

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

In the Matter of Transfer Application)	F I N A L O R D E R
T-9844, Umatilla County)	APPROVING A DISTRICT
)	PERMANENT TRANSFER,
)	DIMINUTION AND CANCELLATION
)	OF CERTAIN WATER RIGHTS

ORS 540.570 to 540.580 establishes the process in which a district may submit a request to transfer a water right within district boundaries. OAR Chapter 690, Division 385 implements the statutes and provides the Department's procedures and criteria for evaluating district transfer applications.

Applicant

WESTLAND IRRIGATION DISTRICT
P.O. BOX 944
HERMISTON, OR 97838

Findings of Fact

1. On December 30, 2004, Westland Irrigation District filed a district transfer application to permanently change the place of use under Certificates 76717, 79439, 76799, 76050, and diminish a portion of Certificate 61533 from irrigation to supplemental irrigation. The Department assigned the application number T-9844.
2. On September 20, 2005, the Department received in writing from the applicant a response to the Department's September 13, 2005 letter, addressing the issue of a supplemental water right appurtenant to the "FROM" lands that either must be transferred or the right canceled. The written response contained a request to cancel the entire water right for supplemental irrigation under Certificate 76744 consistent with ORS 540.580 (2)(d) and ORS 540.510.
3. Notice of the application for transfer was published pursuant to ORS 540.580 and OAR 690-385-4400. No comments were filed in response to the notice.

<p>This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OR 137-004-0080 you may either 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.</p>
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4. The portion of the first right to be transferred is as follows:

Certificate: 76717, issued in the name of Westland Irrigation District

Use: Irrigation

Priority Date: July 1907

Rate & Duty: 1/80th cfs per acre irrigated from March 1 to November 1 and
subject to limitations of paragraph 32 of the Umatilla River Decree

Source: Umatilla River, tributary to Columbia River

Authorized Point of Diversion:

TWP	RNG	MER	SEC	QTR-QTR	LOCATION
3 N	29 E	W.M.	21	SW NE	Westland Canal - North 76 Degrees 45 Minutes 56 Seconds East 2913.19 feet from the West ¼ Corner of Section 21.

Authorized Place of Use:

IRRIGATION – CERTIFICATE 76717									
TWP	RNG	MER	SEC	QTR-QTR	TL	AC	USER	NOT#	
4 N	28 E	W.M.	30	NW NE	3506	0.40	PRIOR	Gass - 5 & 7	
4 N	28 E	W.M.	30	SW NE	3505	30.40	PRIOR	Gass - 5 & 7	
4 N	28 E	W.M.	30	SW NW	3100	13.00	PRIOR	Gass - 5 & 7	
4 N	28 E	W.M.	30	SE NW	3505	36.20	PRIOR	Gass - 5 & 7	
4 N	28 E	W.M.	30	NE SW	3505,3507 & 3503	40.00	PRIOR	Gass - 5 & 7	
4 N	28 E	W.M.	30	NW SW	3505, 3300	20.30	PRIOR	Gass - 5 & 7	
4 N	28 E	W.M.	30	SW SW	3400	1.40	PRIOR	Gass - 5 & 7	
4 N	28 E	W.M.	30	SE SW	3507, 3503	18.40	PRIOR	Gass - 5 & 7	
4 N	28 E	W.M.	30	NW SE	3505, 3503	38.40	PRIOR	Gass - 5 & 7	
4 N	28 E	W.M.	30	SW SE	3503	10.30	PRIOR	Gass - 5 & 7	
TOTAL:						208.80			

Application T-9844 proposes to change the place of use to:

