

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

In the Matter of Transfer Application) FINAL ORDER APPROVING
T-11215, Douglas County) CHANGES IN POINTS OF DIVERSION
) PLACES OF USE, AND CHARACTER
) 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

KURT M. AND VERONICA SPENCER
6459 OAK HILL ROAD
ROSEBURG, OR 97470

Findings of Fact

Background

1. On March 23, 2011, Kurt M. and Veronica Spencer filed an application to change the points of diversion, to change the place of use, and to change the character of use under Certificates 27632, 43957, 49003, 79303, 85765, and 85724. The Department assigned the application number T-11215.
2. On March 26, 2011, the applicants amended the application to clarify the proposed place of use under Certificate 79303.
3. On September 20, 2011, the applicants again amended the application to add an additional point of diversion to Certificate 85724.
4. The first right to be transferred is as follows:
 - Certificate:** 27632 in the name of GAIL WINNIFORD (perfected under Permit S-21066)
 - Use:** IRRIGATION of 56.9 ACRES
 - Priority Date:** JANUARY 31, 1952

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.

Rate: 0.71 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year
Source: CALAPOOYA CREEK, tributary to the UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC
25 S	6 W	WM	29	SW SE	54

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
25 S	6 W	WM	29	NE SE	43	27.8
25 S	6 W	WM	29	NW SE	54	8.4
25 S	6 W	WM	29	NW SE	43	1.1
25 S	6 W	WM	29	SW SE	54	1.2
25 S	6 W	WM	29	SW SE	43	0.4
25 S	6 W	WM	29	SE SE	43	18.0

5. Certificate 27632 does not describe the location of the point of diversion, however information is available from the Certified Water Right Examiner indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
25 S	6 W	WM	29	SW SE	54	(POD 2) - 540 FEET SOUTH AND 520 FEET WEST FROM THE NE CORNER OF DLC 54

6. Transfer Application T-11215 proposes to move the authorized point of diversion for a portion of the right (18.9 acres) approximately ¼ mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
25 S	6 W	WM	29	NW SE	42	POD 3 - 1100 FEET NORTH AND 1220 FEET EAST FROM THE SW CORNER OF DLC 42

7. Transfer Application T-11215 also proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	POD ID
25 S	6 W	WM	28	NW SW	43	7.1	2
25 S	6 W	WM	29	SW NE	42	12.3	3
25 S	6 W	WM	29	SE NE	42	6.6	3
25 S	6 W	WM	29	NE SE	43	23.2	2
25 S	6 W	WM	29	SE SE	43	7.7	2

8. The second right to be transferred is as follows:

Certificate: 43957 in the name of RALPH WINNIFORD (perfected under Permit S-24886)
Use: IRRIGATION of 25.0 ACRES
Priority Date: APRIL 4, 1957
Rate: 0.31 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: CALAPOOYA CREEK, tributary to the UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
25 S	6 W	WM	29	SW SE	54	(POD 2) - 540 FEET SOUTH AND 520 FEET WEST FROM NE CORNER OF DLC 54

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
25 S	6 W	WM	28	NW SW	43	19.5
25 S	6 W	WM	28	SW SW	43	3.0
25 S	6 W	WM	29	NE SE	43	2.0
25 S	6 W	WM	29	SE SE	43	0.5

9. Transfer Application T-11215 proposes to move the authorized point of diversion for a portion of the right (6.2 acres) approximately ¼ mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
25 S	6 W	WM	29	NW SE	42	POD 3 - 110 FEET NORTH AND 1220 FEET EAST FROM THE SW CORNER OF DLC 42

10. Transfer Application T-11215 also proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	POD ID
25 S	6 W	WM	28	NW SW	43	8.9	2
25 S	6 W	WM	29	SW NE	42	6.2	3
25 S	6 W	WM	29	NW SE	54	4.1	2
25 S	6 W	WM	29	SE SE	43	5.8	2

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

Certificate: 49003 in the name of ESSELSTROM LOGGING COMPANY (perfected under Permit S-21982)
Use: IRRIGATION of 6.5 ACRES
Priority Date: DECEMBER 15, 1952
Rate: 0.08 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: CALAPOOYA CREEK, tributary to the UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
25 S	6 W	WM	29	NW SE	42	(POD 3) - 110 FEET NORTH AND 1220 FEET EAST FROM THE SW CORNER OF DLC 42

