

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

|                                       |   |                           |
|---------------------------------------|---|---------------------------|
| In the Matter of Transfer Application | ) | FINAL ORDER APPROVING A   |
| T-8333, Clackamas County              | ) | CHANGE IN POINT OF        |
|                                       | ) | APPROPRIATION AND PARTIAL |
|                                       | ) | CANCELLATION OF A WATER   |
|                                       | ) | RIGHT                     |

**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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

**Applicant**

A. JOEL NEUSCHWANDER  
6097 S. WHISKEY HILL RD  
HUBBARD, OR 97032

**Findings of Fact**

***Background***

1. On September 16, 1999, A. JOEL NEUSCHWANDER filed an application to change the points of appropriation under Certificates 20401 and 68565. The Department assigned the application number T-8333.
2. On January 20, 2005, Certificate 20401 was cancelled by Special Order Volume 63, pages 22 and 23, which partially cancelled the right, and was superseded by Certificate 81136.
3. On April 30, 2010, the agent, on behalf of the applicant, requested that Certificate 81136 be removed from the transfer application.
4. On May 27, 2010, the agent, on behalf of the applicant, submitted a revised map, identifying 44.4 acres for transfer.

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.

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

**Certificate:** 68565 in the name of TWIN CREEK FARMS (perfected under Permit G-4921)  
**Use:** IRRIGATION of 44.4 ACRES  
**Priority Date:** SEPTEMBER 23, 1971  
**Rate:** 0.56 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; provided further that the right allowed herein shall be limited to any deficiency in the available supply and any right existing for the same land shall not exceed the limitation allowed herein.  
**Source:** WELL 2 within the BEAR CREEK BASIN

**Authorized Point of Appropriation:**

| Twp | Rng | Mer | Sec | Q-Q   | Measured Distances  |
|-----|-----|-----|-----|-------|---|
| 4 S | 1 E | WM  | 32  | SE SW | Well 2 (CLAC 12713) - 720 FEET NORTH FROM THE S¼ CORNER OF SECTION 32 |

**Authorized Place of Use:**

| IRRIGATION |     |     |     |       |       |
|------------|-----|-----|-----|-------|-------|
| Twp        | Rng | Mer | Sec | Q-Q   | Acres |
| 4 S        | 1 E | WM  | 32  | NW SE | 19.0  |
| 4 S        | 1 E | WM  | 32  | SW SE | 25.4  |
|            |     |     |     | Total | 44.4  |

6. Transfer Application T-8333 proposes to move the authorized point of appropriation approximately 2016 feet north from the existing point of appropriation to:

| Twp | Rng | Mer | Sec | Q-Q   | Measured Distances   |
|-----|-----|-----|-----|-------|--|
| 4 S | 1 E | WM  | 32  | SE NW | Well 1 (CLAC 51287) - 100 FEET NORTH AND 50 FEET WEST FROM THE C¼ CORNER OF SECTION 32 |

7. Notice of the application for transfer was published on September 28, 1999, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. On May 28, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-8333 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 28, 2010, 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.
9. On June 24, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Application T-8333 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 June 29, 2010, and in the Canby Herald newspaper on July 10, 17, and 24, 2010, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

***Transfer Review Criteria (OAR 690-380-4010)***

10. Water has been used within the last five years prior to the submittal of Transfer Application T-8333 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-8333.
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.

***Partial Cancellation of a Water Right***

14. On January 20, 2005, the Department issued Special Order Volume 63, Page 22, cancelling a portion of primary irrigation under Certificate 20401. There is supplemental irrigation appurtenant to the same land that is also subject to cancellation because the primary irrigation has been cancelled and supplemental irrigation is not an authorized use without primary irrigation. The right to be cancelled is as follows:

**Certificate:** 68565 in the name of TWIN CREEK FARMS (perfected under Permit G-4921)  
**Use:** SUPPLEMENTAL IRRIGATION of 37.0 ACRES  
**Priority Date:** SEPTEMBER 23, 1971  
**Rate:** 0.46 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; provided further that the right allowed herein shall be limited to any deficiency in the available supply and any right existing for the same land shall not exceed the limitation allowed herein..  
**Source:** WELL 2, within the BEER CREEK BASIN

**Authorized Point of Diversion:**

| Twp | Rng | Mer | Sec | Q-Q   | Measured Distances                              |
|-----|-----|-----|-----|-------|---|
| 4 S | 1 E | WM  | 32  | SE SW | 720 FEET NORTH FROM THE S¼ CORNER OF SECTION 32 |

**Authorized Place of Use to be cancelled:**

| SUPPLEMENTAL IRRIGATION |     |     |     |       |      |       |
|-------------------------|-----|-----|-----|-------|------|-------|
| Twp                     | Rng | Mer | Sec | Q-Q   | GLot | Acres |
| 4 S                     | 1 E | WM  | 32  | SE NW | 2    | 14.0  |
| 4 S                     | 1 E | WM  | 32  | NE SW |      | 23.0  |


**Conclusions of Law**

The change in point of appropriation proposed in Transfer Application T-8333 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

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

1. The change in point of appropriation proposed in Transfer Application T-8333 is approved. The portion of the right that has been abandoned is cancelled.
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 Certificate 68565 and any related decree.
3. Water right certificate 68565 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation.
4. The quantity of water diverted at the new point of appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation.
5. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
6. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
7. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. 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.
8. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 23 day of August 2010.

  
Phillip C. Ward, Director

Mailing Date: AUG 24 2010