

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

In the Matter of Transfer Application                    )   **FINAL ORDER**  
T-9889, Marion County                                    )   APPROVING A 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.

**Applicants**

Agnes Annen    Norbert Annen  
705 Taylor Street                   &   11588 Koster Road NE  
Mt. Angel, OR 97362                   Mt. Angel, OR 97362

**Receiving Landowner**

Dickman Farms, Inc.  
Attn: Mark Dickman  
15829 Mt. Angel-Scotts Mills Hwy. NE  
Silverton, OR 97381-9734

**Findings of Fact**

***Background***

1. On March 18, 2005, Agnes Annen and Norbert Annen filed a transfer application to change the place of use under Certificates 74272, 76186, 76984 and 74273. The Department assigned the application number T-9889.
2. Dickman Farms, Inc. will be responsible for completing the changes proposed under this transfer application (T-9889).
3. Notice of the application for transfer was published on March 29, 2005, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
4. The Department mailed a copy of the draft preliminary determination to the applicant on August 4, 2006, proposing denial of Transfer Application T-9889 due to discrepancies involving the application and map.

**NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW**

This is an order other than a 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. The applicant's agent (Greg Kupillas of Pacific Hydro-Geology Inc.) submitted a revised transfer application and map on April 24, 2007, in order to clear up application and map discrepancies and to reflect the number of acres to be transferred under each certificate. The application was also modified on behalf of the applicants to remove Certificate 76984 from the transfer application and replace it with a proposed change in place of use for Certificate 76159.
6. On June 7, 2007, the Department issued a Preliminary Determination proposing to approve Transfer T-9889 and mailed a copy to the applicants and receiving landowner. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on June 12, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
7. The FIRST right to be transferred in its entirety is as follows:

**Certificate:** 74272 in the name of CLETUS and AGNES ANNEN (perfected under Permit S-16524)  
**Use:** IRRIGATION of 21.9 ACRES  
**Priority Date:** AUGUST 17, 1945  
**Rate:** 0.28 CUBIC FOOT PER SECOND (cfs)  
**Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year  
**Source:** BUTTE CREEK, a tributary to the PUDDING RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
5 S	1 E	WM	31	NE SW
5 S	1 E	WM	31	NW SE
5 S	1 E	WM	31	SW SE

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 E	WM	31	NE SW	0.1
5 S	1 E	WM	31	SE SW	1.3
5 S	1 E	WM	31	NW SE	0.5
5 S	1 E	WM	31	SW SE	19.1
5 S	1 E	WM	31	SE SE	0.9
<b>TOTAL:</b>					<b>21.9</b>

8. Application T-9889 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 E	WM	31	NE SW	3.4
5 S	1 E	WM	31	SE SW	18.5
<b>TOTAL:</b>					<b>21.9</b>

9. The SECOND right to be transferred in its entirety is as follows:

**Certificate:** 76186 in the name of DICKMAN FARMS, INC. (perfected under Permit S-16524)  
**Use:** IRRIGATION of 8.1 ACRES  
**Priority Date:** AUGUST 17, 1945  
**Rate:** 0.1 CUBIC FOOT PER SECOND (cfs)  
**Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year  
**Source:** BUTTE CREEK, a tributary to the PUDDING RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
5 S	1 E	WM	31	SW SE	1300 FEET NORTH AND 500 FEET EAST FROM THE SOUTH 1/4 CORNER OF SECTION 31

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 E	WM	31	SE SW	4.8
5 S	1 E	WM	31	SW SE	3.3
<b>TOTAL:</b>					<b>8.1</b>

10. Application T-9889 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 E	WM	31	SE SW	8.1
<b>TOTAL:</b>					<b>8.1</b>

11. The THIRD right to be transferred in its entirety is as follows:

**Certificate:** 74273 in the name of CLETUS and AGNES ANNEN (perfected under Permit S-39747)  
**Use:** IRRIGATION of 40.5 ACRES  
**Priority Date:** JULY 11, 1975  
**Rate:** 0.51 CUBIC FOOT PER SECOND (cfs)  
**Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre feet per acre per year  
**Source:** BUTTE CREEK, a tributary to the PUDDING RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
5 S	1 E	WM	31	SW SE	1300 FEET NORTH AND 500 FEET EAST FROM THE SOUTH 1/4 CORNER OF SECTION 31

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 E	WM	31	NE SW	15.2
5 S	1 E	WM	31	SE SW	25.3
<b>TOTAL:</b>					<b>40.5</b>

12. Application T-9889 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 E	WM	31	NE SW	28.4
5 S	1 E	WM	31	SE SW	2.9
5 S	1 E	WM	31	NW SE	1.3
5 S	1 E	WM	31	SW SE	7.9
<b>TOTAL:</b>					<b>40.5</b>

13. The FOURTH right to be transferred in its entirety is as follows:

**Certificate:** 76159 in the name of DICKMAN FARMS, INC. (perfected under Permit S-39747)  
**Use:** IRRIGATION of 1.8 ACRES  
**Priority Date:** JULY 11, 1975  
**Rate:** 0.02 CUBIC FOOT PER SECOND (cfs)  
**Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year  
**Source:** BUTTE CREEK, a tributary to the PUDDING RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
5 S	1 E	WM	31	SW SE	1300 FEET NORTH AND 500 FEET EAST FROM THE SOUTH 1/4 CORNER OF SECTION 31

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 E	WM	31	SE SW	1.8
<b>TOTAL:</b>					<b>1.8</b>