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
25 S	6 W	WM	29	SW NE	42	6.5

12. Transfer Application T-11215 proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	POD ID
25 S	6 W	WM	29	SW NE	42	6.5	3

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

Certificate: 85765 in the name of KURT AND VERONICA SPENCER; NORTHWEST FARM CREDIT SERVICES, FLCA; STEPHEN E. MURPHY; AND PHYLLIS J. MURPHY (perfected under Permit S-21982)

Use: IRRIGATION of 14.9 ACRES

Priority Date: DECEMBER 15, 1952

Rate: 0.19 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: CALAPOOYA CREEK, tributary to the UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
25 S	6 W	WM	29	NW SE	42	(POD 3) - 110 FEET NORTH AND 1220 FEET EAST FROM THE SW CORNER OF DLC 42

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
25 S	6 W	WM	29	NE NE	42	1.9
25 S	6 W	WM	29	NW NE	42	2.0
25 S	6 W	WM	29	SW NE	42	6.5
25 S	6 W	WM	29	SE NE	42	2.7
25 S	6 W	WM	29	SE NE	63	1.8

14. Transfer Application T-11215 proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	POD ID
25 S	6 W	WM	29	SW NE	42	6.9	3
25 S	6 W	WM	29	SE NE	42	0.4	3
25 S	6 W	WM	29	NE SE	63	0.6	3
25 S	6 W	WM	29	NW SE	42	7.0	3

15. The portion of the fifth right to be transferred is as follows:

Certificate: 79303 in the name of KURT M. AND VERONICA J. SPENCER
(perfected under Permit S-20066)

Use: IRRIGATION of 22.1 ACRES

Priority Date: JANUARY 8, 1951

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, is 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: CALAPOOYA CREEK, tributary to the UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
25 S	6 W	WM	28	NE SW	43	(POD 1) - 2000 FEET NORTH AND 450 FEET WEST FROM S¼ CORNER OF SECTION 28

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
25 S	6 W	WM	28	NW SE	43	22.1

16. Transfer Application T-11215 proposes to change the character of use of an equivalent 0.8 acre to year 'round domestic expanded and livestock use.

17. Transfer Application T-11215 also proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	POD ID
25 S	6 W	WM	28	NE SW	43	7.8	1
25 S	6 W	WM	28	NW SE	43	13.5	1

DOMESTIC EXPANDED AND LIVESTOCK						
Twp	Rng	Mer	Sec	Q-Q	DLC	POD ID
25 S	6 W	WM	28	SE SW	43	1

18. Transfer Application T-11215 requests that the diversion rate and duty of water allowed under Certificate 79303 for 0.8 acre be converted for year 'round domestic expanded and livestock use. A rate of diversion of 1/80 cfs per acre is equal to 0.0125 cfs per acre or 0.01 cfs for 0.8 acre during the irrigation season. Because the rate requested is for year 'round use, the 0.01 cfs is diminished to accommodate a longer season of use. Therefore, the rate for domestic expanded and livestock use would be 0.007 cfs from POD 1.

19. The annual duty of water listed on Certificate 79303 is 2.5 acre feet per acre. The annual duty for an equivalent irrigation use of 0.8 acre would be 2.0 acre feet (0.8 x 2.5).

20. The sixth right to be transferred is as follows:

Certificate: 85724 in the name of KURT AND VERONICA SPENCER AND NORTHWEST FARM CREDIT SERVICES, FLCA (perfected under Permit S-45243)

Use: IRRIGATION of 88.3 ACRES

Priority Date: JANUARY 3, 1980

Rate: 1.10 CUBIC FEET 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: CALAPOOYA CREEK, tributary to the UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
25 S	6 W	WM	29	NW SE	42	(POD 3) - 110 FEET NORTH AND 1220 FEET EAST FROM THE SW CORNER OF DLC 42

