

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-10782, Umatilla County) CHANGE 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

WILLIAM M. AND LALANI L. ANDERSON
412 SOUTH HOWARD STREET
MOSCOW ID 83843

Receiving Landowners

KERRY L. AND TIFFANY L. NEWSON
P O BOX 1844
PENDLETON OR 97801

Agent

DALE VAN SCHOIACK
2141 SOUTH LYLE
KENNEWICK WA 99337

Findings of Fact

Background

1. On February 12, 2009, WILLIAM M. AND LALANI L. ANDERSON filed an application to change the place of use under portions of Certificate 84251 and Permit 7400. The Department assigned the application number T-10782.

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.

2. The portion of the primary right and its associated supplemental water right to be transferred is as follows:

Certificate: 84251 in the name of WILLIAM M. AND LALANI L. ANDERSON
(confirmed by Permit S-12309)
Use: IRRIGATION OF 1.5 ACRES
Priority Date: AUGUST 14, 1936
Rate: 0.013 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 and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated
Source: McKAY CREEK, tributary to the UMATILLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
2 N	32 E	WM	16	NW NW	585 FEET SOUTH AND 840 FEET EAST FROM THE NW CORNER OF SECTION 16

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
2 N	32 E	WM	16	NW NW	1.5

3. The portion of the primary right and its associated supplemental water right to be transferred is as follows:

Permit: 7400 in the name of U. S. BUREAU OF RECLAMATION
Use: SUPPLEMENTAL IRRIGATION OF 1.5 ACRES
Priority Date: JULY 1, 1924
Rate & Duty: ONE-EIGHTIETH of one cubic foot per second, provided further that the right allowed herein for supplemental irrigation 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 therein.
Source: McKAY RESERVOIR, a tributary of McKAY CREEK. Water is run down the natural channels of McKay Creek (and the Umatilla River) to the different diversions in use

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
2 N	32 E	WM	34	NW SE	McKAY DAM

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
2 N	32 E	WM	16	NW NW	1.50

4. Transfer Application T-10782 proposes to change the place of the above described water rights to a different tax lot within the same quarter quarter located:

IRRIGATION AND SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
2 N	32 E	WM	16	NW NW	900	1.5

5. Notice of the application for transfer was published on March 3, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. On January 15, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10782 to the applicant. The draft Preliminary Determination set forth a deadline of February 15, 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 the applicant is authorized to pursue the transfer.
7. On February 24, 2010, the Department issued a preliminary determination proposing to approve Transfer T-10782 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 March 3, 2010, 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)]

8. Water has been used within the five-year period prior to submittal of the transfer application 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.
9. 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-10782.
10. The proposed change would not result in enlargement of the rights.
11. The proposed change would not result in injury to other water rights.

Conclusions of Law

The change in place of use proposed in Transfer Application T-10782 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in place of use proposed in Transfer Application T-10782 is 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 84251, Permit 7400 and any related decree.
3. Water right certificate 84251 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer. Permit 7400 is modified. The Department will issue a superseding certificate describing the right when it is determined that it is necessary for record keeping.
4. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
5. The former place of use of the transferred rights shall no longer receive water under these rights.
6. The approved change 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 Rights 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.
7. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 2nd day of April 2010.

William E. Frubsa
Phillip C. Ward, Director

Mailing Date: APR 07 2010