14. Application T-9889 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 E	WM	31	SW SE	1.8
<b>TOTAL:</b>					<b>1.8</b>

15. On March 5, 1993, Transfer T-6919 was submitted to permanently change the place of use for portions of Certificates 16778 and 51601. Transfer T-6919 was approved on April 21, 1997 (*Sp. Or. Vol. 51, Pg. 393*), and remaining right Certificates 74272 and 74273 were issued describing those portions of the rights not affected by Transfer T-6919.
16. Transfer T-8237 was submitted on April 5, 1999, to temporarily change the place of use for Certificates 74272 and 74273. The temporary transfer (T-8237) was approved on May 6, 1999, for use during the 1999 irrigation season (*Special Order Vol. 53, Pg. 660*). Upon expiration of the temporary transfer at the end of the 1999 irrigation season, Certificates 74272 and 74273 reverted back to the location *from* which they came.

17. Permit Amendment T-8236 was also submitted on April 5, 1999, to change the place of use under Permit S-53120 (issued on April 16, 1997). The permit amendment (T-8236) was approved on October 26, 1999 (*Sp. Or. Vol. 53, Pg. 1373*).
18. A Claim of Beneficial Use (COBU) report was submitted for Transfer T-6919 on March 15, 1999. Certificates 76159 and 76160 were issued on May 6, 1999, confirming completion of the changes in place of use under T-6919 and the subsequent beneficial use of the water.
19. Certificate 76160 was cancelled and superseded by Certificate 76186 on June 2, 1999, in order to correctly describe the date of priority.
20. Transfer T-8480 was submitted on April 6, 2000, to temporarily transfer the place of use under Certificates 74272, 74273, 76159 and 76186 (primary irrigation rights). The temporary transfer (T-8480) was approved on May 10, 2000, for use during the 2000 and 2001 irrigation seasons (*Special Order Vol. 54, Pg. 362*). Upon expiration of the temporary transfer at the end of the 2001 irrigation season, Certificates 74272, 74273, 76159 and 76186 were to revert back to the location *from* which they came.
21. Permit S-53120 is located at the same place of use *from* which Certificates 74272 and 76186 were temporarily removed under T-8480. In order to prevent the overlapping of primary irrigation rights upon the expiration of temporary Transfer T-8480 at the end of the 2001 irrigation season, a COBU report requesting certification of Permit S-53120 (*as modified by Sp. Or. Vol. 53, Pg. 1373*) and Transfer T-8481 (filed by Dickman Farms, Inc.) proposing to permanently change the place of use under Permit S-53120 were submitted to the Department on April 6, 2000.
22. Because a certificate of water right had not yet been issued for Permit S-53120, it was not yet subject to transfer. Before the processing of Transfer T-8481 could begin, the Department first had to review the COBU report for Permit S-53120 (*as modified by Sp. Or. Vol. 53, Pg. 1373*) and then issue a certificate of water right confirming the use of water under the permit.
23. The COBU report for Permit S-53120 was evaluated and the Department issued Certificate 76984 on June 29, 2001. The Department was not able to review and process Transfer T-8481 by the end of the 2001 irrigation season. Therefore, Certificates 74272 and 76186 reverted back to their originating place of use and became "layered" with Certificate 76984.
24. Because the application would no longer accomplish their objective, Dickman Farms, Inc. submitted a written request on March 18, 2005, to withdraw their Transfer T-8481. The Department issued an order on April 4, 2005, withdrawing the transfer application (*Sp. Or. Vol. 64, Pg. 18*).
25. Instead of pursuing Transfer T-8481, on March 18, 2005, the applicant submitted Transfer T-9889 proposing to transfer the place of use under Certificates 76186, 74272, 74273 and 76984. (*NOTE: Transfer T-9889 was amended on April 24, 2007 to remove Certificate 76984 from the application and replace it with Certificate 76159.*)

26. Based upon Findings #21, #22 and #23, it is clear that the applicant and Dickman Farms, Inc. intended to remove the primary irrigation rights under Certificate 76984 (Permit S-53120) before temporary Transfer T-8480 expired and Certificates 74272 and 76186 reverted back to their originating place of use, which would have prevented any overlapping or “layering” of the primary rights. Therefore, given the history and the reasons described herein, the Department is able to process Transfer T-9889 as requested.

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

27. Water has been used within the last five years according to the terms and conditions of the rights, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
28. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
29. Because the transfer application meets all of the criteria outlined in OAR 690-380-3000(21)(a)(b)(c) and (d), the applicant is not required to submit a land use information form completed by the local planning department.
30. The proposed change would not result in enlargement of the rights.
31. The proposed change would not result in injury to other water rights.

**Conclusions of Law**

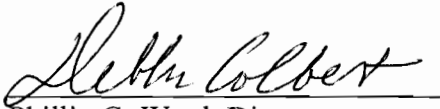
The change in place of use proposed in Transfer Application T-9889 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

**Now, therefore, it is ORDERED:**

1. The change in place of use proposed in application T-9889 is approved.
2. Water Right Certificates 74272, 76186, 76159 and 74273 are cancelled.
3. 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 74272, 76186, 76159 and 74273 and any related decree.
4. The former place of use of the transferred rights shall no longer receive water under the rights.
5. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2008**. 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.

6. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 13<sup>th</sup> day of July 2007.

  
Phillip C. Ward, Director

Mailing date: JUL 18 2007