IRRIGATION – CERTIFICATE 76717									
TWP	RNG	MER	SEC	QTR-QTR	TL	AC	USER	NOT#	
3 N	28 E	W.M.	20	NE NE	6700	31.80	PRIOR	Gass - 5 & 7	
3 N	28 E	W.M.	20	NW NE	6700	31.40	PRIOR	Gass - 5 & 7	
3 N	28 E	W.M.	20	SW NE	6700	33.90	PRIOR	Gass - 5 & 7	
3 N	28 E	W.M.	20	SE NE	6700	32.80	PRIOR	Gass - 5 & 7	
3 N	28 E	W.M.	20	NE SE	6700	14.70	PRIOR	Gass - 5 & 7	
3 N	28 E	W.M.	20	NW SE	6700	31.30	PRIOR	Gass - 5 & 7	
3 N	28 E	W.M.	20	SW SE	6700	32.70	PRIOR	Gass - 5 & 7	
3 N	28 E	W.M.	29	NW NE	8100	0.20	PRIOR	Gass - 5 & 7	
TOTAL:						208.80			

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

Certificate: 79439, issued in the name of U.S. Bureau of Reclamation

Use: Supplemental Irrigation

Priority Date: July 1, 1924

Rate & Duty: 1/80th cfs per acre irrigated

Source: McKay Reservoir, tributary to McKay Creek

Authorized Point of Diversion:

TWP	RNG	MER	SEC	QTR-QTR	LOCATION
2 N	32 E	W.M.	34	NW SE	McKay Dam - NW¼ SE¼, Section 34, T 2 N, R 32 E, W.M.; Water is run down the natural channels of McKay Creek and Umatilla River and is re-diverted at Westland Irr. Dist. canal
3 N	29 E	W.M.	21	SW NE	Westland Canal - North 76 Degrees 45 Minutes 56 Seconds East 2913.19 feet from the West ¼ Corner of Section 21.

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION – CERTIFICATE 79439										
TWP	RNG	MER	SEC	QTR-QTR	TL	AC	USER	NOT#		
4 N	28 E	W.M.	30	NW NE	3506	0.40	PRIOR	Gass - 5 & 7		
4 N	28 E	W.M.	30	SW NE	3505	30.40	PRIOR	Gass - 5 & 7		
4 N	28 E	W.M.	30	SW NW	3100	13.00	PRIOR	Gass - 5 & 7		
4 N	28 E	W.M.	30	SE NW	3505	36.20	PRIOR	Gass - 5 & 7		
4 N	28 E	W.M.	30	NE SW	3505,3507 & 3503	40.00	PRIOR	Gass - 5 & 7		
4 N	28 E	W.M.	30	NW SW	3505, 3300	20.30	PRIOR	Gass - 5 & 7		
4 N	28 E	W.M.	30	SW SW	3400	1.40	PRIOR	Gass - 5 & 7		
4 N	28 E	W.M.	30	SE SW	3507, 3503	18.40	PRIOR	Gass - 5 & 7		
4 N	28 E	W.M.	30	NW SE	3505, 3503	38.40	PRIOR	Gass - 5 & 7		
4 N	28 E	W.M.	30	SW SE	3503	10.30	PRIOR	Gass - 5 & 7		
TOTAL:						208.80				

Application T-9844 proposes to change the place of use to:

SUPPLEMENTAL IRRIGATION - CERTIFICATE 79439										
TWP	RNG	MER	SEC	QTR-QTR	TL	AC	USER	NOT#		
3 N	28 E	W.M.	20	NE NE	6700	31.80	PRIOR	Gass - 5 & 7		
3 N	28 E	W.M.	20	NW NE	6700	31.40	PRIOR	Gass - 5 & 7		
3 N	28 E	W.M.	20	SW NE	6700	33.90	PRIOR	Gass - 5 & 7		
3 N	28 E	W.M.	20	SE NE	6700	32.80	PRIOR	Gass - 5 & 7		
3 N	28 E	W.M.	20	NE SE	6700	14.70	PRIOR	Gass - 5 & 7		
3 N	28 E	W.M.	20	NW SE	6700	31.30	PRIOR	Gass - 5 & 7		
3 N	28 E	W.M.	20	SW SE	6700	32.70	PRIOR	Gass - 5 & 7		
3 N	28 E	W.M.	29	NW NE	8100	0.20	PRIOR	Gass - 5 & 7		
TOTAL:						208.80				

