

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

In the Matter of Permits G-11197 and G-12957, Marion County)	FINAL ORDER APPROVING
)	ASSIGNMENT OF WATER RIGHT
)	PERMITS AND ISSUANCE OF
)	REPLACEMENT WATER RIGHT
)	PERMITS

Authority

ORS 537.225 establishes the process in which a water right permit holder may submit a request for full or partial assignment of a water right permit and issuance of replacement permits. OAR chapter 690, Division 325 establishes the requirements and procedures to be used by the Department to evaluate an application by a landowner of record holding a water right permit for irrigation, nursery, temperature control, stock watering or agricultural water use, to assign all or part of the water right permit and to issue a replacement permit to reflect an assignment from the current permit holder to one or more additional permit holders.

Applicant

SHAWN AND KIMBERLY SCHURTER
10520 SUNNYVIEW ROAD NE
SALEM, OREGON 97317

Findings of Fact

Background

1. On October 7, 2016, SHAWN AND KIMBERLY SCHURTER filed an application for partial assignment of Water Right Permits G-11197 and G-12957 and requested issuance of replacement permits. The Department assigned the application number T-12497.
2. On July 15, 2016, the Department approved extension of times for both permits to complete construction and to complete application of water to October 1, 2021.
3. On September 4, 2007, the Department approved partial assignment of Permits G-11197 and G-12957 from Richard Kuenzi to Charles Mueller and Rita Mueller.
4. On December 11, 2015, the Department approved partial assignment of Permits G-11197 and G-12957 from Richard Kuenzi to Shawn and Kimberly Schurter.

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 OAR 137-004-080 and OAR 690-01-005 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.

5. On October 12, 2016, the Department contacted the acting agent regarding deficiencies in the application tables and the map. On October 20, 2016, the agent submitted amended application pages and amended maps, resolving the deficiencies.
6. The Applicants identified the following landowners within the authorized place of use for both permits, who are not participating in the request for assignment:

Name and Address
Charles and Rita Mueller 10570 Sunnyview Road NE Salem, OR 97317

7. The first Permit to be modified and assigned is as follows:

Permit: G-11197 in the name of RICHARD KUENZI
Use: IRRIGATION of 144.0 ACRES
Priority Date: APRIL 24, 1990
Quantity: 1.8 CUBIC FEET PER SECOND
Rate/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: ONE WELL within the PUDDING RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	1 W	WM	20	SW SW	550 FEET NORTH AND 580 FEET EAST FROM THE SW CORNER OF SECTION 20

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	1 W	WM	19	NE SE	1.1
7 S	1 W	WM	19	SE SE	25.6
7 S	1 W	WM	20	SW SW	29.1
7 S	1 W	WM	20	SE SW	12.1
7 S	1 W	WM	29	NE NW	13.7
7 S	1 W	WM	29	NW NW	30.8
7 S	1 W	WM	30	NE NE	30.0
7 S	1 W	WM	30	NW NE	1.6
Total					144.0

8. The Applicants request Permit G-11197 be split and replacement permits be issued as follows:

Permit A: Shawn and Kimberly Schurter
Use: IRRIGATION of 43.4 ACRES
Priority Date: APRIL 24, 1990
Quantity: 0.54 CUBIC FEET PER SECOND

Rate/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: ONE WELL within the PUDDING RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	1 W	WM	20	SW SW	550 FEET NORTH AND 580 FEET EAST FROM THE SW CORNER OF SECTION 20

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	1 W	WM	19	NE SE	1.1
7 S	1 W	WM	19	SE SE	22.3
7 S	1 W	WM	20	SW SW	0.1
7 S	1 W	WM	30	NE NE	18.3
7 S	1 W	WM	30	NW NE	1.6
Total					43.4

Permit B: Charles and Rita Mueller

Use: IRRIGATION of 100.6 ACRES

Priority Date: APRIL 24, 1990

Quantity: 1.26 CUBIC FEET PER SECOND

Rate/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: ONE WELL within the PUDDING RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	1 W	WM	20	SW SW	550 FEET NORTH AND 580 FEET EAST FROM THE SW CORNER OF SECTION 20

