

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

In the Matter of Transfer Application)	SUPERSEDING FINAL ORDER
T-10927, Deschutes County)	APPROVING AN ADDITIONAL POINT
)	OF APPROPRIATION, AND CHANGES
)	IN PLACE OF USE AND CHARACTER
)	OF USE; AND PARTIAL
)	CANCELLATION OF WATER RIGHT
)	CERTIFICATES 79694 AND 81614; and
)	CORRECTING SCRIVENER'S ERROR
)	IN A PREVIOUS FINAL ORDER

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

GEORGE ANDERSON
7795 BERMUDA ROAD
LAS VEGAS NV 89123-1842

Findings of Fact

Background

1. On June 30, 2009, GEORGE ANDERSON filed an application to change the character of use from supplemental to primary irrigation, to cancel a portion of the supplemental irrigation, to change the place of use, and to add a point of appropriation under Certificate 81614, and to cancel a portion of the primary irrigation under Certificate 79694. The Department assigned the application number T-10927.
2. On February 26, 2010, the applicant's agent submitted an amended map and documentation of use for supplemental water right 81614.

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.

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

Certificate: 81614 in the name of WAYNE AND CONNIE MITCHELL AND RAYMOND L. CURRY (confirmed by Permit G-10670)
Use: SUPPLEMENTAL IRRIGATION of 3.5 ACRES
Priority Date: SEPTEMBER 25, 1986
Rate: 0.04 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year, provided further that the right allowed herein 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 herein.
Source: A WELL, in the DESCHUTES RIVER BASIN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
15 S	11 E	WM	30	SW SW	4	290 FEET NORTH AND 250 FEET EAST FROM THE SW CORNER OF SECTION 30

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
15 S	11 E	WM	30	SW SW	4	3.50

4. Transfer Application T-10927 proposes to change the character of use to primary irrigation.
 5. Transfer Application T-10927 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
15 S	11 E	WM	30	NW SW	3	1.14
15 S	11 E	WM	30	SW SW	4	2.36

6. Transfer Application T-10927 proposes an additional point of appropriation approximately 940 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
15 S	11 E	WM	30	SW SW	4	1227 FEET NORTH AND 372 FEET EAST FROM THE SW CORNER OF SECTION 30

7. Notice of the application for transfer was published on July 21, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
 8. On February 26, 2010, George Anderson submitted documentation establishing the quantity of water historically used under the supplemental water right. The evidence establishes that

full measure of the right has been historically used for supplemental irrigation, as water from the primary surface water source was not available.

9. The amount of water used for primary irrigation (0.04 cfs), together with the amount secured under any other right existing for the same lands, should be limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and should be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated (total of 10.4 acre-feet) during the irrigation season of each year.
10. On March 4, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10927 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 7, 2010, 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 he applicant is authorized to pursue the transfer.
11. On April 9, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10927 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 April 13, 2010, and in The Bulletin newspaper on April 21 and 28, 2010, and May 5, 2010, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
12. On June 7, 2010, the Department issued a Final Order for the transfer, recorded at Special Order Volume 81, Pages 38 to 42. Following issuance of the order the Department recognized a scrivener's error in one of the Certificate numbers.
13. This order is issued to correct the scrivener's error and to supersede the previous order recorded at Special Order Volume 81, Pages 38 to 42.

Transfer Review Criteria (OAR 690-380-4010)

14. Water has been used within the last five years prior to the submittal of Transfer Application T-10927 according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
15. 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-10927.
16. As conditioned in Findings of Fact No. 9, the proposed change would not result in enlargement of the right.
17. The proposed change would not result in injury to other water rights.

Partial Cancellation of Water Rights

18. On June 30, 2009, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from George Anderson. Three Sisters Irrigation District, formerly Squaw Creek Irrigation District approved the cancellation by letter dated June 23, 2009. The right to be cancelled is as follows:

Certificate: 79496 in the name of SQUAW CREEK IRRIGATION DISTRICT
(confirmed by Squaw Creek [Whychus Creek] decree)
Use: IRRIGATION OF 3.5 ACRES
Priority Date: SEPTEMBER 30, 1902
Rate: 0.07 CUBIC FOOT PER SECOND
Source: WHYCHUS CREEK, tributary to the DESCHUTES RIVER
Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	29	SW SE	850 FEET NORTH AND 2550 FEET WEST FROM THE SE CORNER OF SECTION 29

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	11 E	WM	30	SW SW	3.50

19. On February 26, 2010, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from George Anderson. The right to be cancelled is as follows:

Certificate: 81614 in the name of WAYNE AND CONNIE MITCHELL AND RAYMOND L. CURRY (perfected under Permit G-10670)
Use: SUPPLEMENTAL IRRIGATION of 1.14 ACRES
Priority Date: SEPTEMBER 25, 1986
Rate: 0.01 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year, provided further that the right allowed herein 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 herein.
Source: A WELL in the DESCHUTES RIVER BASIN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
15 S	11 E	WM	30	SW SW	4	290 FEET NORTH AND 250 FEET EAST FROM THE SW CORNER OF SECTION 30

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	11 E	WM	30	NW SW	1.14

Conclusions of Law

The additional point of appropriation, change in place of use, and change in character of use proposed in Transfer Application T-10927 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, and the scrivener's error in Special Order Volume 81, Pages 38 to 42 should be corrected in the record.

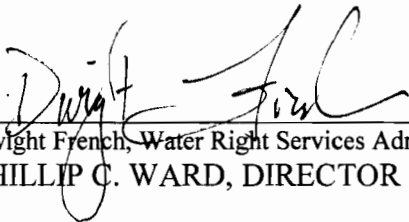
Now, therefore, it is ORDERED:

1. The order entered at Special Order Volume 81, Pages 38 to 42 is withdrawn and of no further force and effect and is superseded by this order.
2. The additional point of appropriation, change in place of use, and change in character of use proposed in Transfer Application T-10927 are approved. The portions of the rights that have been abandoned are cancelled.
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 Certificate 81614 and any related decree.
4. Water right certificate 81614 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation.
5. Water right Certificate 79496 is modified as set forth in Finding of Fact No. 16. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation, when the Department deems it necessary for further processing.
6. The quantity of water diverted at the additional point of appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.
7. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
8. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
9. The former place of use of the transferred right shall no longer receive water under the right.
10. The amount of water used for primary irrigation (0.04 cfs), 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 3.0 acre-feet per acre for each acre irrigated (total of 10.4 acre-feet) during the irrigation season of each year.

11. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. 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 change and full beneficial use of the water.
12. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 31 day of May 2011.



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

Mailing Date: JUN 03 2011