

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-11309, Morrow County) PERMANENT DISTRICT TRANSFER

Authority

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

WEST EXTENSION IRRIGATION DISTRICT
P. O. BOX 100
IRRIGON, OR 97844

Findings of Fact

Background

1. On October 20, 2011, Stacey Wells, on behalf of West Extension Irrigation District filed an application to change the place of use under Certificates 79926, 79928 and 79929. The Department assigned the application number T-11309.
2. Notice of the application for transfer was published on October 25, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 5, 2012, the Department received an amended application and map clarifying the place of use involved in Transfer Application T-11309. The Department also received cancellation affidavits submitted by West Extension Irrigation District.
4. On February 23, 2012, the District again submitted amended application materials including additional place of use acres.
5. The portion of the first primary irrigation right and its layered supplemental water right to be transferred is as follows:
Certificate: 79926 in the name of U. S. BUREAU OF RECLAMATION (perfected under Permit S-408)

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 137-004-0080 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.

Use: IRRIGATION of 26.7 ACRES

Priority Date: MARCH 28, 1909

Rate: 1.92 CUBIC FEET PER SECOND (cfs)

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 not to exceed 2.0 acre-feet per acre in any 30 day period and not to exceed 10.0 acre-feet per acre throughout the irrigation season

Source: UMATILLA RIVER, a tributary of the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
5 N	28 E	WM	28	SW SW	1100 FEET NORTH AND 520 FEET EAST FROM THE SW CORNER OF SECTION 28

Certificate: 79929 in the name of WEST EXTENSION IRRIGATION DISTRICT (perfected under Permit S-33883)

Use: SUPPLEMENTAL IRRIGATION of 26.7 ACRES

Priority Date: SEPTEMBER 12, 1968

Rate: 0.28 CUBIC FOOT PER SECOND (cfs)

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-FORTIETH of one cfs per acre, or the equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 4.5 acre-feet for each acre irrigated during the irrigation season

Source: COLUMBIA RIVER, a tributary of the PACIFIC OCEAN

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
5 N	28 E	WM	17	NW SW	1900 FEET NORTH AND 150 FEET EAST FROM THE SW CORNER OF SECTION 17
5 N	28 E	WM	10	NW SE	2150 FEET NORTH AND 3500 FEET EAST FROM THE SW CORNER OF SECTION 10

Authorized Place of Use:

IRRIGATION (IR) and SUPPLEMENTAL IRRIGATION (IS)								
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	ACRES		User
						Certificate 79926 (IR)	Certificate 79929 (IS)	
4 N	24 E	WM	23	NE NE	100	0.30	0.30	Morrow County
4 N	24 E	WM	23	NW NE	200	0.25	0.25	Morrow County
4 N	24 E	WM	23	NE NW	300	0.30	0.30	Morrow County
4 N	24 E	WM	23	NW NW	400	0.15	0.15	Morrow County
4 N	24 E	WM	23	NW NW	401	0.10	0.10	Morrow County
4 N	24 E	WM	24	NE NE	100	0.30	0.30	Morrow County
4 N	24 E	WM	24	NW NE	200	0.30	0.30	Morrow County
4 N	24 E	WM	24	NE NW	300	0.30	0.30	Morrow County
4 N	24 E	WM	24	NW NW	400	0.30	0.30	Morrow County
4 N	24 E	WM	24	SW NW	500	20.00	20.00	Suter
4 N	24 E	WM	24	NW SW	500	1.40	1.40	Suter
4 N	25 E	WM	17	NW SW	700	1.30	1.30	Jim
4 N	25 E	WM	19	NE NE	100	0.30	0.30	Morrow County
4 N	25 E	WM	19	NW NE	100	0.30	0.30	Morrow County
4 N	25 E	WM	19	NE NW	100	0.30	0.30	Morrow County

IRRIGATION (IR) and SUPPLEMENTAL IRRIGATION (IS)								
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	ACRES		User
						Certificate 79926 (IR)	Certificate 79929 (IS)	
4 N	25 E	WM	19	NW NW	100	0.30	0.30	Morrow County
4 N	25 E	WM	19	NW NW	200	0.10	0.10	Morrow County
4 N	25 E	WM	19	NW NW	201	0.10	0.10	Morrow County
4 N	25 E	WM	20	NW NW	1000	0.10	0.10	Morrow County
4 N	25 E	WM	20	NW NW	1200	0.20	0.20	Morrow County
TOTAL:						26.70	26.70	

