

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

In the Matter of Transfer Application)
T-11366, Clackamas County)
)
)
)
)

FINAL ORDER APPROVING
ADDITIONAL POINTS OF
APPROPRIATION AND CHANGE IN
PLACES OF USE; 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

WILLAMETTE EGG FARMS
ATTN: GORDON SATRUM
31348 S HWY 170
CANBY, OR 97013

Agent

SKOOKUM WATER ASSOCIATES, INC.
STEVEN R. BRUCE
PO BOX 80174
PORTLAND, OR 97280

Findings of Fact

Background

1. On March 1, 2012, WILLAMETTE EGG FARMS filed an application for additional points of appropriation and changes in places of use under Certificates 42788 and 44577. The Department assigned the application number T-11366.
2. On August 10, 2012, the applicant submitted an amended application clarifying the place of use proposed for transfer under Certificate 44577.
3. On September 11, 2012, the Department received affidavits from Willamette Egg Farms, 31348 S. Highway 170, Canby, OR 97013, stating that the entity is the owner of lands and the water right appurtenant as evidenced by Certificates 42788 and 44577, State Record of

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.

Water Right Certificates. The affidavits further stated they had obtained a different source of water for primary irrigation of these lands and requested the entire water rights be diminished from rights for primary irrigation to rights for supplemental irrigation of the lands, upon approval of Application G-17461.

4. A letter received October 11, 2012, from the applicant, however, withdrew the request to diminish these rights.
5. The portion of the first right to be transferred is as follows:

Certificate: 42788 in the name of TALMER DYBVAD (perfected under Permit G-4046)
Use: IRRIGATION of 66.0 ACRES
Priority Date: MAY 29, 1968
Rate: 0.826 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, shall be 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: A WELL, tributary of BEAR CREEK (WILLAMETTE RIVER)

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	1 E	WM	9	SE NE	1680 FEET SOUTH AND 40 FEET WEST FROM THE NE CORNER OF SECTION 9

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Type of Change
5 S	1 E	WM	9	NE NE	12.8	APOA
5 S	1 E	WM	9	SE NE	16.6	APOA
5 S	1 E	WM	9	SE NE	2.6	APOA/POU
5 S	1 E	WM	10	NW NW	17.7	APOA
5 S	1 E	WM	10	NW NW	2.1	APOA/POU
5 S	1 E	WM	10	SW NW	6.6	APOA
5 S	1 E	WM	10	SW NW	7.6	APOA/POU
Total					66.0	

6. Transfer Application T-11366 proposes additional points of appropriation approximately 1300 feet from the existing point of appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	1 E	WM	10	SW NW	1780 FEET SOUTH AND 280 FEET EAST FROM THE NW CORNER OF SECTION 10
5 S	1 E	WM	10	SW NW	1380 FEET SOUTH AND 1230 FEET EAST FROM THE NW CORNER OF SECTION 10
5 S	1 E	WM	10	SW NW	1890 FEET SOUTH AND 380 FEET EAST FROM THE NW CORNER OF SECTION 10

7. Transfer Application T-11366 also proposes to change the place of use of 12.3 acres of the right to:

IRRIGATION					
Twsp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 E	WM	10	SW NW	2.8
5 S	1 E	WM	10	SE NW	9.5
Total					12.3

8. The second right to be transferred is as follows:

Certificate: 44577 in the name of WILLAMETTE EGG FARM (perfected under Permit G-5414)

Use: IRRIGATION of 28.4 ACRES

Priority Date: MAY 27, 1971

Rate: 0.36 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, shall be 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: A WELL, a tributary of the BEAR CREEK OVERFLOW CHANNEL

Authorized Point of Appropriation:

Twsp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	1 E	WM	9	SE NE	1680 FEET SOUTH AND 40 FEET WEST FROM THE NE CORNER OF SECTION 9

Authorized Place of Use:

IRRIGATION						
Twsp	Rng	Mer	Sec	Q-Q	Acres	Type of Change
5 S	1 E	WM	10	NW NW	9.3	APOA
5 S	1 E	WM	10	NW NW	2.3	APOA/POU
5 S	1 E	WM	10	SW NW	12.5	APOA/POU
5 S	1 E	WM	10	SW NW	4.3	APOA
Total					28.4	

9. Transfer Application T-11366 proposes additional points of appropriation approximately 1300 feet from the existing point of appropriation:

Twsp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	1 E	WM	10	SW NW	1890 FEET SOUTH AND 380 FEET EAST FROM THE NW CORNER OF SECTION 10
5 S	1 E	WM	10	SW NW	1780 FEET SOUTH AND 280 FEET EAST FROM THE NW CORNER OF SECTION 10
5 S	1 E	WM	10	SW NW	1380 FEET SOUTH AND 1230 FEET EAST FROM THE NW CORNER OF SECTION 10

10. Transfer Application T-11366 also proposes to change the place of use of 14.8 acres of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 E	WM	10	SE NW	14.8

11. Notice of the application for transfer was published on March 13, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
12. On July 31, 2012, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11366 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 31, 2012, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination, provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer, and requested a completion date of October 1, 2015.
13. On August 13, 2012, a Preliminary Determination was issued, incorporating the completion date of October 1, 2015.
14. On September 19, 2012, a revised Preliminary Determination was issued which incorporated the September 11, 2012, request for diminution to supplemental irrigation.
15. On October 11, 2012, Willamette Egg Farms submitted a letter requesting that the affidavits submitted on September 11, 2012, be rescinded and withdrawn.
16. On October 23, 2012, the Department issued a second revised Preliminary Determination proposing to approve Transfer Application T-11366 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 August 21, and on October 30, 2012, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.

Transfer Review Criteria (OAR 690-380-4010)

17. 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.
18. 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-11366.
19. The proposed change would not result in enlargement of the rights.
20. The proposed change would not result in injury to other water rights.

Partial Cancellation of a Water Right

21. On March 1, 2012, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Smyrna United Church of Christ. The right to be cancelled is as follows:

- Certificate:** 42788 in the name of TALMER DYBVAD (perfected under Permit G-4046)
- Use:** IRRIGATION of 0.3 ACRE
- Priority Date:** MAY 29, 1968
- Rate:** 0.004 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, shall be 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:** A WELL, tributary of BEAR CREEK (WILLAMETTE RIVER)

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	1 E	WM	9	SE NE	1780 FEET SOUTH AND 40 FEET WEST FROM THE NE CORNER OF SECTION 9

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 E	WM	9	NE NE	0.3

Conclusions of Law

The additional points of appropriation and changes in places of use proposed in Transfer Application T-11366 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000, and the abandoned right should be cancelled.

Now, therefore, it is ORDERED:

1. The additional points of appropriation and changes in places of use proposed in Transfer Application T-11366 are 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 42788 and 44577 and any related decree.
3. Water right certificates 42788 and 44577 are cancelled.

4. The quantity of water diverted at the additional points of appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.
5. 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 (new and existing).
 - b. The water user shall maintain the meters or measuring devices in good working order.
 - c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices is located within a private structure, the Watermaster shall request access upon reasonable notice.
6. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
7. The former places of use of the transferred rights shall no longer receive water under the rights.
8. 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 changes and full beneficial use of the water.
9. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 6 day of December, 2012.



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

Mailing date: DEC 13 2012