

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

| | | |
|---------------------------------------|---|-----------------------------|
| In the Matter of Transfer Application |) | FINAL ORDER APPROVING OF A |
| T-12559, Marion County |) | CHANGE IN PLACE OF USE, A |
| |) | RE-DESCRIPTION OF TWO WATER |
| |) | RIGHTS AND A PARTIAL |
| |) | CANCELLATION 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.

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

BRYAN SCHURTER
AMY SCHURTER
2913 HIBBARD RD NE
SILVERTON, OR 97381

Findings of Fact

1. On January 9, 2017, BRYAN SCHURTER filed an application to change the place of use under Certificates 20059 and 28253. The Department assigned the application number T-12559.
2. Notice of the application for transfer was published on January 24, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 18, 2017, the Department contacted the agent of the applicant in regards to discrepancies identified in the transfer application with regards to the authorized place of use for Certificates 20056, 20059, and 33094 and the authorized point of diversion location for Certificate 28253.

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.

4. On June 27, 2017, the agent submitted a revised application and re-description maps for Certificates 20059 and 28253. The agent has requested that the Department remove Certificates 20056 and 33094 from the transfer application.
5. On July 11, 2017, the applicant provided a revised evidence of use form, an affidavit for the partial cancellation of 0.92 acres of Certificate 20059, another revised Table 2 of the application and re-description maps for Certificate 20059, resolving the deficiencies in the letter from the Department dated May 18, 2017.
6. On July 26, 2017, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12559 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 24, 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.
7. On August 14, 2017, the Department issued a Preliminary Determination proposing to approve Transfer T-12559 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 22, 2017, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
8. During the initial review of the application the Department determined that the description of the authorized place of use, as listed on Certificate 20059, is inconsistent with the actual location of Donation Land Claim (DLC) 49 and along with the tax lot map.
9. The original final proof survey for Certificate 20059 is inconsistent with the tax lot map location of Hibbard Road, the 1/16th section line, and the DLC line. The place of use has historically always been located as follows:

| IRRIGATION | | | | | | | |
|------------|-----|-----|-----|-------|------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | GLot | DLC | Acres |
| 7 S | 1 W | WM | 17 | NW NE | | 49 | 6.80 |
| 7 S | 1 W | WM | 17 | SW NE | | 49 | 11.80 |
| 7 S | 1 W | WM | 17 | SW NE | 2 | | 13.70 |
| 7 S | 1 W | WM | 17 | SE NW | 3 | | 4.58 |
| Total | | | | | | | 36.88 |

10. The following table lists the place of use as described in existing certificate 20059 and the proposed re-description based on the above findings:

| Twp | Rng | Mer | Sec | Original Description | | | | Proposed Re-Description | | | | |
|-------|-----|-----|-----|----------------------|-----|------|-------|-------------------------|-----|------|-------|-------|
| | | | | Q-Q | DLC | GLot | Acres | Q-Q | DLC | GLot | Acres | |
| 7 S | 1 W | WM | 17 | NE NE | | 1 | 0.40 | NW NE | 49 | | 6.80 | |
| 7 S | 1 W | WM | 17 | NW NE | 49 | | 6.40 | SW NE | 49 | | 11.80 | |
| 7 S | 1 W | WM | 17 | SW NE | 49 | | 10.00 | SW NE | | 2 | 13.70 | |
| 7 S | 1 W | WM | 17 | SW NE | | 2 | 15.50 | SE NW | | 3 | 4.58 | |
| 7 S | 1 W | WM | 17 | SE NW | | 3 | 4.58 | | | | | |
| Total | | | | | | | 36.88 | Total | | | | 36.88 |

11. Both the original place of use and the re-described place of use depict the same irrigated land. The actual location of the place of use, as found on the ground, remains unchanged.

12. The first right to be transferred is as follows:

Certificate: 20059 in the name of EDWARD KUENZI
(perfected under Permit S-16475)
Use: IRRIGATION of 36.88 ACRES
Priority Date: JULY 18, 1945
Rate: 0.461 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: BEAVER CREEK, a tributary of PUDDING RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | GLot |
|-----|-----|-----|-----|-------|------|
| 7 S | 1 W | WM | 17 | SW NE | 3 |

