN  
COOPER DLC 53  
SECTION 10

TOWNSHIP 5 SOUTH, RANGE 3 WEST, W.M.

The right to use the water for the above purpose is restricted to beneficial use on the lands or place of use described and is subject to the existing minimum flow policies established by the Water Policy Review Board.

The second right to be modified, as evidenced by a portion of Certificate 31657, was perfected under Permit 27687 with a date of priority of NOVEMBER 10, 1961. The right allows the use of LAMBERT SLOUGH, a tributary of the WILLAMETTE RIVER, for IRRIGATION OF 7.9 ACRES. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.10 cubic foot per second, if available at the authorized point of diversion: LOT 5 (NW¼ NW¼), SECTION 10, T 5 S, R 3 W, W.M., or its equivalent in case of rotation, measured at the point of diversion from the source.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is 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 2½ acre-feet for each acre irrigated during the irrigation season of each year.

The authorized place of use is located as follows:

NE¼ NE¼ 2.3 ACRES  
AS PROJECTED WITHIN  
COOPER DLC 53  
SECTION 9

NW¼ NW¼ 5.6 ACRES  
AS PROJECTED WITHIN  
COOPER DLC 53  
SECTION 10

TOWNSHIP 5 SOUTH, RANGE 3 WEST, W.M.

The right to use the water for the above purpose is restricted to beneficial use on the lands or place of use described.

The third right to be modified, as evidenced by Special Order Volume 53, Page 568, entered April 7, 1999, approving Transfer Application 7190, was perfected under Permit 28613 with a date of priority of FEBRUARY 7, 1963. The right allows the use of the WILLAMETTE RIVER, a tributary of the COLUMBIA RIVER, for IRRIGATION OF 36.9 ACRES. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.46 cubic foot per second, if available at the original point of diversion: LOT 3 (NW¼ SW¼), SECTION 22, T 4 S, R 3 W, W.M.; 1440 FEET NORTH AND 550 FEET EAST FROM THE SE CORNER OF GOODRICH DLC 49, or its equivalent in case of rotation, measured at the point of diversion from the source.

The authorized point of diversion is located:

LOT 5 (NW¼ NW¼), SECTION 10, T 5 S, R 3 W, W.M.;  
430 FEET NORTH AND 80 FEET EAST FROM THE SW CORNER OF  
LOT 5.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is 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 2½ acre-feet for each acre irrigated during the irrigation season of each year.

The authorized place of use is located as follows:

NE¼ SW¼ 1.0 ACRE  
SE¼ SW¼ 0.9 ACRE  
NW¼ SE¼ 25.8 ACRES  
SW¼ SE¼ 9.2 ACRES  
ALL AS PROJECTED WITHIN THESSING DLC 51  
SECTION 8

TOWNSHIP 5 SOUTH, RANGE 3 WEST, W.M.

When required by the Department, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable devices 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.

The water user shall maintain a fish screen or fish by-pass device. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning of construction and shall be installed under the supervision of the Department of Fish and Wildlife.

The right to use the water for the above purpose is restricted to beneficial use on the lands or place of use described.

The fourth right to be modified, was perfected under a portion of Permit 51918 with a date of priority of MARCH 11, 1993. The right allows the use of WILLAMETTE BASIN PROJECT RESERVOIRS, CONSTRUCTED UNDER PERMITS R-1625 AND R-5363, AND LAMBERT SLOUGH, tributaries of the WILLAMETTE RIVER, for NURSERY OPERATIONS ON 32.0 ACRES, BEING SUPPLEMENTAL IRRIGATION OF 32.0 ACRES AND AGRICULTURAL USE. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.49 CUBIC FOOT PER SECOND FROM LIVE FLOW AND 80.0 ACRE FEET PER YEAR STORED WATER ONLY, if available at the original point of diversion: POD 1 - LOT 5 (NW¼ NW¼), SECTION 10, T 4 S, R 3 W, W.M.; 430 FEET NORTH AND 80 FEET EAST FROM THE SE CORNER OF DLC 52, or its equivalent in case of rotation, measured at the point of diversion from the source.

The authorized place of use is located as follows:

SUPPLEMENTAL

NE¼ NE¼ 15.3 ACRES  
AS PROJECTED WITHIN  
COOPER DLC 53  
SECTION 9

NW¼ NW¼ 16.7 ACRES  
AS PROJECTED WITHIN  
COOPER DLC 53  
SECTION 10

TOWNSHIP 5 SOUTH, RANGE 3 WEST, W.M.

The amount of water used for NURSERY OPERATIONS is limited to a diversion of 0.15 cubic foot per second per acre. For the irrigation of **containerized nursery plants**, the amount of water diverted is limited to ONE-FORTIETH of one cubic foot per second (or its equivalent) and 5.0 acre feet per acre per year. For the irrigation of **in ground nursery plants** the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre feet per acre per year. The use

of water for NURSERY OPERATIONS may be made at anytime of the year that the use is beneficial. For the irrigation of **any other crop**, the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2½ acre feet per acre during the irrigation season of each year. Water from live flow for AGRICULTURAL USE may be appropriated year-round. The use of water for irrigation from live flow is allowed March 1 through June 30 and September 1 through October 31. The use of water for irrigation from stored water is allowed March 1 through October 31 or as may be limited by the Bureau of Reclamation water supply contract.

Measurement, recording and reporting conditions:

- A. The water user shall install meters or other suitable measuring devices as approved by the director. The water user shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the director. Further, the Director may require the water user to report general water use information, including the place and nature of use of water under the right.
- B. 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.

The use of water under this right is subject to the terms and conditions of Water Service Contract No. 5-07-10-W1030 or a satisfactory replacement between the Bureau of Reclamation and the applicant, a copy of which is on file in the records of the Water Resources Department.