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
25 S	6 W	WM	28	SW NW	63	13.1
25 S	6 W	WM	28	NW SW	63	3.0
25 S	6 W	WM	29	SW NE	42	22.7
25 S	6 W	WM	29	SE NE	42	8.2
25 S	6 W	WM	29	SE NE	63	18.2
25 S	6 W	WM	29	NE SE	42	1.8
25 S	6 W	WM	29	NE SE	63	4.6
25 S	6 W	WM	29	NW SE	42	16.7

21. Transfer Application T-11215 proposes to move the authorized point of diversion (POD 3) approximately 1,000 feet upstream to POD 2; approximately 1¼ miles upstream to POD 1; and 1½ miles upstream to POD 4 as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
25 S	6 E	WM	29	SW SE	54	(POD 2) - 540 FEET SOUTH AND 520 FEET WEST FROM THE NE CORNER OF DLC 54
25 S	6 W	WM	28	SW NE	63	(POD 4) - 1600 FEET SOUTH AND 280 FEET EAST FROM THE N¼ CORNER OF SECTION 28
25 S	6 W	WM	28	NE SW	43	(POD 1) - 2000 FEET NORTH AND 450 FEET WEST FROM THE S¼ CORNER OF SECTION 28

22. Transfer Application T-11215 proposes to change the character of use of an equivalent of 2.4 acre of irrigation to year 'round domestic expanded and livestock use.
23. Transfer Application T-11215 also proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	POD ID
25 S	6 W	WM	28	SW NW	63	5.4	3
25 S	6 W	WM	28	SW NW	63	18.0	2 & 4
25 S	6 W	WM	28	SE NW	63	14.3	2 & 4
25 S	6 W	WM	28	NE SW	63	1.8	2 & 4
25 S	6 W	WM	28	NW SW	63	1.7	2 & 4
25 S	6 W	WM	28	NW SW	63	0.6	3
25 S	6 W	WM	28	NW SE	43	14.4	1
25 S	6 W	WM	28	SW SE	43	11.3	1
25 S	6 W	WM	29	SE NE	63	14.5	3
25 S	6 W	WM	29	NE SE	63	2.5	3
25 S	6 W	WM	29	NW SE	54	1.4	2

DOMESTIC EXPANDED						
Twp	Rng	Mer	Sec	Q-Q	DLC	POD ID
25 S	6 W	WM	21	NW SW		4
25 S	6 W	WM	28	NE NW	63	4
25 S	6 W	WM	29	SE SE	43	2

LIVESTOCK						
Twp	Rng	Mer	Sec	Q-Q	DLC	POD ID
25 S	6 W	WM	21	NW SW		4
25 S	6 W	WM	21	SW SW		4
25 S	6 W	WM	28	NE NW	63	4
25 S	6 W	WM	29	SE SE	43	2

24. Transfer Application T-11215 requests that the diversion rate and duty of water allowed under Certificate 85724 for 2.4 acres be converted for year 'round domestic expanded and livestock use. A rate of diversion of 1/80 cfs per acre is equal to 0.0125 cfs per acre or 0.03 cfs for 2.4 acres during the irrigation season. Because the rate requested is for year 'round use, the 0.03 cfs is diminished to accommodate a longer season of use. Therefore, the rate for domestic expanded and livestock uses would be 0.021 cfs as follows: 0.014 cfs for POD 4 and 0.007 cfs for POD 2.
25. The annual duty of water listed on Certificate 85724 is 2.5 acre feet per acre. The annual duty for an equivalent irrigation use of 2.4 acres would be 6.0 acre feet (2.4 x 2.5) as follows: 4.0 acre feet from POD 4 and 2.0 acre feet from POD 2.
26. Instream Water Right Certificates 59698 and 59901 exist in the stream reach of Calapooya Creek in which the authorized points of diversion would be moved upstream, and stream flows within the reach are frequently below the levels allocated under the instream water rights.
27. Certificate 85724 is junior in priority date to the instream water rights. When stream flows within the reach are below the levels allocated under the instream water rights, water use under Certificate 85724 is regulated off. Therefore, no injury occurs as a result of the upstream movements of the points of diversion.
28. Both instream water rights 59681 and 59901 do not have priority over appropriations for water for human consumption, livestock consumption, and irrigation of non-commercial gardens not to exceed one-half acre in area. Because of the change in character of use from irrigation to domestic expanded and livestock, the instream water rights would be injured as a result of the proposed change from a regulated use (irrigation) to a non-regulated use (domestic and livestock) in relation to the instream rights.
30. Notice of the application for transfer was published on March 29, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
31. On June 16, 2011, the Department mailed a copy to the applicants of the draft Preliminary Determination proposing to deny transfer application T-11215, unless the Oregon Department of Fish and Wildlife (ODFW) recommends the Department consent to injury of an instream water right or, the applicant agrees to condition the right to prevent injury, or the applicants withdraw that portion of the transfer application causing injury. The draft Preliminary Determination cover letter set forth a deadline of July 18, 2011, for the applicants to respond.