6. The portion of the third right to be transferred is as follows:
Certificate: 76799, issued in the name of Westland Irrigation District
Use: Irrigation
Priority Date: April 12, 1961
Rate & Duty: 1/40 cfs per acre irrigated not to exceed 4.5 acre-feet per acre per irrigation season
Source: Umatilla River and McKay Reservoir, tributary to Columbia River

Authorized Point of Diversion:

TWP	RNG	MER	SEC	QTR-QTR	LOCATION
3 N	29 E	W.M.	21	SW NE	Westland Canal - North 76 Degrees 45 Minutes 56 Seconds East 2913.19 feet from the West ¼ Corner of Section 21. McKay Dam - NW¼ SE¼, Section 34, T 2 N, R 32 E, W.M..

Authorized Place of Use:

IRRIGATION - CERTIFICATE 76799								
TWP	RNG	MER	SEC	QTR-QTR	TL	AC	USER	NOT#
4 N	28 E	W.M.	30	NE NW	3505	2.00	PRIOR	Gass - 06
4 N	28 E	W.M.	30	SE NW	3505	3.80	PRIOR	Gass - 06
TOTAL:						5.80		

Application T-9844 proposes to change the place of use to:

IRRIGATION - CERTIFICATE 76799								
TWP	RNG	MER	SEC	QTR-QTR	TL	AC	USER	NOT#
3 N	28 E	W.M.	20	NE SE	6700	5.80	PRIOR	Gass - 06
TOTAL:						5.80		

7. The portion of the fourth right to be transferred is as follows:
Certificate: 76050, issued in the name of Teel Irrigation District
Use: Irrigation
Priority Date: April 22, 1955
Rate & Duty: 1/40th cfs per acre irrigated not to exceed 4.5 acre-feet per acre per irrigation season
Source: Umatilla River, tributary to Columbia River

Authorized Point of Diversion:

TWP	RNG	MER	SEC	QTR-QTR	LOCATION
3 N	29 E	W.M.	21	SW NE	Westland Canal - North 76 Degrees 45 Minutes 56 Seconds East 2913.19 feet from the West ¼ Corner of Section 21.

Authorized Place of Use:

IRRIGATION - CERTIFICATE 76050											
TWP	RNG	MER	SEC	QTR-QTR	TL	LOT	AC	USER	NOT#		
3	N	28	E	W.M.	20	NE NE	6700		31.80	PRIOR	Gass - 08
3	N	28	E	W.M.	20	NW NE	6700		31.40	PRIOR	Gass - 08
3	N	28	E	W.M.	20	SW NE	6700		33.90	PRIOR	Gass - 08
3	N	28	E	W.M.	20	SE NE	6700		32.80	PRIOR	Gass - 08
3	N	28	E	W.M.	20	NE SE	6700		20.50	PRIOR	Gass - 08
3	N	28	E	W.M.	20	NW SE	6700		31.30	PRIOR	Gass - 08
3	N	28	E	W.M.	20	SW SE	6700		32.70	PRIOR	Gass - 08
3	N	28	E	W.M.	29	NW NE	8100		0.20	PRIOR	Gass - 08
TOTAL:								214.60			

Application T-9844 proposes to change the place of use to:

IRRIGATION - CERTIFICATE 76050											
TWP	RNG	MER	SEC	QTR-QTR	TL	LOT	AC	USER	NOT#		
3	N	29	E	W.M.	18	SW NW	5601	2	9.00	PRIOR	Gass - 08
3	N	29	E	W.M.	18	SE NW	5501		1.70	PRIOR	Gass - 08
3	N	29	E	W.M.	18	NE SW	5800		23.20	PRIOR	Gass - 08
3	N	29	E	W.M.	18	NW SW	5800	3	50.40	PRIOR	Gass - 08
3	N	29	E	W.M.	18	SW SW	5800	4	36.10	PRIOR	Gass - 08
3	N	29	E	W.M.	18	SE SW	5800		9.30	PRIOR	Gass - 08
3	N	29	E	W.M.	19	NE NW	6100		5.70	PRIOR	Gass - 08
3	N	29	E	W.M.	19	NW NW	6100	1	41.20	PRIOR	Gass - 08
3	N	29	E	W.M.	19	SW NW	6100	2	28.00	PRIOR	Gass - 08
3	N	29	E	W.M.	19	SE NW	6100		10.00	PRIOR	Gass - 08
TOTAL:								214.60			

