

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

In the Matter of Transfer Application            )  
T-10914, Deschutes County                    )  
  )  
  )  
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  )

FINAL ORDER  
APPROVING A CHANGE IN POINT OF  
APPROPRIATION, A 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**

ERIC VETTERLEIN  
DESERT SPRINGS LIMITED PARTNERSHIP  
1100 SW SIXTH AVENUE #1200  
PORTLAND OR 97204

**Findings of Fact**

**Background**

1. On June 26, 2009, DESERT SPRINGS LIMITED PARTNERSHIP filed an application to change the point of appropriation and place of use under Certificate 61097. The Department assigned the application number T-10914.
2. On December 17, 2009, the Department issued remaining right Certificate 85977, which supersedes Certificate 61097.

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:** 85977 in the name of DONALD H. VETTERLEIN, DESERT SPRINGS RANCH (perfected under Permit G-8846)

**Use:** IRRIGATION OF 1.0 ACRE

**Priority Date:** MARCH 4, 1980

**Rate:** 0.012 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.

**Source:** A WELL in the DEEP CANYON BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
15 S	11 E	WM	19	SW SW	4	1200 FEET NORTH AND 450 FEET EAST FROM THE SW CORNER OF SECTION 19

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	11 E	WM	30	NE NE	1.0

4. Transfer Application T-10914 proposes to move the authorized point of appropriation approximately 2 miles from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	11 E	WM	32	NW NE	381 FEET SOUTH AND 1104 FEET EAST FROM THE C/4 CORNER OF SECTION 32

5. Transfer Application T-10914 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
15 S	11 E	WM	32	NW NE	200	1.0

6. Notice of the application for transfer was published on July 14, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

7. On March 23, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10914 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 25, 2011, 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.

8. On April 21, 2011, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10914 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 26, 2011, and in the Bulletin Newspaper on April 28, May 5, and 12, 2011, 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)**

9. Water has been used within the last five years prior to the submittal of Transfer Application T-10914 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.
10. 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-10914.
11. The proposed changes would not result in enlargement of the right.
12. The proposed changes would not result in injury to other water rights.

**Partial Cancellation of a Water Right**

13. On June 26, 2009, the receiving landowners, Henry and Karen Queen, submitted an affidavit authorizing the partial cancellation of a portion of Certificate 80952 as follows:

**Certificate:** 80952, in the name of SUCCESSORS TO SQUAW CREEK IRRIGATION COMPANY  
**Use:** IRRIGATION OF 10.0 ACRES AND DOMESTIC USE  
**Priority Date:** NOVEMBER 24, 1953  
**Quantity** 0.2 CUBIC FOOT PER SECOND  
**Source:** SQUAW CREEK (WHYCHUS CREEK), tributary of the DESCHUTES RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	28	SW SE	PLAINVIEW DITCH – 710 FEET NORTH AND 2640 FEET WEST FROM THE SW CORNER OF SECTION 29

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

IRRIGATION AND DOMESTIC USE						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
15 S	11 E	WM	32	NW NE	200	10.0

14. The applicant's agent submitted a letter from the Three Sisters Irrigation District that concurs with the partial cancellation of Certificate 80952.

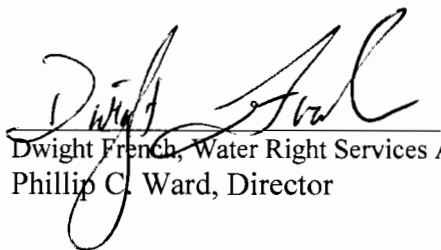
### Conclusions of Law

The change in point of appropriation and place of use proposed in Transfer Application T-10914 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right is cancelled..

### Now, therefore, it is ORDERED:

1. The changes in point of appropriation and place of use proposed in Transfer Application T-10914 are approved. The portion of the right described by Certificate 80952 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 85977 and any related decree.
3. Water right certificates 80952 and 85977 are cancelled. New certificates will be issued describing those portions of these rights not affected by this transfer and cancellation.
4. The quantity of water diverted at the new point of appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation.
5. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
6. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
7. The former place of use of the transferred right shall no longer receive water under the right.
8. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2012**. A Claim of Beneficial Use prepared by a Certified Water Rights 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.
9. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 13 day of June, 2011.



Dwight French, Water Right Services Administrator, for  
Phillip C. Ward, Director

Mailing Date: JUN 20 2011