

4. On July 24, 2014, the Department contacted the Certified Water Right Examiner (CWRE) by telephone to notify the CWRE and applicant of deficiencies in the application. The deficiencies being that clarification was needed as to what exactly was being transferred where, both on the application and the transfer map. After some discussion and clarification, the CWRE submitted amended application pages and an amended transfer map correcting the deficiencies.
5. On October 29, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11757 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 28, 2014, for the applicant to respond.
6. The applicant requested that the Department proceed with issuance of a Preliminary Determination contingent upon the correction of draft Preliminary Determination where it stated Certificate 32858 was proposed to be diminished. The draft should have read Certificate 61961 is proposed to be diminished. The applicant provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
7. On January 6, 2015, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11757 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 January 13, 2015, and in the Grants Pass Daily Courier newspaper on January 15, and 22, 2015, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

Certificate: 32854 in the name of WILHELMINA T. PERRY (confirmed by Rogue River Decree (F) State Water Board)

Use: IRRIGATION of 7.1 ACRES

Priority Date: 1902

Rate: 0.14 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.14 cubic foot per second.

Source: APPLGATE RIVER, a tributary of ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
37 S	5 W	WM	19	NW NE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	6 W	WM	24	NE NE	3.9
37 S	6 W	WM	24	SE NE	3.2

9. The Rogue River Decree further describes the source of the right as water from the Applegate River through Murphy Ditch.
10. Certificate 32854 does not specify the irrigation season. The irrigation season, as established by the Rogue River Decree, is from April 1 through October 31.
11. Certificate 32854 does not describe the measured distances of the point of diversion, however information is available from the applicant and CWRE further describing the location of the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
37 S	5 W	WM	19	NW NE	3	MURPHY DITCH/POD #1: 733 FEET SOUTH AND 267 FEET EAST FROM THE N1/4 CORNER OF SECTION 19

12. Transfer Application T-11757 proposes additional points of diversion approximately 0.9 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	6 W	WM	24	SW NE	POD #3: 2550 FEET SOUTH AND 1595 FEET WEST FROM THE NE CORNER OF SECTION 24
37 S	6 W	WM	24	SW NE	POD #4: 2040 FEET SOUTH AND 1445 FEET WEST FROM THE NE CORNER OF SECTION 24

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

Certificate: 32858 in the name of MIKKEL AND CECIL GIMMESTAD (confirmed by Rogue River Decree (F) State Water Board)

Use: IRRIGATION of 6.3 ACRES

Priority Date: 1902

Rate: 0.13 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.13 cubic foot per second.

Source: APPLGATE RIVER, a tributary of ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
37 S	5 W	WM	19	NW NE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	6 W	WM	24	SW NE	6.3

14. The Rogue River Decree further describes the source of the right as water from the Applegate River through Murphy Ditch.

15. Certificate 32858 does not specify the irrigation season. The irrigation season, as established by the Rogue River Decree, is from April 1 through October 31.
16. Certificate 32858 does not describe the measured distances of the point of diversion, however information is available from the applicant and CWRE further describing the location of the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
37 S	5 W	WM	19	NW NE	3	MURPHY DITCH/POD #1: 733 FEET SOUTH AND 267 FEET EAST FROM THE N1/4 CORNER OF SECTION 19

17. Transfer Application T-11757 proposes additional points of diversion located approximately 0.9 mile downstream from the authorized point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	6 W	WM	24	SW NE	POD #3: 2550 FEET SOUTH AND 1595 FEET WEST FROM THE NE CORNER OF SECTION 24
37 S	6 W	WM	24	SW NE	POD #4: 2040 FEET SOUTH AND 1445 FEET WEST FROM THE NE CORNER OF SECTION 24

18. Transfer Application T-11757 proposes additional points of diversion and to change the place of use of the right as identified below:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Type of Change
37 S	6 W	WM	24	SW NE	0.7	POU
37 S	6 W	WM	24	SE NE	4.1	POU
37 S	6 W	WM	24	SW NE	2.2	APOD
37 S	6 W	WM	24	SE NE	4.1	APOD
Total Place of Use Change:					4.8	
Total APOD Change:					6.3	

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

Certificate: 32863 in the name of E. L. RIGHTMIER (confirmed by Rogue River Decree (F) State Water Board)

Use: IRRIGATION of 7.8 ACRES

Priority Date: 1902

Rate: 0.16 CUBIC FOOT PER SECOND

Source: APPLGATE RIVER, a tributary of ROGUE RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q
37 S	5 W	WM	19	NW NE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	6 W	WM	24	SW NE	7.8

20. The Rogue River Decree further describes the source of the right as water from the Applegate River through Murphy Ditch.
21. Certificate 32863 does not specify the irrigation season. The irrigation season, as established by the Rogue River Decree, is from April 1 through October 31.
22. Certificate 32863 does not describe the measured distances of the point of diversion, however information is available from the applicant and CWRE further describing the location of the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
37 S	5 W	WM	19	NW NE	3	MURPHY DITCH/POD #1: 733 FEET SOUTH AND 267 FEET EAST FROM THE N1/4 CORNER OF SECTION 19