8. The Department received an affidavit from the record owner of lands to which a portion of the following water right is appurtenant, requesting to diminish the described portion of the right from primary irrigation to supplemental irrigation.

Certificate: 61533, issued in the name of Travelers Insurance Company

Use: Irrigation

Priority Date: June 30, 1975

Rate & Duty: 1/80th cfs per acre irrigated not to exceed 3.0 acre-feet per acre per irrigation season

Source: Prior Wells 1 & 2, within the Umatilla River Basin

Authorized Points of Appropriation:

TWP	RNG	MER	SEC	QTR-QTR	LOT	LOCATION		
3	N	29	E	W.M.	7	NW SW	3	Well 1 – 1550 feet North and 1270 feet East from the SW Corner of Section 7
3	N	29	E	W.M.	7	SW SW	4	Well 2 – 40 feet North and 1490 feet West from the South 1/4 Corner of Section 7

Authorized Place of Use:

DIMINISHED TO SUPPLEMENTAL IRRIGATION - CERTIFICATE 61533											
TWP	RNG	MER	SEC	QTR-QTR	TL	LOT	AC	OWNER	NOT#		
3	N	29	E	W.M.	18	SW NW	5601	2	9.00	PRIOR	Gass - 08
3	N	29	E	W.M.	18	SE NW	5501		1.70	PRIOR	Gass - 08
3	N	29	E	W.M.	18	NE SW	5800		23.20	PRIOR	Gass - 08
3	N	29	E	W.M.	18	NW SW	5800	3	50.40	PRIOR	Gass - 08
3	N	29	E	W.M.	18	SW SW	5800	4	36.10	PRIOR	Gass - 08
3	N	29	E	W.M.	18	SE SW	5800		9.30	PRIOR	Gass - 08
3	N	29	E	W.M.	19	NE NW	6100		5.70	PRIOR	Gass - 08
3	N	29	E	W.M.	19	NW NW	6100	1	41.20	PRIOR	Gass - 08
3	N	29	E	W.M.	19	SW NW	6100	2	28.00	PRIOR	Gass - 08
3	N	29	E	W.M.	19	SE NW	6100		10.00	PRIOR	Gass - 08
TOTAL:							214.60				

9. The Department received a statement from the owner of lands to which a portion of the following water use permit is appurtenant, stating he will not perfect the described portion of the water use permit.

Water Use Permit: 48450, issued in the name of Chester J. Prior

Use: Irrigation

Priority Date: August 3, 1981

Rate & Duty: 1/40th cfs per acre irrigated not to exceed 4.5 acre-feet November 16 through June 15 of each year

Source: Umatilla River, tributary to Columbia River

Authorized Point of Diversion:

TWP	RNG	MER	SEC	QTR-QTR	LOCATION
3	N	29	E	W.M.	21 SW NE South 55 degrees 48 minutes West 3237.3 feet from the NE Corner of Section 21

Authorized Place of Use:

PLACE OF USE NOT TO BE PERFECTED - WATER USE PERMIT 48450										
TWP	RNG	MER	SEC	QTR-QTR	TL	AC	OWNER			
3	N	28	E	W.M.	29	NW NE	8100	0.20	PRIOR	

10. On September 13, 2005, the Department notified the applicant that the supplement water right described in Certificate 76744 is appurtenant to the same lands as the primary water right proposed for transfer and, that the supplemental right would be cancelled on approval of the transfer if the applicant did not include the supplemental right in the transfer or withdraw the transfer application. On September 20, 2005, the applicant requested that the Department proceed with processing of the application without inclusion of the supplemental right. Pursuant to ORS 540.510(1) and OAR

