

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

In the Matter of Transfer Application            )     FINAL ORDER APPROVING A  
T-11319, Marion County                         )     CHANGE IN PLACE OF USE AND  
  )     PARTIAL CANCELLATION OF A  
  )     WATER RIGHT

**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**

ETZEL FAMILY TRUST  
14271 FERN RIDGE ROAD  
STAYTON, OR 97383

**Findings of Fact**

***Background***

1. On November 21, 2011, ETZEL FAMILY TRUST filed an application to change the place of use under Certificate 35369. The Department assigned the application number T-11319.
2. On August 28, 2012, the applicant amended the application and submitted an affidavit of partial cancellation.

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:** 35369 in the name of ETZEL BROTHERS (perfected under Permit G-2147)

**Use:** IRRIGATION OF 20.2 ACRES

**Priority Date:** MAY 10, 1962

**Rate:** 0.152 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 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:** ETZEL BROTHERS WELL 2 within the MILL CREEK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	1 W	WM	2	SE SE	ETZEL BROTHERS WELL 2 - 850 FEET NORTH AND 1440 FEET EAST FROM THE S¼ CORNER OF SECTION 2

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	1 W	WM	1	NW SW	3.50
9 S	1 W	WM	1	SW SW	8.01
9 S	1 W	WM	2	SW SE	0.34
9 S	1 W	WM	2	SE SE	8.35
TOTAL					20.20

4. Transfer Application T-11319 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	1 W	WM	2	NW SE	6.70
9 S	1 W	WM	2	SW SE	13.50
TOTAL					20.20

5. Notice of the application for transfer was published on November 22, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

6. On September 6, 2012, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11319 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 8, 2012, for the applicant to respond.

7. On September 18, 2012, the agent for the applicant requested a 60 day administrative hold on the processing of Transfer Application T-11319. The hold expires December 7, 2012.

8. On November 19, 2012, the agent for the applicant requested an additional 120 day administrative hold on Transfer Application T-11319. The hold expires April 7, 2013.

9. On April 8, 2013, the agent for the applicant requested an additional 90 day administrative hold on Transfer Application T-11319. The hold expires July 8, 2013.
10. On July 11, 2013, 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.
11. On July 16, 2013, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11319 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 30, 2013 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)***

12. Water has been used within the last five years 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.
13. 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-11319.
14. The proposed change would not result in enlargement of the right.
15. The proposed change would not result in injury to other water rights.

***Partial Cancellation of a Water Right***

1. On August 28, 2012, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Larry Etzel, authorized agent for the Etzel Family Trust. The right to be cancelled is as follows:

**Certificate:** 35369 in the name of ETZEL BROTHERS (perfected under Permit G-2147)  
**Use:** IRRIGATION OF 3.13 ACRES  
**Priority Date:** MAY 10, 1962  
**Rate:** 0.024 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 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:** ETZEL BROTHERS WELL 2 in the MILL CREEK BASIN

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	1 W	WM	2	SE SE	ETZEL BROTHERS WELL 2 - 850 FEET NORTH AND 1440 FEET EAST FROM THE S¼ CORNER OF SECTION 2

**Authorized Place of Use to be Cancelled:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	1 W	WM	1	SW SW	0.12
9 S	1 W	WM	2	SW SE	0.06
9 S	1 W	WM	2	SE SE	2.95
TOTAL					3.13

**Conclusions of Law**

The change in place of use proposed in Transfer Application T-11319 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the abandoned portion of the right should be cancelled.

**Now, therefore, it is ORDERED:**

1. The change in place of use proposed in Transfer Application T-11319 is approved. The portion of the right that has been abandoned is cancelled.
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 35369 and any related decree.
3. Water right certificate 35369 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation.
4. The former place of use of the transferred right shall no longer receive water under the right.
5. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2015**. 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.

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

Dated at Salem, Oregon this 4 day of October, 2013.

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

Mailing date: **OCT 21 2013**