

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-12194, Lane and Linn Counties)	CHANGE IN PLACE OF USE AND
)	PARTIAL DIMINISHMENT OF A
)	WATER RIGHT

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

MUDDY CREEKS IRRIGATION DISTRICT
PO BOX 228
HARRISBURG, OR 97446

Receiving Landowners

PAUL AND MARY ZEHR TRUST
52747 COUNTY ROAD
MILTON-FREEWATER, OR 97862

Receiving Landowners

JASON AND RUTH SCHROCK TRUST
26890 POWERLINE ROAD
HALSEY, OR 97348

Findings of Fact

1. On November 5, 2015, MUDDY CREEKS IRRIGATION DISTRICT filed an application to change the place of use under Certificate 75255. The Department assigned the application number T-12194.
2. Paul and Mary Zehr Trust and Jason and Ruth Schrock Trust are the receiving landowners who will be responsible for completion of the changes.
3. Notice of the application for transfer was published on November 10, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On June 28, 2016, the Department contacted the agent by email to notify them of a layering issue occurring on the lands being transferred.

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 July 5, 2016, the Department received the affidavit of diminishment, resolving the layering issue.
6. On July 11, 2016, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12194 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of August 10, 2016, 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.
7. On August 2, 2016, the Department issued a Preliminary Determination proposing to approve Transfer T-12194 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 August 9, 2016, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

Certificate: 75255 in the name of MUDDY CREEKS IRRIGATION PROJECT
(perfected under Permit S-42759)

Use: IRRIGATION of 37.1 ACRES

Priority Date: MARCH 1, 1978

Rate: 0.46 CUBIC FEET 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 ONE-EIGHTIETH of one cubic foot per second per acre, 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.

Source: MCKENZIE RIVER, a tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
17 S	3 W	WM	9	NE NE	38	4440 FEET SOUTH AND 5250 FEET EAST FROM THE SE CORNER OF MANSFIELD DLC 79

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	4 W	WM	2	SE SW	6.9
14 S	4 W	WM	2	SE SE	23.3
14 S	4 W	WM	11	NE NW	1.2
14 S	4 W	WM	11	SE NW	5.7
Total					37.1

9. Certificate 75255 describes the tributary as being Columbia River; however it is more accurately defined as McKenzie River, a tributary to the Willamette River.
10. Transfer Application T-12194 proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	4 W	WM	11	NE NE	20.4
14 S	4 W	WM	11	NW NE	4.3
14 S	4 W	WM	11	SW NE	12.4
Total					37.1

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

11. Water has been used within the last five years 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.
12. 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-12194.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.

Partial Diminution of a Water Right

15. On July 5, 2016, an affidavit certifying that a portion of a water right has been diminished from primary irrigation to supplemental irrigation and requesting partial diminution of the right was received from Paul and Mary Zehr.

16. The right to be diminished is as follows:

Certificate: 90947 in the name of PAUL ZEHR (perfected under Permit S-54109)
Use: IRRIGATION on 12.9 ACRES
Priority Date: APRIL 19, 2004
Rate: 0.13 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 and 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Period of Use: May 1 through June 30
Source: MUDDY CREEK, a tributary to EAST CHANNEL

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	4 W	WM	11	SW NE	NORTH DIVERSION – NORTH 44 DEGREES 22.091 MINUTES, WEST 123 DEGREES 8.225 MINUTES
14 S	4 W	WM	11	NW SE	SOUTH DIVERSION – NORTH 44 DEGREES 21.947 MINUTES, WEST 123 DEGREES 8.207 MINUTES

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	4 W	WM	11	NW NE	0.5

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	4 W	WM	11	SW NE	12.4
Total					12.9

Conclusions of Law

The change in place of use proposed in Transfer Application T-12194 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-12194 is approved.
2. The water right for the irrigation of 12.9 acres under Water Right Certificate 90947 as described in Finding of Fact No. 16 is diminished from primary irrigation to supplemental irrigation.
3. 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 75255 and any related decree.
4. Water right Certificate 75255 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
5. Water right Certificate 90947 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and modified by the diminishment.
6. The former place of use of the transferred right shall no longer receive water under the right.
7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2017**. 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. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 9 day of September, 2016.



 Dwight French, Water Right Services Administrator, for
 Thomas M. Byler, Director
 Oregon Water Resources Department

Mailing date: SEP 15 2016