

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

In the Matter of Transfer Application) FINAL ORDER APPROVING
T-11314, Morrow County) CHANGES 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.

Applicant

DUANE NEIFFER
67795 MCNAB LANE
IONE, OR 97843

Agent

MCKINNIS ENGINEERING
RONALD V. MCKINNIS
79980 PRINDLE LOOP RD
HERMISTON, OR 97838

Findings of Fact

Background

1. On November 7, 2011, DUANE NEIFFER filed an application to change the place of use under Certificate 184½. The Department assigned the application number T-11314.
2. On March 30, 2012, the applicant submitted Supplemental Form D for the irrigation and supplemental irrigation under Permit S-54649.
3. On April 9, 2012, the applicant amended the application to include the irrigation and supplemental irrigation under Permit S-54649.
4. On May 3, 2012, the applicant corrected the amended application and map for Permit S-54649 to accurately reflect the points of diversion.

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.

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

Certificate: 184½ in the name of MARGARET REANEY (confirmed by Willow Creek Decree)
Use: IRRIGATION OF 2.5 ACRES
Priority Date: 1890
Rate: 0.04 CUBIC FOOT PER SECOND
Period of Use: APRIL 1 TO JUNE 10
Source: WILLOW CREEK, tributary to the COLUMBIA RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	25 E	WM	28	SW NE	2.5

6. Certificate 184½ does not describe the location of the point of diversion, however information is available from the Certified Water Right Examiner indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	25 E	WM	28	NE SE	1340 FEET NORTH AND 250 FEET WEST FROM THE SE CORNER OF SECTION 28
1 S	25 E	WM	28	NE SE	2560 FEET NORTH AND 1280 FEET WEST FROM THE SE CORNER OF SECTION 28

7. Transfer Application T-11314 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	25 E	WM	27	NW SW	2.5

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

Permit: S-54649 in the name of WILLOW CREEK DISTRICT IMPROVEMENT CO. (Application S-87373)
Use: IRRIGATION AND SUPPLEMENTAL IRRIGATION OF 2.5 ACRES
Priority Date: JANUARY 6, 2009
Maximum Volume: 7.5 ACRE FEET (SUBJECT TO THE BYLAWS OF THE WILLOW CREEK DISTRICT IMPROVEMENT COMPANY)
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall not exceed 3.0 acre feet per acre for each acre irrigated during the irrigation season of each year.
Period of Use: PRIMARY IRRIGATION MARCH 1 THROUGH MARCH 31, SUPPLEMENTAL IRRIGATION APRIL 1 THROUGH JULY 15, AND PRIMARY IRRIGATION JULY 16 THROUGH OCTOBER 31
Source: WILLOW CREEK RESERVOIR (CONSTRUCTED UNDER PERMIT R-10880), tributary to WILLOW CREEK

Authorized Dam Location:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	26 E	WM	35	NW SE	1530 FEET NORTH AND 3050 FEET EAST FROM THE SW CORNER OF SECTION 35

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	25 E	WM	27	SW SW	1200 FEET NORTH AND 120 FEET EAST FROM THE SW CORNER OF SECTION 27
1 S	25 E	WM	28	NE SE	1730 FEET NORTH AND 580 FEET WEST FROM THE SE CORNER OF SECTION 28

Authorized Place of Use:

IRRIGATION AND SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	25 E	WM	28	SW NE	2.5

9. Transfer Application T-11314 proposes to change the place of use of the right to:

IRRIGATION AND SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	25 E	WM	27	NW SW	2.5

10. Notice of the application for transfer was published on November 15, 2011, pursuant to OAR 690-380-4000. An amended notice of the transfer application was published on May 15, 2012. No comments were filed in response to the notices.
11. On May 22, 2012, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11314 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 22, 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.
12. On June 27, 2012, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11314 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on July 3, 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(2)]

13. 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 right is subject to forfeiture under ORS 540.610.
14. 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-11314.

15. The proposed changes would not result in enlargement of the rights.
16. The proposed changes would not result in injury to other water rights.

Conclusions of Law

The changes in place of use proposed in Transfer Application T-11314 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in place of use proposed in Transfer Application T-11314 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 Certificate 184½, Permit S-54649, and any related decree.
3. Water right certificate 184½ is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. Permit S-54770, in the name of Willow Creek District Improvement Co., is issued to replace Permit S-54649, and incorporates the change in place of use approved by this order and the order issued for Transfer Application T-11313. Permit S-54649, in the name of Willow Creek District Improvement Co., is no longer of any force or effect.
5. The former places of use of the transferred rights shall no longer receive water under the rights.
6. The approved changes shall be completed and full beneficial use of the water shall be made 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.
7. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred under Certificate 184½ will be issued.

Dated at Salem, Oregon this 7 day of August, 2012.


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

Mailing Date AUG 16 2012