Authorized Place of Use:

| IRRIGATION | | | | | | | |
|------------|-----|-----|-----|-------|------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | GLot | DLC | Acres |
| 7 S | 1 W | WM | 17 | NW NE | | 49 | 6.8 |
| 7 S | 1 W | WM | 17 | SW NE | | 49 | 11.8 |
| 7 S | 1 W | WM | 17 | SW NE | 2 | | 13.7 |
| 7 S | 1 W | WM | 17 | SE NW | 3 | | 4.58 |
| Total | | | | | | | 36.88 |

13. Transfer Application T-12599 proposes to change the place of use of the right to:

| IRRIGATION | | | | | | | |
|------------|-----|-----|-----|-------|------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | GLot | DLC | Acres |
| 7 S | 1 W | WM | 17 | NW NE | | 49 | 6.8 |
| 7 S | 1 W | WM | 17 | SW NE | | 49 | 11.8 |
| 7 S | 1 W | WM | 17 | SW NE | 2 | | 14.0 |
| 7 S | 1 W | WM | 17 | SE NW | 3 | | 4.28 |
| Total | | | | | | | 36.88 |

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

Certificate: 28253 in the name of EDWARD KUENZI
(perfected under Permit S-25837)
Use: IRRIGATION of 10.0 ACRES
Priority Date: OCTOBER 27, 1958
Rate: 0.13 CUBIC FOOT PER SECOND (CFS), being 0.10 CFS from Beaver Creek and 0.03 CFS from Unnamed Stream

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 from direct flow 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 from direct flow and storage from reservoir constructed under Permit No. R-2199.

Sources: BEAVER CREEK, UNNAMED STREAM AND RESERVOIR CONSTRUCTED UNDER APPLICATION R-32727, PERMIT R-2199, a tributary of PUDDING RIVER

Authorized Points of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | GLot |
|-----|-----|-----|-----|-------|------|
| 7 S | 1 W | WM | 17 | NW SE | |
| 7 S | 1 W | WM | 17 | SW NE | 2 |

Authorized Place of Use:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 7 S | 1 W | WM | 17 | NW NE | 49 | 10.0 |

15. The water right re-description map for Certificate 28253 more accurately describes the point of diversion, referred to as POD 1, as follows:

| Twp | Rng | Mer | Sec | Q-Q | GLot | Measured Distance |
|-----|-----|-----|-----|-------|------|--|
| 7 S | 1 W | WM | 17 | SW NE | 2 | 590 FEET SOUTH AND 1180 FEET WEST FROM THE SE CORNER OF DLC 49 |

16. Transfer Application T-12599 proposes to change the place of use of the right to:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 7 S | 1 W | WM | 17 | NW NE | 49 | 10.0 |

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

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-12599.
19. The proposed changes would not result in enlargement of the rights.
20. The proposed changes would not result in injury to other water rights.

Partial Cancellation of a Water Right

19. On July 11, 2017, the Department received an affidavit from the applicant’s agent certifying that a portion of a water right has been abandoned and requesting cancellation of the right.

20. The portion of the right to be cancelled is as follows:

Certificate: 20059 in the name of EDWARD KUENZI
(perfected under Permit S-16475)
Use: IRRIGATION OF 0.92 ACRES
Priority Date: July 18, 2017
Rate: 0.012 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, 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: BEAVER CREEK, a tributary of Pudding River

Authorized Points of Diversion:

| Twp | Rng | Mer | Sec | GLot | Q-Q |
|-----|-----|-----|-----|------|-------|
| 7 S | 1 W | WM | 17 | 3 | SW NE |

Authorized Place of Use to be Cancelled:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|------|-------|-------|
| Twp | Rng | Mer | Sec | GLot | Q-Q | Acres |
| 7 S | 1 W | WM | 17 | 2 | SW NE | 0.90 |
| 7 S | 1 W | WM | 17 | 3 | SE NW | 0.02 |
| Total | | | | | | 0.92 |

Conclusions of Law

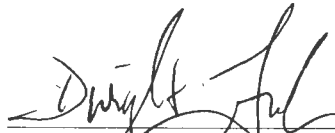
The change in place of use proposed in Transfer Application T-12559 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved and the abandoned right will be cancelled.

If Transfer Application T-12559 is approved, the final order will include the following:

1. The changes in place of use proposed in Transfer Application T-12559 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 Certificates 20059 and 28253 and any related decree.
3. Water right Certificates 20059 and 28253 are cancelled.

4. The former place of use of the transferred rights shall no longer receive water under the rights.
5. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2019**. 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.
6. After satisfactory proof of beneficial use is received new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 2 day of October, 2017.



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

Mailing date: OCT 11 2017