

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

In the Matter of Transfer Application)
T-11096, Umatilla County)
)
)
)

SUPERSEDING FINAL ORDER
APPROVING AN ADDITIONAL POINT
OF APPROPRIATION AND
CORRECTING A SCRIVENER'S
ERROR IN A PREVIOUS ORDER

Authority

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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

ANDREW SANDLER
1812 10TH AVENUE E
SEATTLE, WA 98102

Findings of Fact

Background

1. On June 23, 2010, ANDREW SANDLER filed an application for an additional point of appropriation Certificate 26533. The Department assigned the application number T-11096.

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

Certificate: 26533 in the name of RICHARD KNOPF (perfected under Permit G-483)
Use: SUPPLEMENTAL IRRIGATION of 8.8 ACRES
Priority Date: OCTOBER 23, 1950
Rate: 0.11 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 3 acre-feet per acre for each acre for each acre irrigated during the irrigation season of each year.
Source: A WELL within the DUGGER CREEK BASIN

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.

Authorized Point of Appropriation:

Well	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
Well	6 N	35 E	WM	33	NE NW	300 FEET NORTH AND 380 FEET WEST FROM THE SE CORNER OF THE NE ¼ OF THE NW ¼ OF SECTION 33

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Source	Twp	Rng	Mer	Sec	Q-Q	Acres
Well	6 N	35 E	WM	33	NE NW	8.8

3. The Transfer Map prepared by John S. Warinner, CWRE, states that the authorized Point of Appropriation is better described as:

Well	Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
POA 1	6 N	35 E	WM	33	NE NW	301	1030 FEET SOUTH AND 400 FEET WEST FROM THE NORTH ¼ CORNER OF SECTION 33

4. Transfer Application T-11096 proposes to add the following point of appropriation, approximately 200 feet south of the existing point of appropriation:

Well	Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
POA 2	6 N	35 E	WM	33	NE NW	301	1255 FEET SOUTH AND 415 FEET WEST FROM THE NORTH ¼ CORNER OF SECTION 33

5. Notice of the application for transfer was published on June 29, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. On July 26, 2011, the Department mailed a copy of a draft Preliminary Determination proposing to approve Transfer Application T-11096 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 27, 2011, 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 September 19, 2011, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11096 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 September 20, 2011, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
8. On October 31, 2011, the Department issued a Final Order for the transfer, recorded at Special Order Volume 85, Pages 598 to 601. Shortly following issuance of the order the Department recognized a scrivener's error in the description of the location of the proposed POA 2.

9. This order is issued to correct the scrivener's error and to supersede the previous order recorded at Special Order Volume 85, Pages 598 to 601.

Transfer Review Criteria (OAR 690-380-4010)

10. Water has been used within the last five years 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.
11. 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-11096.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.

Conclusions of Law

The additional point of appropriation proposed in Transfer Application T-11096 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the scrivener's error in Special Order Volume 85, Pages 598 to 601 should be corrected in the record.

Now, therefore, it is ORDERED:

1. The order entered at Special Order Volume 85, Pages 598 to 601 is withdrawn and of no further force and effect, and is superseded by this order.
2. The additional point of appropriation proposed in application T-11096 is approved.
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 Certificate 26533 and any related decree.
4. Water right certificate 26533 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
5. The quantity of water diverted at the additional point of appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.
6. Water use measurement conditions:
 - a. 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 appropriation.
 - b. The water user shall maintain the meters or measuring devices in good working order.

- c. 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.
7. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
 8. The approved change 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 change and full beneficial use of the water.
 9. When satisfactory proof of the completed change is received, a new certificate confirming the portion of the right 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