

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

In the Matter of Transfer Application) FINAL ORDER APPROVING CHANGE
T-8837, Crook County) IN PLACE OF USE; AND PARTIAL
) DIMINUTION 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

DAVID AND/OR JOANNE ORR
8892 NW CAMPBELL RANCH ROAD
PRINEVILLE, OR 97754

Findings of Fact

Background

1. On June 13, 2001, JACK YEAGER and DON CAMPBELL filed an application to add a point of appropriation and to change the place of use under Certificate 85862. The Department assigned the application number T-8837.
2. On January 28, 2002, a Request for Assignment of Transfer was received from Don Campbell, transferring his interest in Transfer Application T-8837 to Ray L. and Sandy L. Shanafelt.
3. On May 28, 2009, Raymond L. Shanafelt died.
4. On November 9, 2009, a Request for Assignment (by Proof of Ownership) was received from David and Joanne Orr.

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. OWRD's investigation and subsequent documentation indicate the Shanafelt property was acquired by Greg Huston. On March 11, 2010, an Affidavit Consenting to Proposed Water Right Transfer was submitted by Greg Huston.
6. On March 29, 2010, Transfer Application T-8837 was amended by e-mail from David and Joanne Orr. The e-mail withdraws the request for the additional point of appropriation and withdraws the transfer of supplemental irrigation.
7. The portion of the right to be transferred is as follows:

Certificate: 85862 in the name of ROBERT LISTER (perfected under Permit G-1119)
Use: IRRIGATION of 4.9 ACRES
Priority Date: SEPTEMBER 5, 1958
Rate: 0.061 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, 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: A WELL within the CROOKED RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	15 E	WM	20	NE NW	693 FEET (10.5 CHAINS) SOUTH AND 2755.5 FEET (41.75 CHAINS) WEST FROM NE CORNER OF SECTION 20

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	15 E	WM	20	NW NE	4.9

8. Transfer Application T-8837 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	15 E	WM	20	NW NE	1.0
14 S	15 E	WM	20	NE NW	1.6
14 S	15 E	WM	20	SW NE	1.7
14 S	15 E	WM	20	SE NW	0.6

9. Notice of the application for transfer was published on June 26, 2001, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
10. On March 30, 2010, the Department mailed to the applicants a copy of the draft Preliminary Determination proposing to approve Transfer Application T-8837. The draft Preliminary Determination cover letter set forth a deadline of April 30, 2010, for the applicants to

respond. The applicants requested 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.

11. On April 2, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Application T-8837 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 April 6, 2010, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

Transfer Review Criteria (OAR 690-380-4010)

12. Water has been used within the last five years prior to the submittal of Transfer Application T-8837 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.
13. 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-8837.
14. The proposed change would not result in enlargement of the right.
15. The proposed change would not result in injury to other water rights.

Partial Diminution of a Water Right

16. On March 11, 2010, an Affidavit for the Partial Diminution of a Water Right Certificate was submitted by Greg Huston, requesting the primary irrigation on 2.5 acres be diminished to supplemental irrigation. The portion of the right to be diminished is as follows:

Certificate: 85862 in the name of ROBERT LISTER (perfected under Permit G-1119)
Use: SUPPLEMENTAL IRRIGATION of 2.1 ACRES
Priority Date: SEPTEMBER 5, 1958
Rate: 0.031 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, 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: A WELL within the CROOKED RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	15 E	WM	20	NE NW	693 FEET (10.5 CHAINS) SOUTH AND 2755.5 FEET (41.75 CHAINS) WEST FROM NE CORNER OF SECTION 20

Authorized Place of Use to be Diminished:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	15 E	WM	17	SW SE	1.0
14 S	15 E	WM	20	NW NE	1.5

Partial Cancellation of a Water Right

17. On March 29, 2010, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from David and Joanne Orr. The right to be cancelled is as follows:

Certificate: 85862 in the name of ROBERT LISTER (perfected under Permit G-1119)
Use: SUPPLEMENTAL IRRIGATION of 3.1 ACRES
Priority Date: SEPTEMBER 5, 1958
Rate: 0.038 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, 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: A WELL within the CROOKED RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	15 E	WM	20	NE NW	693 FEET (10.5 CHAINS) SOUTH AND 2755.5 FEET (41.75 CHAINS) WEST FROM NE CORNER OF SECTION 20

Authorized Place of Use to be Cancelled:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	15 E	WM	20	NW NE	0.8
14 S	15 E	WM	20	SW NE	0.8
14 S	15 E	WM	20	NE NW	0.9
14 S	15 E	WM	20	SE NW	0.6

Conclusions of Law

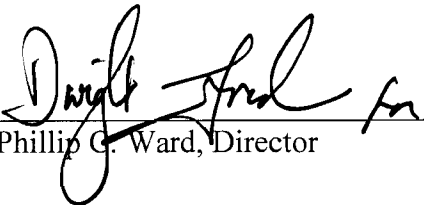
The change in place of use and partial diminishment proposed in Transfer Application T-8837 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right is cancelled.

Now, therefore, it is ORDERED:

1. The change in place of use proposed in application T-8837 is approved. The portion of the right that has been abandoned is cancelled. The portion of the right proposed to be diminished is diminished.

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 85862 and any related decree.
3. Water right certificate 85862 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer, partial diminution, and partial cancellation.
4. The Director may require the water user to install a totalizing flow meter or other suitable measuring device at each point of appropriation. If the Director notifies the water user to install a totalizing flow meter or other measuring device, the water user shall install such device specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meter or measuring device in good working order and shall allow the Watermaster access to the meter or measuring device.
5. The former place of use of the transferred right shall no longer receive water under the right.
6. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. A Claim of Beneficial Use prepared by a Certified Water Rights 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. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 15 day of May 2010.


Phillip C. Ward, Director

Mailing date: MAY 12 2010