

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

In the Matter of Transfer Application)
T-10166, Malheur County)
)
)
)
)

FINAL ORDER APPROVING A
CHANGE IN POINT OF DIVERSION,
PLACE OF USE AND PARTIAL
CANCELLATION

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. 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

Snake River Correctional Institution
777 Stanton Blvd.
Ontario, OR 97914

Agent

Oregon State Parks and Recreation Dept.
1705 Main Street, Suite 101
Baker City, OR 97814

Findings of Fact

1. On May 6, 2006, Snake River Correctional Institution filed a transfer application to change the point of diversion and place of use under Certificate 75566. The Department assigned the application number T-10166.
2. The portion of the right to be transferred is as follows:

Certificate: 75566 in the name of Skyline Farms, Inc. (perfected under Permit S-31231)

Use: Irrigation of 45.0 acres

Priority Date: June 27, 1966

Quantity: 0.92 cubic foot per second (cfs)

Rate/Duty: 1/40 cfs per acre, not to exceed 4.0 acre-feet per acre per year

Source: Snake River, tributary to Columbia River

Authorized Point of Diversion:

| Township | | Range | | Meridian | Sec | ¼ ¼ | Lot | Survey Coordinates |
|----------|---|-------|---|----------|-----|-------|-----|--|
| 17 | S | 47 | E | W.M. | 21 | NE NW | 1 | 350 feet South and 1980 feet East from the NW corner of Section 21 |

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.

Authorized Place of Use:

| Township | | Range | | Meridian | Sec | ¼ ¼ | Acres |
|----------|---|-------|---|----------|-----|-------|-------|
| 17 | S | 46 | E | W.M. | 22 | NE NE | 10.6 |
| 17 | S | 46 | E | W.M. | 22 | NW NE | 27.2 |
| 17 | S | 46 | E | W.M. | 22 | SW NE | 7.2 |

3. Transfer Application T-10166 proposes to move the point of diversion to approximately 14 miles downstream from the authorized point of diversion to:

| Township | | Range | | Meridian | Sec | ¼ ¼ | Survey Coordinates |
|----------|---|-------|---|----------|-----|-------|--|
| 14 | S | 45 | E | W.M. | 33 | NE SW | 160 feet South and 1810 feet East from the W¼ corner of Section 33 |
| 14 | S | 45 | E | W.M. | 33 | NW SW | 1130 feet South and 760feet East from the W¼ corner of Section 33 |

4. Transfer Application T-10166 proposes to change the place of use of the right to:

| Township | | Range | | Meridian | Sec | ¼ ¼ | Acres |
|----------|---|-------|---|----------|-----|-------|-------|
| 14 | S | 45 | E | W.M. | 32 | NE SE | 8.1 |
| 14 | S | 45 | E | W.M. | 32 | SE SE | 1.2 |
| 14 | S | 45 | E | W.M. | 33 | SW NW | 2.2 |
| 14 | S | 45 | E | W.M. | 33 | SE NW | 5.8 |
| 14 | S | 45 | E | W.M. | 33 | NE SW | 4.6 |
| 14 | S | 45 | E | W.M. | 33 | NW SW | 22.1 |
| 14 | S | 45 | E | W.M. | 33 | SW SW | 1.0 |

Partial Cancellation of a Water Right

5. On August 7, 2006, the Oregon Parks and Recreation Department submitted an affidavit for partial cancellation of a water right as follows:

Certificate: 32506 in the name of Oregon State Highway Commission -State Park Division- (perfected under Permit S-26100)

Use: Irrigation of 2.7 acres

Priority Date: April 1, 1959

Source: Snake River, tributary to Columbia River

Authorized Points of Diversion:

| Township | | Range | | Meridian | Sec | ¼ ¼ |
|----------|---|-------|---|----------|-----|-------|
| 14 | S | 45 | E | W.M. | 33 | NW SW |
| 14 | S | 45 | E | W.M. | 33 | SW SW |

Authorized Place of Use to be Cancelled:

| Township | | Range | | Meridian | Sec | ¼ ¼ | Acres |
|----------|---|-------|---|----------|-----|-------|-------|
| 14 | S | 45 | E | W.M. | 32 | SE SE | 1.5 |

| Township | | Range | | Meridian | Sec | ¼ ¼ | | Acres |
|----------|---|-------|---|----------|-----|-----|----|-------|
| 14 | S | 45 | E | W.M. | 33 | NW | SW | 0.5 |
| 14 | S | 45 | E | W.M. | 33 | SW | SW | 0.7 |

6. Notice of the application for transfer was published on May 30, 2006, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
7. On October 13, 2006, the Department issued a preliminary determination proposing to approve Transfer Application T-10166 and mailed a copy to the applicants. Additionally, notice of the preliminary determination for the transfer application was published on the Department's weekly notice on October 17, 2006, and in the Baker City Herald on November 24, December 1 and December 8, 2006 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.
8. Water has been used within the last five years according to the terms and conditions of the right and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
9. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.

Conclusions of Law

The changes in point of diversion and place of use proposed in Transfer Application T-10166 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. The portion of Certificate 32506 described in Finding of Fact #5 as abandoned will be cancelled.


Now, therefore, it is ORDERED:

1. The changes in point of diversion and place of use proposed in Transfer Application T-10166 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 Certificate 75566.
3. The portion of Certificate 32506 described in Finding of Fact #5 above is cancelled.
4. Certificates 75566 and 32506 are cancelled. New certificates will be issued describing that portion of the rights not involved in this transfer.
5. The approved changes 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. The former place of use shall no longer be irrigated as part of this water right.
7. When required by the Department, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
8. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 23rd day of January, 2007.



Phillip C. Ward, Director

Mailing date: JAN 25 2007