

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

In the Matter of Transfer Application	)	FINAL ORDER APPROVING A
T-11603, Deschutes County	)	CHANGE IN CHARACTER OF USE
	)	FROM SUPPLEMENTAL USE TO
	)	PRIMARY USE, AND
	)	CANCELLATION OF AN ENTIRE
	)	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.

**Applicants**

JENNIFER D. AND JAMES D. CLINE JR  
22598 S. LEWELLEN RD.  
BEAVERCREEK, OR 97004-8732

**Findings of Fact**

1. On May 22, 2013, Doug and Barbara Burke filed an application to change the character of use of Certificate 85968 from supplemental to primary irrigation, upon cancellation of the primary right for those lands. The Department assigned the application number T-11603.
2. On September 9, 2013, the transfer application was assigned to James D. Cline Jr. and Jennifer D. Cline.
3. James D. Cline Jr. and Jennifer D. Cline will be responsible for completion of the changes.
4. Notice of the application for transfer was published on May 28, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

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. On October 24, 2013, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11603 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of November 25, 2013, for the applicants to respond. The applicants 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.
6. On December 12, 2013, the Department issued a preliminary determination proposing to approve Transfer T-11603 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 December 17, 2013, and in the Nugget newspaper on December 18 and 2013 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

**Certificate:** 85968 in the name of DOUG AND BARBARA BURKE (perfected under Permit G-7092)  
**Use:** SUPPLEMENTAL IRRIGATION of 11.3 ACRES  
**Priority Date:** DECEMBER 26, 1976  
**Rate:** 0.11 CUBIC FOOT PER SECOND  
**Limit/Duty:** The amount of water used for irrigation, together 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.  
**Period of Use:** During the irrigation season of each year.  
**Source:** A WELL within the WHYCHUS CREEK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	26	SE NE	130 FEET NORTH AND 290 FEET WEST FROM THE E <sup>1</sup> / <sub>4</sub> CORNER OF SECTION 26

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	26	SE NE	5.4
15 S	10 E	WM	26	NE SE	5.9

8. Transfer Application T-11603 proposes to change the character of use from supplemental to primary use on the following lands.

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	26	SE NE	5.4
15 S	10 E	WM	26	NE SE	5.9

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

9. Water has been used within the last five years prior to the submittal of Transfer Application T-11603 according to the terms and conditions of the right. Certificate 85968 was issued December 18, 2009, proving that water was used within five years. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
10. 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-11603.
11. The Watermaster reviewed Transfer Application T-11603 and stated the surface water is only available during approximately one month per year. Therefore, the supplemental water right has been used to the full extent authorized under the right.
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.
14. All other application requirements are met.

**Cancellation of a Water Right**

15. On May 7, 2013, an affidavit certifying that an entire water right has been abandoned and requesting cancellation of the right was received from Doug and Barbara Burke. The right to be cancelled is as follows:

**Certificate:** 86387 in the name of WELDON WANKIER (confirmed by Squaw Creek Decree)  
**Use:** IRRIGATION of 11.3 ACRES  
**Priority Date:** NOVEMBER 1904  
**Rate:** 0.225 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-FIFTIETH of one cubic foot per second, or its equivalent for each acre irrigated during the irrigation season of each year.  
**Period of Use:** During the irrigation season.  
**Source:** WHYCHUS CREEK, tributary to the DESCHUTES RIVER

**Authorized Point of Diversion to be Cancelled:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	29	SW SE	PLAINVIEW DITCH - 710 FEET NORTH AND 2640 FEET WEST FROM THE SE CORNER OF SECTION 29

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

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	26	SE NE	5.4
15 S	10 E	WM	26	NE SE	5.9

16. A letter was received from Three Sisters Irrigation District, dated May 28, 2013, approving the cancellation of Certificate 86387.

**Conclusions of Law**

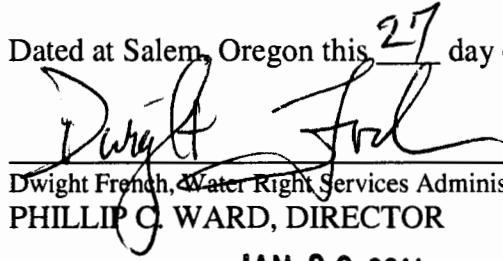
The change in character of use from supplemental to primary irrigation proposed in Transfer Application T-11603 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000, and the abandoned primary right Certificate 86387 should be cancelled.

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

1. The change in character of use from supplemental to primary irrigation proposed in Transfer Application T-11603 is 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 85968 and any related decree.
3. Water right Certificates 85968, 86387 are cancelled. A new certificate will be issued to describe that portion of Certificate 85968 not affected by this transfer.
4. 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 (existing).
  - b. The water user shall maintain the meter or measuring device in good working order.
  - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.
5. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2015**. 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.

6. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 27 day of January, 2014.



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

Mailing date: JAN 29 2014