BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application)	FINAL ORDER
T-12358, Klamath County)	APPROVING A CHANGE IN
)	PLACE OF USE

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

LESTER STURM 36121 STASTNY RD MALIN, OR 97632

Findings of Fact

- 1. On April 28, 2016, LESTER STURM filed an application to change the place of use under Certificates 86371, 86372, 86373, 86378, and 86379. The Department assigned the application number T-12358.
- 2. Notice of the application for transfer was published on May 3, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 3. On November 9, 2016, the agent for the applicant submitted amended application maps.
- 4. On December 7, 2016, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12358 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 9, 2017, 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.

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 January 25, 2017, the Department issued a Preliminary Determination proposing to approve Transfer Application T-12358 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on January 31, 2017 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
- 6. The portion of the first right to be transferred is as follows:

Certificate: 86371 in the name of LESTER STURM (perfected under Permit S-880)

Use: **IRRIGATION OF 1.36 ACRES**

Priority Date: SEPTEMBER 27, 1911

0.02 CUBIC FOOT PER SECOND Rate:

The amount of water used for irrigation, together with the amount secured Limit/Duty:

> 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 during the irrigation season of each year.

DRAINAGE FROM SNOW SHEDS, tributary to MILLS CREEK Source:

Authorized Place of Use:

	IRRIGATION								
Twp Rng Mer Sec Q-Q GLot Acre									
41 S	13 E	WM	18	NE NW		0.55			
41 S	13 E	WM	18	SW NW	2	0.17			
41 S	13 E	WM	18	SE NW		0.09			
41 S	13 E	WM	18	NE SW		0.55			
					Total	1.36			

7. Certificate 86371 does not describe the location of the point of diversion, however information is available from the applicant's certified water right examiner (CWRE) field inspection and other water right certificates 86372, 86373, and 86379 indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
41 S	13 E	WM	7	NW SE	1330 FEET NORTH AND 610 FEET EAST FROM THE S¼ CORNER OF SECTION 7

8. Transfer Application T-12358 proposes to change the place of use of the right to:

IRRIGATION							
Twp Rng Mer Sec Q-Q GLot Acres							
41 S	13 E	WM	18	SW NW	2	1.36	

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

Certificate: 86372 in the name of LESTER STURM (perfected under Permit S-880)

Use: IRRIGATION OF 5.02 ACRES

Priority Date: SEPTEMBER 27, 1911

Rate: 0.06 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 during the irrigation season of each year.

Source: DRAINAGE FROM SNOW SHEDS, tributary to MILLS CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
41 S	13 E	WM	7	NW SE	1330 FEET NORTH AND 610 FEET EAST FROM THE S¼ CORNER OF SECTION 7

Authorized Place of Use:

Twp	Rng	Mer	IGATI Sec	Q-Q	GLot	Acres
41 S	13 E	WM	18	NE NW		1.75
41 S	13 E	WM	18	NW NW	1	1.87
41 S	13 E	WM	18	SE NW		0.46
41 S	13 E	WM	18	NE SW		0.94
					Total	5.02

10. Transfer Application T-12358 proposes to change the place of use of the right to:

		IRR	IGATI	ON		
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
41 S	13 E	WM	18	SW NW	2	5.02

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

Certificate: 86373 in the name of LESTER STURM (perfected under Permit S-49909)

Use: IRRIGATION OF 0.65 ACRE

Priority Date: SEPTEMBER 8, 1986

Rate: 0.016 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-FORTIETH 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.

Source: MILLS CREEK, tributary to TULE LAKE

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
41 S	13 E	WM	7	NW SE	1330 FEET NORTH AND 610 FEET EAST FROM THE S¼ CORNER OF SECTION 7

Authorized Place of Use:

IRRIGATION									
Twp Rng Mer Sec Q-Q GLot Acres									
41 S	41 S 13 E WM 18 SW NW 2 0.65								

12. Transfer Application T-12358 proposes to change the place of use of the right to:

IRRIGATION							
Twp Rng Mer Sec Q-Q GLot Acres							
41 S	13 E	WM	18	SW NW	2	0.65	

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

Certificate: 86378 in the name of LESTER STURM (perfected under Permit S-2466)

Use: SUPPLEMENTAL IRRIGATION OF 1.36 ACRES

Priority Date: MAY 24, 1915

Rate: 0.02 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 during the irrigation season of each year.

Source: SIMMS RESERVOIR, CONSTRUCTED UNDER PERMIT R-252,

tributary to MILLS CREEK

Authorized Place of Use:

	SUPPLEMENTAL IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres			
41 S	13 E	WM	18	NE NW		0.55			
41 S	13 E	WM	18	SW NW	2	0.17			
41 S	13 E	WM	18	SE NW		0.09			
41 S	13 E	WM	18	NE SW		0.55			
	•				Total	1.36			

14. Certificate 86378 does not describe the location of the point of diversion, however information is available from the applicant's certified water right examiner (CWRE) field inspection and other water right certificates 86372, 86373, and 86379 indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
41 S	13 E	WM	7	NW SE	1330 FEET NORTH AND 610 FEET EAST FROM THE S¼ CORNER OF SECTION 7

15. Transfer Application T-12358 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					·	
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
41 S	13 E	WM	18	SW NW	2	1.36

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

Certificate: 86379 in the name of LESTER STURM (perfected under Permit S-2466)

Use: **SUPPLEMENTAL IRRIGATION OF 5.02 ACRES**

Priority Date: MAY 24, 1915

0.06 CUBIC FOOT PER SECOND Rate:

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 during the irrigation season of each year.

SIMMS RESERVOIR, CONSTRUCTED UNDER PERMIT R-252, Source:

tributary to MILLS CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
41 S	13 E	WM	7	NW SE	1330 FEET NORTH AND 610 FEET EAST FROM THE S¼ CORNER OF SECTION 7

Authorized Place of Use:

	SUPF	LEMEN	TAL I	RRIGATION	V	
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
41 S	13 E	WM	18	NE NW		1.75
41 S	13 E	WM	18	NW NW	1	1.87
41 S	13 E	WM	18	SE NW		0.46
41 S	13 E	WM	18	NE SW		0.94
		*			Total	5.02

17. Transfer Application T-12358 proposes to change the place of use of the right to:

	SUPP	LEMEN	TAL I	RRIGATION	V	
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
41 S	13 E	WM	18	SW NW	2	5.02

Transfer Review Criteria [OAR 690-380-4010(2)]

- 18. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
- 19. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-12358.
- 20. The proposed change would not result in enlargement of the rights.
- 21. The proposed change would not result in injury to other water rights.

Conclusions of Law

The change in place of use proposed in Transfer Application T-12358 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

- 1. The change in place of use proposed in Transfer Application T-12358 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 Certificates 86371, 86372, 86373, 86378, and 86379 and any related decree.
- 3. Water right Certificates 86371, 86372, 86373, 86378, and 86379 are cancelled. New certificates will be issued describing those portions of the rights 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 diversion.
 - 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. The former place of use of the transferred rights shall no longer receive water under the rights.
- 6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2018**. 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.
- 7. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this day of March, 2017
- Duright Avril
Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department
Mailing date:
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