690-380-2250(5), the supplemental right to be cancelled on approval of Transfer T-9844 is as follows:

Certificate: 76744, in the name of Howard Gass (conveyed to Chester Prior by Water Rights Purchase Agreement between Howard Gass and Chester Prior, approved and signed January 16, 1996, in Resolution by Board of Equalization, Westland Irrigation District)

Use: Supplemental Irrigation

Priority Date: December 11, 1967

Rate & Duty: 1.68 cubic feet per second, being 1/40th cfs per acre irrigated not to exceed 4.5 acre-feet per each acre irrigated during the irrigation season of each year

Source: Umatilla River, tributary to Columbia River

Authorized Point of Diversion:

TWP	RNG	MER	SEC	QTR-QTR	LOCATION
4	N	28	E	W.M. 30 SW NE	3760 Feet North and 1810 Feet West from the SE Corner of Section 30

Authorized Place of Use:

PLACE OF USE TO BE CANCELED – WATER RIGHT CERTIFICATE 76744							
TWP	RNG	MER	SEC	QTR-QTR	LOT	ACRES	
4	N	28	E	W.M. 30	NW NE		0.40
4	N	28	E	W.M. 30	SW NE		30.40
4	N	28	E	W.M. 30	NE NW		1.50
4	N	28	E	W.M. 30	SE NW		16.00
4	N	28	E	W.M. 30	NE SW		2.00
4	N	28	E	W.M. 30	NW SE		16.80
TOTAL:							67.10

10. The district permanent transfer application satisfies the criteria of OAR 690-385-4000, contains the information required under OAR 690-385-2000, and includes maps meeting the requirements of OAR 690-385-2200.
11. The water rights are subject to transfer as defined in OAR 690-385-0100(17).
12. The proposed change in place of use would not result in enlargement of the rights.
13. The proposed change in place of use under Certificates 76717 and 76799 will affect return flows to the Umatilla River and injure other water rights. However, a reduction in the use of water at the proposed place of use to a rate of 1/80 of a cfs per acre and a duty of 3.0 acre-feet per acre per irrigation season avoids injury to other water rights.
14. The applicant and landowner submitted statements accepting the transfer condition described in *Finding of Fact* #13 reducing the rate and duty of water under

Certificates 76717 and 76799 that may be used under these rights at the proposed place of use.


Conclusions of Law

The proposed changes in place of use in Transfer Application T-9844 satisfy the requirements of ORS 540.574(3) and 540.580.

Now, therefore, it is ORDERED:

1. The proposed changes to the water rights evidenced by Certificates 76717, 79439 and 76050 are approved.
2. The proposed changes to the water rights evidenced by Certificates 76717 and 76799 are approved at a reduced rate of 1/80 of a cfs per acre and a reduced duty of 3.0 acre-feet per acre per season to avoid injury to other water rights.
3. The right to the use of water is restricted to beneficial use at the place of use described and is subject to all other conditions and limitations contained in Certificates 76799, 76717, 79439 and 76050, any related decree and the Final Order approving T-9844.
4. The former places of use shall no longer be irrigated as part of these water rights.
5. Certificate 61533 is diminished as described in *Finding of Fact #8* and the Department shall issue superseding Certificate 81758 to describe those modifications.
6. The portion of Water Use Permit 48450 described in *Finding of Fact #9* shall not be perfected under the terms and conditions of the water use permit.
7. The entire water right under Certificate 76744 described in *Finding of Fact #10* is cancelled and of no further force or effect.
8. The proposed changes shall be completed on or before October 1, 2007.
9. A Claim of Beneficial Use and Final Proof Map shall be submitted by the applicant to the Department by October 1, 2008.
10. The Department shall issue water right certificates on a determination that it is necessary to produce certificates describing the rights.

Dated at Salem, Oregon this 15th day of December, 2005.


Phillip C. Ward, Director

Mailing Date: DEC 22 2005