32. On July 11, 2011, the applicants agreed to condition the right to prevent injury with the following language: “the proposed domestic expanded and stock uses proposed for Certificate 85724 will not be exempted from regulation for existing instream water rights (Certificates 59698 and 59901)”.
33. On July 27, 2011, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11215, and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination was published in the Department’s weekly notice on August 2, 2011, and in the Douglas County News newspaper on August 3, 10, and 17, 2011. No protests were filed in response to the notices.
34. On August 25, 2011, the applicants requested the Department withdraw the Preliminary Determination because they had not been able to review the water measurement conditions prior to issuance of the Preliminary Determination.
35. On August 25, 2011, the Department issued an Order Withdrawing FINAL ORDER APPROVING Changes in Points of Diversion, Places of Use, and Character of Use, which is recorded at Special Order Volume 85, Pages 274-275.
36. On September 20, 2011, the applicants submitted an amended application and maps for Certificate 85724, altering the change in points of diversion for certain lands.
37. On September 28, 2011, the Department issued a 2nd Preliminary Determination proposing to approve Transfer Application T-11215 and mailed a copy to the applicants. Additionally, notice of the 2nd Preliminary Determination for the transfer application was published on the Department’s weekly notice on October 4, 2011, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
38. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new points of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversions are not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

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

39. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
40. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-11215.
41. The proposed changes as conditioned in Findings of Fact Nos. 18, 19, 24, and 25 would not result in enlargement of the rights.

42. The proposed changes as conditioned in Finding of Fact No. 32 would not result in injury to the other water rights.

Conclusions of Law


The changes in points of diversion, changes in place of use and changes in character of use proposed in Transfer Application T-11215 are 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 points of diversion, changes in place of use, and changes in character of use proposed in Transfer Application T-11215 are 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 Certificates 27632, 43957, 49003, 79303, 85724, and 85765, and any related decree.
3. Water right certificates 27632, 43957, 49003, 79303, 85765, and 85724 are cancelled. New certificates will be issued for Certificates 49003, 85765, and 85724 describing those portions of the rights not affected by this transfer.
4. The quantity of water diverted at the new 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.
5. Water use measurement conditions:
 - a. Before water use may begin under this order, the water user shall install a flow restrictor on each of the supply lines for the domestic expanded uses.
 - b. Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of diversion for irrigation use. Flow meters are not required for domestic expanded and stock water diversions.
 - c. The water user shall maintain the meters or measuring devices in good working order.
 - d. 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.
6. Prior to diverting water, the water user shall install a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain the headgate as required by the Department.

7. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.
8. The former place of use of the transferred rights shall no longer receive water under the rights.
9. Use of water for domestic expanded and livestock use under Certificate 79303 is limited to a rate of 0.007 cfs and an annual volume of 2.0 acre feet.
10. Use of water for domestic expanded and livestock uses under Certificate 85724 is limited to a rate of 0.014 cfs from POD 4 and 0.007 cfs from POD 2, and an annual volume limitation of 4.0 acre feet from POD 4 and 2.0 acre feet from POD 2.
11. Use of water for domestic expanded and livestock uses under Certificate 85724 is not exempt from regulation for existing instream water rights (Certificates 59698 and 59901).
12. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2013**. 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.
13. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 7 day of November 2011.



Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing date: NOV 09 2011