The water user shall install, maintain, and operate fish screening and by-pass devices as required by the Oregon Department of Fish and Wildlife (ODFW) to prevent fish from entering the diversion. The required screens and by-pass devices are to be in place, functional and approved by the ODFW.

In the event of a request for a change in point of appropriation, an additional point of appropriation or alteration of the appropriation facility associated with this authorized diversion,

the quantity of water allowed herein, together with any other right, shall not exceed the capacity of the facility at the time of perfection of this right.

This right is limited to any deficiency in the available supply of any prior right existing for the same land.

The use shall conform to any reasonable rotation system ordered by the proper state officer.

Failure to comply with any of the provisions of this right may result in action including but not limited to, restrictions on the use, civil penalties, or cancellation of the right.

The right to use the water for the above purpose is restricted to beneficial use without waste on the lands or place of use described. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

The Director finds the use of water described by this right, as conditioned, will not impair or be detrimental to the public interest.

The applicant proposes to change the places of use to:

PERMIT 13847

SE $\frac{1}{4}$  SW $\frac{1}{4}$  6.0 ACRES

SW $\frac{1}{4}$  SE $\frac{1}{4}$  8.0 ACRES

SE $\frac{1}{4}$  SE $\frac{1}{4}$  10.1 ACRES

ALL AS PROJECTED WITHIN MATHENY DLC 38  
SECTION 28

TOWNSHIP 5 SOUTH, RANGE 3 WEST, W.M.

PERMIT 27687

SE $\frac{1}{4}$  SW $\frac{1}{4}$  7.9 ACRES  
AS PROJECTED WITHIN MATHENY DLC 38  
SECTION 28

TOWNSHIP 5 SOUTH, RANGE 3 WEST, W.M.

PERMIT 28613

SW $\frac{1}{4}$  SW $\frac{1}{4}$  3.6 ACRES  
AS PROJECTED WITHIN  
MATHENY DLC 38  
SECTION 27

NW $\frac{1}{4}$  NW $\frac{1}{4}$  14.5 ACRES  
AS PROJECTED WITHIN  
MATHENY DLC 38  
SECTION 34

NE $\frac{1}{4}$  NE $\frac{1}{4}$  18.8 ACRES  
AS PROJECTED WITHIN  
MATHENY DLC 38  
SECTION 33

TOWNSHIP 5 SOUTH, RANGE 3 WEST, W.M.

PERMIT 51918

SUPPLEMENTAL

SE $\frac{1}{4}$  SW $\frac{1}{4}$  13.9 ACRES  
SW $\frac{1}{4}$  SE $\frac{1}{4}$  8.0 ACRES  
SE $\frac{1}{4}$  SE $\frac{1}{4}$  10.1 ACRES  
ALL AS PROJECTED WITHIN MATHENY DLC 38  
SECTION 28

TOWNSHIP 5 SOUTH, RANGE 3 WEST, W.M.

The applicant proposes to change the point of diversion of all the above rights to:

LOT 2 (NE $\frac{1}{4}$  NW $\frac{1}{4}$ ), SECTION 34, T 5 S, R 3 W, W.M.;  
1600 FEET SOUTH AND 510 FEET EAST FROM THE NE CORNER OF MATHENY  
DLC 38.

An affidavit was received from Carlton Plants, LLC, owner of certain land and the water right appurtenant to it. A portion of the water right has been abandoned and is requested to be cancelled.

The portion is described by Certificate 31657, State Record of Water Right Certificates. The date of priority is November 10, 1961. The water use was for irrigation of 24.1 acres from Lambert Slough, a tributary of the Willamette River. The amount used was 0.30 cubic foot per second.

The abandoned portion is located as follows:

NE¼ NE¼ 13.0 ACRES  
AS PROJECTED WITHIN  
ENOCH COOPER DLC 53  
SECTION 9

NW¼ NW¼ 11.1 ACRES  
AS PROJECTED WITHIN  
ENOCH COOPER DLC 53  
SECTION 10

TOWNSHIP 5 SOUTH, RANGE 3 WEST, W.M.

ORS 540.610 provides: "Whenever the owner of a perfected and developed water right certifies under oath to the Water Resources Commission that the water right has been abandoned by the owner and that the owner desires cancellation thereof, the commission shall enter an order cancelling the water right."

THESE CHANGES TO EXISTING WATER RIGHTS MAY BE MADE PROVIDED THE FOLLOWING CONDITIONS ARE MET BY THE WATER USER:

1. The proposed changes shall be completed on or before October 1, 2003.
2. The quantity of water diverted at the new point of diversion, together with that diverted at the old point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
3. 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.
4. Water shall be acquired from the same surface water source as the original point of diversion.
5. The former places of use shall no longer be irrigated as a part of these water rights.



6. The water user shall install and maintain a fish screen or fish by-pass device. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning of construction and shall be installed under the supervision of the Department of Fish and Wildlife.

The water user may participate in the Oregon Department of Fish and Wildlife's cost sharing program for installation of screening and by-pass devices in accordance with ORS 540.525.


Satisfactory proof of the completion of the changes approved by the order of the Water Resources Director entered April 5, 1999, at Special Order Volume 53, Page 568 approving Transfer 7190, is confirmed as described above.

Satisfactory proof has been received that appropriation of water was perfected under Permit 51937.

The portion of the water right evidenced by Certificate 31657 requested to be cancelled is cancelled.

Certificates 51227 and 31657 are cancelled. New certificates will be issued to confirm those portions of the rights NOT involved in this transfer. When satisfactory proof of the completed changes is received, new certificates confirming these water rights will be issued.

WITNESS the signature of the Water Resources  
Director, affixed           MAY 8 2002          .

  
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Paul R. Cleary, Director