

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

In the Matter of Transfer Application                    )     **FINAL ORDER APPROVING A**  
T-11503, Klamath County                                 )     **CHANGE IN PLACE OF USE**

**Authority**

Oregon Revised Statute (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. Oregon Administrative Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

DRISCOLL STRAWBERRY ASSOCIATES, INC.  
C/O HOLLY BURGESS  
434 REDCLIFF RD SUITE D  
REDDING, CA 96002

**Findings of Fact**

1. On December 13, 2012, DRISCOLL STRAWBERRY ASSOCIATES INC.; C/O HOLLY BURGESS filed an application to change the place of use under Certificate 86143. The Department assigned the application number T-11503.
2. Notice of the application for transfer was published on December 18, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. In a December 16, 2013, letter the Department notified Driscoll Strawberries, applicant and James Newton, CWRE, that an additional \$250.00 fee is required because the application is to transfer more than one cubic foot per second of water.
4. The Department received the additional \$250.00 fee January 24, 2014.
5. In a December 16, 2013, letter the Department notified Driscoll Strawberries, applicant and James Newton, CWRE, that a refund of the \$125.00 fee they paid for Reimbursement Authority would be refunded as they immediately decided not to use Reimbursement Authority.
6. On January 6, 2014, the Department mailed a check in the amount of \$125.00 as refund for the Reimbursement Authority fee to Driscoll Strawberries Associates, Inc. c/o Holly Burgess.

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.

7. After discussion with the applicant's agent, James Newton, regarding the lands involved in the transfer, in a February 4, 2014, email, James Newton approved the amended Table 2 Description of Changes to Water Right Certificate 86143. The amendments clarify the acres on specific tax lots and/or government lots and/or donated land claims.
8. On February 19, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11503 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 19, 2014, for the applicant to respond. The deadline was extended to April 3, 2014.
9. On May 14, 2014, the Department received a request from the applicant's agent requesting that the file be put on Administrative Hold. The file was placed on Administrative Hold until November 14, 2014.
10. On November 14, 2014, the Department received a request from the applicant's agent requesting that the file be put on another Administrative Hold. The file was placed on Administrative Hold until May 14, 2015.
11. On May 14, August 11, and 13, 2015, the applicant's agent submitted amended documents decreasing the number of acres in the application and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer. The applicant requested that the Department proceed with issuance of a Preliminary Determination with the changes as described in the amended application.
12. On August 31, 2015, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11503 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 September 15, 2015, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
13. The portion of the right to be transferred is as follows:
  - Certificate:** 86143 in the name of DRISCOLL STRAWBERRY ASSOCIATES INC. C/O HOLLY BURGESS (perfected under Permit G-15347)
  - Use:** SUPPLEMENTAL IRRIGATION of 72.51 ACRES
  - Priority Date:** JUNE 24, 2002
  - Rate:** 0.90 CUBIC FEET PER SECOND; BEING 0.50 CFS FROM WELL #1 and 0.40 CUBIC FEET PER SECOND FROM WELL #3
  - 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, 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:** March 1 through October 31
  - Sources:** WELL 1 and WELL 3 within the LOST RIVER BASIN

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
41 S	11 E	WM	9	NE NW	WELL 3: 90 FEET SOUTH AND 139 FEET WEST FROM THE N1/4 CORNER OF SECTION 9
41 S	11 E	WM	10	NE SW	WELL 1: 643 FEET NORTH AND 70 FEET WEST FROM THE SE CORNER OF THE NESW OF SECTION 10

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
41 S	11 E	WM	8	NE NE		12.82
41 S	11 E	WM	8	NW NE		11.60
41 S	11 E	WM	8	SW NE	2	7.00
41 S	11 E	WM	8	SE NE	1	13.30
41 S	11 E	WM	8	SE NE	15	5.09
41 S	11 E	WM	8	NE SE	14	4.00
41 S	11 E	WM	9	SW NW	5	0.49
41 S	11 E	WM	9	NW SW	9	0.42
41 S	11 E	WM	10	NE SE	8	1.92
41 S	11 E	WM	10	SE SE		15.87
Total:						72.51

14. Transfer Application T-11503 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
41 S	11 E	WM	9	NE NE		6.00
41 S	11 E	WM	9	SE NE	8	8.40
41 S	11 E	WM	9	SE NE	1	30.60
41 S	11 E	WM	9	NE SE	8	17.00
41 S	11 E	WM	16	NW NE	2	1.41
41 S	11 E	WM	16	SW NE		9.10
Total:						72.51

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

15. 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.
16. 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-11503.
17. There is a Klamath claim (KA 1000) existing on both the "From" and "To" lands.
18. The proposed change would not result in enlargement of the right.
19. The proposed change would not result in injury to other water rights.
20. All other application requirements are met.

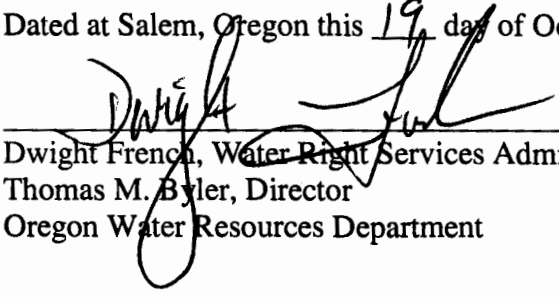
## Conclusions of Law

The change in place of use proposed in Transfer Application T-11503 is consistent with the requirements of ORS 537.705 and 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-11503 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 86143 and any related decree.
3. Water right Certificate 86143 is cancelled. A new certificate will be issued describing that portion of the right 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 (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 are located within a private structure, the Watermaster shall request access upon reasonable notice. Water shall be acquired from the same aquifer (water source) as the original points of appropriation.
5. The former place of use of the transferred right shall no longer receive water under the right.
6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2016**. 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, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 19 day of October, 2015.

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

Mailing Date: OCT 20 2015