6. Transfer Application T-11309 proposes to change the place of use for the above described water rights to:

IRRIGATION (IR) and SUPPLEMENTAL IRRIGATION (IS)								
Twp	Rng	Mer	Sec	Q - Q	Tax Lot#	ACRES		User
						Certificate 79926 (IR)	Certificate 79929 (IS)	
4 N	25 E	WM	20	SW NE	7300	3.40	3.40	K. Smith
4 N	25 E	WM	20	SE NW	101	0.80	0.80	K. Smith
4 N	25 E	WM	20	NW SE	802	*21.50	*21.50	K. Smith
4 N	25 E	WM	20	SW SE	802	*1.00	*1.00	K. Smith
TOTAL:						26.70	26.70	

* Note: Water right Certificate 44107 exists on these lands and will be transferred off in Transfer Application T-11404.

7. The portion of the second primary right and its layered supplemental water right to be transferred is as follows:

Certificate: 79928 in the name of WEST EXTENSION IRRIGATION DISTRICT (perfected under Permit S-33883)

Use: IRRIGATION of 9.95 ACRES

Priority Date: SEPTEMBER 12, 1968

Rate: 0.25 cfs

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 not to exceed ONE-FORTIETH of one cfs, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 4.5 ACRE-FEET per acre for each acre irrigated during the irrigation season of each year

Source: UMATILLA RIVER, a tributary of the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
5 N	28 E	WM	28	SW SW	1100 FEET NORTH AND 520 FEET EAST FROM THE SW CORNER OF SECTION 28

Certificate: 79929 in the name of WEST EXTENSION IRRIGATION DISTRICT (perfected under Permit S-33883)

Use: IRRIGATION of 9.95 ACRES

Priority Date: SEPTEMBER 12, 1968

Rate: 0.11 cfs

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-FORTIETH of one cfs per acre, or the equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 4.5 acre-feet for each acre irrigated during the irrigation season

Source: COLUMBIA RIVER, a tributary of the PACIFIC OCEAN

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
5 N	28 E	WM	17	NW SW	1900 FEET NORTH AND 150 FEET EAST FROM THE SW CORNER OF SECTION 17
5 N	28 E	WM	10	NW SE	2150 FEET NORTH AND 3500 FEET EAST FROM THE SW CORNER OF SECTION 10

Authorized Places of Use:

IRRIGATION (IR) and SUPPLEMENTAL IRRIGATION (IS)								
Twp	Rng	Mer	Sec	Q - Q	Tax Lot#	ACRES		User
						Certificate 79928 (IR)	Certificate 79929 (IS)	
4 N	25 E	WM	16	SW SW	500	0.10	0.10	Morrow County
5 N	26 E	WM	36	SW SE	800	0.70	0.70	Anacapa Land Co.
5 N	26 E	WM	36	SE SE	800	1.00	1.00	Anacapa Land Co.
5 N	27 E	WM	31	NE NE	100	0.80	0.80	Anacapa Land Co.
5 N	27 E	WM	31	NW NE	100	1.20	1.20	Anacapa Land Co.
5 N	27 E	WM	31	SW NE	100	0.40	0.40	Anacapa Land Co.
5 N	27 E	WM	31	SE NW	100	1.30	1.30	Anacapa Land Co.
5 N	27 E	WM	31	NE SW	100	0.30	0.30	Anacapa Land Co.
5 N	27 E	WM	31	NW SW	100	0.90	0.90	Anacapa Land Co.
5 N	27 E	WM	31	SE SW	101	1.10	1.10	City of Irrigon .
5 N	27 E	WM	31	SE SW	102	0.65	0.65	City of Irrigon
5 N	27 E	WM	31	SW SE	102	1.50	1.50	City of Irrigon
TOTAL:						9.95	9.95	

8. Transfer Application T-11309 proposes to change the place of use for the above described water rights to:

IRRIGATION (IR) and SUPPLEMENTAL IRRIGATION (IS)								
Twp	Rng	Mer	Sec	Q - Q	Tax Lot#	ACRES		User
						Certificate 79928 (IR)	Certificate 79929 (IS)	
4 N	25 E	WM	20	NW SE	802	9.95*	9.95*	K. Smith

* Note: Water right Certificate 44107 exists on these lands and will be transferred off in Transfer Application T-11404.