23. Permit Amendment Application T-11757 proposes additional points of diversion located approximately 0.9 mile downstream from the authorized point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	6 W	WM	24	SW NE	POD #3: 2550 FEET SOUTH AND 1595 FEET WEST FROM THE NE CORNER OF SECTION 24
37 S	6 W	WM	24	SW NE	POD #4: 2040 FEET SOUTH AND 1445 FEET WEST FROM THE NE CORNER OF SECTION 24

24. Application T-11757 proposes the additional points of diversion and to change the place of use of the right as identified below:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Type of Change
37 S	6 W	WM	24	SE NE	3.8	POU
37 S	6 W	WM	24	SW NE	4.0	APOD
37 S	6 W	WM	24	SE NE	3.8	APOD
Total Place of Use Change:					3.8	
Total APOD Change:					7.8	

25. The fourth right to be transferred is as follows:

Certificate: 61962 in the name of JOHN T. BRIGGS (perfected under Permit S-45597)

Use: IRRIGATION of 22.0 ACRES

Priority Date: MAY 30, 1980

Rate: 0.28 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 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: APPLGATE RIVER, tributary of ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	6 W	WM	24	SE NE	2190 FEET SOUTH AND 950 FEET WEST FROM THE NE CORNER OF SECTION 24

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	6 W	WM	24	SE NE	22.0

26. Transfer Application T-11757 proposes to move the point of diversion approximately 0.1 mile and 0.2 mile downstream from the authorized point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	6 W	WM	24	SW NE	POD #3: 2550 FEET SOUTH AND 1595 FEET WEST FROM THE NE CORNER OF SECTION 24
37 S	6 W	WM	24	SW NE	POD #4: 2040 FEET SOUTH AND 1445 FEET WEST FROM THE NE CORNER OF SECTION 24

27. Application T-11757 proposes new points of diversion and to change the place of use of the right as identified below:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Type of Change
37 S	6 W	WM	24	SW NE	7.6	POU
37 S	6 W	WM	24	SW NE	7.6	POD
37 S	6 W	WM	24	SE NE	14.1	POD
SUPPLEMENTAL IRRIGATION						
37 S	6 W	WM	24	SE NE	0.3	POD
Total Place of Use Change:					7.6	
Total POD Change:					22.0	

28. The Oregon Department of Fish and Wildlife has determined that the diversion is not currently equipped with an appropriate fish screen, but a fish screen may be required in the future at the new points of diversion to prevent fish from entering the diversion.

Partial Diminution of a Water Right

29. A portion of the proposed place of use as described in Transfer Application T-11757 for Certificate 32858 has an existing water right for primary water right appurtenant (Certificate 61962). As part of the transfer application, to avoid enlargement of the water rights, the applicant has requested that the appurtenant portion of Certificate 61962 (0.3 acre) be diminished to Supplemental Irrigation. The portion of the right to be diminished is as follows:

Certificate: 61962 in the name of JOHN T. BRIGGS (perfected under Permit S-45597)
Use: IRRIGATION of 0.3 ACRE

Priority Date: MAY 30, 1980
Rate: 0.004 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 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: APPLGATE RIVER, tributary of ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	6 W	WM	24	SE NE	2190 FEET SOUTH AND 950 FEET WEST FROM THE NE CORNER OF SECTION 24

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acre
37 S	6 W	WM	24	SE NE	0.3

Transfer Review Criteria [OAR 690-380-4010(2)]

30. 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 rights are subject to forfeiture under ORS 540.610.
31. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right(s) were present within the five-year period prior to submittal of Transfer Application T-11757.
32. The proposed changes would not result in enlargement of the rights.
33. The proposed changes would not result in injury to other water rights.

Conclusions of Law

The change in point of diversion, additional points of diversion and change in place of use proposed in Transfer Application T-11757 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. The portion of the right requested to be diminished should be diminished to supplemental.

Now, therefore, it is ORDERED:

1. The Final Order recorded at Special Order Volume 95, Pages 463-470, is withdrawn and of no further force or effect and is superseded by this order.
2. The change in point of diversion, additional points of diversion, change in place of use and partial diminution proposed in Transfer Application T-11757 are approved.

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 Certificates 32854, 32858, 32863, 61962 and any related decree.
4. The water right for irrigation of 0.3 acre as evidenced by Certificate 61962, described in Finding of Fact No. 27, is diminished from a right for primary irrigation to a right for supplemental irrigation.
5. Water Right Certificates 32854, 32858, 32863, and 61962 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer.
6. The quantity of water diverted at the new and additional points of diversion, together with that diverted at the original points of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.
7. The former places of use of the transferred rights shall no longer receive water under the rights.
8. Water use measurement conditions:
 - a. **Before water use may begin** under this order, the water user shall install a meter, or, with prior approval of the Director, another suitable measuring device, at each new point of diversion.
 - b. The water user shall maintain the meters or measuring devices in good working order.
 - c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.
9. The Oregon Department of Fish and Wildlife (ODFW) may require the water user to install an approved fish screen at the new point of diversion within one year after receiving written notification that a fish screen is required. Once installed the water user shall maintain and operate the fish screen at the new point of diversion according to ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.
10. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2016**. 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, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 18 day of December, 2015.



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

Mailing Date: DEC 22 2015