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	1 W	WM	19	SE SE	3.3
7 S	1 W	WM	20	SW SW	29.0
7 S	1 W	WM	20	SE SW	12.1
7 S	1 W	WM	29	NE NW	13.7
7 S	1 W	WM	29	NW NW	30.8
7 S	1 W	WM	30	NE NE	11.7
Total					100.6

9. The second Permit to be modified and assigned is as follows:

Permit: G-12957 in the name of RICHARD KUENZI
Use: SUPPLEMENTAL IRRIGATION of 144.0 ACRES
Priority Date: APRIL 28, 1995
Quantity: 0.8 CUBIC FOOT PER SECOND
Rate/Duty: The amount of water used for irrigation under this right, 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) and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.

Period of Use: March 1 through October 31

Source: A WELL within the PUDDING RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	1 W	WM	20	SW SW	900 FEET NORTH AND 390 FEET EAST FROM THE SW CORNER OF SECTION 20

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	1 W	WM	19	SE SE	26.7
7 S	1 W	WM	20	NW SW	0.1
7 S	1 W	WM	20	SW SW	29.1
7 S	1 W	WM	20	SE SW	12.3
7 S	1 W	WM	29	NE NW	13.4
7 S	1 W	WM	29	NW NW	30.8
7 S	1 W	WM	30	NE NE	30.0
7 S	1 W	WM	30	NW NE	1.6
Total					144.0

10. The Applicants request Permit G-12957 be split and replacement permits be issued as follows:

Permit A: Shawn and Kimberly Schurter

Use: SUPPLEMENTAL IRRIGATION of 44.0 ACRES

Priority Date: APRIL 28, 1995

Quantity: 0.24 CUBIC FOOT PER SECOND

Rate/Duty: The amount of water used for irrigation under this right, 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) and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.

Period of Use: March 1 through October 31

Source: A WELL within the PUDDING RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	1 W	WM	20	SW SW	900 FEET NORTH AND 390 FEET EAST FROM THE SW CORNER OF SECTION 20

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	1 W	WM	19	SE SE	23.4
7 S	1 W	WM	20	NW SW	0.1
7 S	1 W	WM	20	SW SW	0.6
7 S	1 W	WM	30	NE NE	18.3
7 S	1 W	WM	30	NW NE	1.6
Total					44.0

Permit B: Charles and Rita Mueller

Use: SUPPLEMENTAL IRRIGATION of 100.0 ACRES

Priority Date: APRIL 28, 1995

Quantity: 0.56 CUBIC FOOT PER SECOND

Rate/Duty: The amount of water used for irrigation under this right, 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) and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.

Period of Use: March 1 through October 31

Source: A WELL within the PUDDING RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	1 W	WM	20	SW SW	900 FEET NORTH AND 390 FEET EAST FROM THE SW CORNER OF SECTION 20

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	1 W	WM	19	SE SE	3.3
7 S	1 W	WM	20	SW SW	28.5
7 S	1 W	WM	20	SE SW	12.3
7 S	1 W	WM	29	NE NW	13.4
7 S	1 W	WM	29	NW NW	30.8
7 S	1 W	WM	30	NE NE	11.7
Total					100.0

11. Notice of the application for the assignment of the water right permit and request for issuance of replacement water right permits was published in the Department's weekly notice on November 22, 2016, pursuant to ORS 537.325(3)(e) and OAR 690-325-0080. No comments were filed in response to the notice. In addition, the Department provided copies of the draft Proposed Final Order, draft replacement permits, the application, map, and existing water right permit to each owner of land upon which the water right permit is appurtenant.
12. On January 5, 2017, the Department issued a Proposed Final Order, considering any comments received, and on January 10, 2017, sent a copy to the applicant and each owner of land upon which the water right permit is appurtenant. Notice of the Proposed Final Order

was published in the Department's weekly notice on January 10, 2017. No protests were filed in response to the notice.