9. The West Extension Irrigation District stopped assessing the parcels owned by James and Leslie Suter property in 2004. The Suter's property no longer being assessed by WEID is delineated in Finding of Fact #5.
10. The Suter family applied for and received Water Use Permit G-15835 on February 10, 2005 that authorizing irrigation use on the properties discussed in Finding of Fact #9.
11. On January 31, 2005, the Department received an affidavit from James and Leslie Suter, stating they are the owners of lands and the water right appurtenant to a portion of water

- right Certificate 79926. The affidavit requested cancellation of a portion of the right appurtenant to their property.
12. On March 21, 2005, the Department issued an order, recorded in Special Order Volume 63, Pages 468 - 469 cancelling a portion of Certificate 79926.
 13. On March 24, 2005, the Department issued an order (recorded in Special Order Volume 63, Pages 485 – 486) that withdrew the order cancelling a portion of Certificate 79926.
 14. The Department instructed the District to file a transfer application to permanently transfer the place of use under Certificate 79926 to avoid a layering issue with the newly issued groundwater water use permit.
 15. Transfer Application T-10875 was submitted on May 11, 2009, to temporarily transfer the place of use under Certificates 79924, 79926, 79928, 79929 and 79930. This temporary transaction was used until the district received a variance for a federally recognized boundary.
 16. Temporary Transfer Application T-10875 was approved on August 27, 2009, and recorded in Special Order Volume 78, Pages 762 - 770. This temporary transfer was approved for the 2009 irrigation season. Upon expiration of the temporary transfer at the end of the 2009 irrigation season, the authorized changes to the place of use reverted back to the location *from* which they came.
 17. The District Manager has stated that the district water right has not been used on the land since Water Use Permit G-15835 was issued.
 18. The District Manager has also stated the District intended to remove WEID's irrigation rights "off" before the temporary expired and the rights reverted back.
 19. Based upon the finding of facts above, the Department has determined that water rights have not been used conjunctively therefore, the water rights have not been enlarged.
 20. A portion of Certificate 44107 is located at the same place of use as the proposed place of use ("to" lands) under Certificates 79926, 79928 and 79929.
 21. On April 19, 2012, the Karl and Patricia Smith submitted Transfer Application T-11404 proposing to permanently change the place of use under Certificate 44107 which, if approved, will address the potential enlargement issue (on the "TO" property) mentioned in Finding of Fact #20.
 22. Based upon an examination and review of Transfer Application T-11404, the Department has determined the intent of this transaction is to remove the primary irrigation right under Certificate 44107 before the District transfers water rights onto the property. The District and landowner do not, in any way, intend on layering Certificate 44107 and the incoming District water rights.

23. Therefore, given the history and the reasons described herein, the Department is able to process Transfer Applications T-11309 and T-11404.
24. The district transfer application satisfies the criteria of ORS 540.580 and OAR 690-385-4000, contains the information required under OAR 690-385-2000, and includes maps meeting the requirements of OAR 690-385-2200.
25. The water rights are subject to transfer as defined in OAR 690-385-0100(17).
26. The proposed change in place of use would not result in enlargement of the rights.
27. The proposed changes in place of use would not result in injury to other rights.

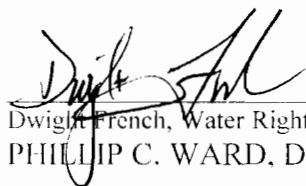
Conclusions of Law

The changes in place of use as proposed in Transfer Application T-11309 satisfy the requirements of ORS 540.574(3) and 540.580.

Now, therefore, it is ORDERED:

1. The proposed changes to Certificates 79926, 79928 and 79929 are approved.
2. 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 the District's water rights related decree, and the Final Order approving Transfer Application T-11309.
3. The former places of use shall no longer be irrigated as part of these water rights.
4. The water user shall maintain and operate the existing measurement devices and shall make such improvements as may be required by the Department.
5. The proposed changes shall be completed on or before **October 1, 2014**. A Claim of Beneficial Use and Final Proof Map shall be submitted by West Extension Irrigation District to the Department by October 1, 2014.
6. Certificates 79926, 79928 and 79929 are modified. The Department will issue superseding Certificates describing the rights when it is determined that it is necessary for record keeping.

Dated at Salem, Oregon this 15TH day of November, 2012.



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

Mailing Date: NOV 16 2012