Split a Permit Review Criteria

13. The Department has verified the mailing address of each owner of the authorized place of use identified on the map for Permit G-11197, contained in the application as follows:

Name and Address	Acres	Proportionate Rate	Twp	Rng	Sec	Q-Q	Tax Lot
Shawn and Kimberly Schurter 10520 Sunnyview Rd. NE Salem, Oregon 97317	1.1	0.54	7 S	1 W	19	NE SE	1900
	22.3		7 S	1 W	19	SE SE	
	0.1		7 S	1 W	20	SW SW	
	18.3		7 S	1 W	30	NE NE	
	1.6		7 S	1 W	30	NW NE	
Charles and Rita Mueller 10570 Sunnyview Rd. NE Salem, Oregon 97317	3.3	1.26	7 S	1 W	19	SE SE	2600
	29.0		7 S	1 W	20	SW SW	
	12.1		7 S	1 W	20	SE SW	
	13.7		7 S	1 W	29	NE NW	
	30.8		7 S	1 W	29	NW NW	
	11.7		7 S	1 W	30	NE NE	

OAR 690-325-0070(1)(a).

14. The Department has verified the mailing address of each owner of the authorized place of use identified on the map for Permit G-12957, contained in the application as follows:

Name and Address	Acres	Proportionate Rate	Twp	Rng	Sec	Q-Q	Tax Lot
Shawn and Kimberly Schurter 10520 Sunnyview Rd. NE Salem, Oregon 97317	23.4	0.24	7 S	1 W	19	SE SE	1900
	0.1		7 S	1 W	20	NW SW	
	0.6		7 S	1 W	20	SW SW	
	18.3		7 S	1 W	30	NE NE	
	1.6		7 S	1 W	30	NW NE	
Charles and Rita Mueller 10570 Sunnyview Rd. NE Salem, Oregon 97317	3.3	0.56	7 S	1 W	19	SE SE	2600
	28.5		7 S	1 W	20	SW SW	
	12.3		7 S	1 W	20	SE SW	
	13.4		7 S	1 W	29	NE NW	
	30.8		7 S	1 W	29	NW NW	
	11.7		7 S	1 W	30	NE NE	

OAR 690-325-0070(1)(a).

15. The deed supplied with the application, matches the property proposed for assignment.
OAR 690-325-0070(1)(b).

16. The applicant affirmed the most recent water use under the permit has been exercised within the relevant terms and conditions of the water right permit. OAR 690-325-0070(1)(c).

17. The assignment and issuance of replacement permits, as outlined in Finding of Facts #8 and #10 above, would not result in injury to other water right holders. OAR 690-325-0070(1)(d).
18. The assignment and issuance of replacement permits, as outlined in Finding of Facts #8 and #10 above, would not result in enlargement of the permit. OAR 690-325-0070(1)(d).
19. The assignment and issuance of replacement permits does not alter any other terms of Permits # G-11197 and G-12957.

Conclusions of Law

The assignment and issuance of replacement permits proposed by Application T-12497 are consistent with the requirements of ORS 537.225 and OAR Chapter 690, Division 325.

Now, therefore, it is ORDERED:

1. The assignment and issuance of replacement permits proposed by Application T-12497 are approved.
2. Permit G-11197, in the name of Richard Kuenzi, is cancelled. Permit G-17694, in the names of Shawn and Kimberly Schurter, and Permit G-17695 in the names of Charles and Rita Mueller, are issued to supersede Permit G-11197.
3. Permit G-12957, name of Richard Kuenzi, is cancelled. Permit G-17696, in the names of Shawn and Kimberly Schurter, and Permit G-17697 in the names of Charles and Rita Mueller, are issued to supersede Permit G-12957.
4. All other terms and conditions under Permit G-11197 are incorporated into Permits G-17694 and G-17695.
5. All other terms and conditions under Permit G-12957 are incorporated into Permits G-17696 and G-17697.

Dated at Salem, Oregon this 1 day of March, 2017.


Dwight French, Water Right Services Administrator, for
THOMAS M. BYLER, DIRECTOR

Mailing Date: MAR 03 2017