

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

In the Matter of Transfer Application	)	FINAL ORDER APPROVING
T-11132, Deschutes County	)	CHANGES IN CHARACTER OF USE
	)	AND POINT OF APPROPRIATION,
	)	CORRECTION OF A SCRIVENER'S
	)	ERROR 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**

CHRISTOPHER & NICOLE CHAPANAR  
3635 ASH STREET  
NORTH BEND, OR 97459

**Agent**

FRED AST, JR. AND ASSOCIATES  
ATTN: MICHELE SIMS  
P.O. BOX 751  
SISTERS, OR 97759

**Findings of Fact**

**Background**

1. On September 15, 2010, CHRISTOPHER and NICOLE CHAPANAR filed an application to change the type of use and change the point of appropriation under Certificate 86336. The Department assigned the application number T-11132.
2. Notice of the application for transfer was published on December 7, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 7, 2012, and December 26, 2012, the Department sent copies of the draft Preliminary Determination proposing to approve Transfer Application T-11132 to the

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.

applicants. The draft Preliminary Determination cover letter set forth a deadline of January 7, 2012, for the applicants to respond. On December 21, 2012 the applicants and agent requested to extend the completion date to October 1, 2020, as well as to withdraw the partial cancellation of water right Certificate 86336 that was included in the first draft preliminary determination.

4. On December 26, 2012, the Department sent copies of a second draft Preliminary Determination proposing to approve Transfer Application T-11132 to the applicants. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
5. On January 7, 2013, the agent submitted a revised transfer application that included an additional 0.5 acre, and a revised map was received on January 9, 2013.
6. On May 8, 2013, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11132 and sent a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on May 14, 2013, and in the Bend Bulletin newspaper on May 13, 20 and 27, 2013, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
7. The portion of the right to be transferred is as follows:

**Certificate:** 86336 in the name of WAYNE MITCHELL and RAYMOND L. CURRY (perfected under Permit G-10670)  
**Use:** SUPPLEMENTAL IRRIGATION of 4.8 ACRES  
**Priority Date:** SEPTEMBER 25, 1986  
**Rate:** 0.06 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 DESCHUTES BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
15 S	11 E	WM	30	SW SW	4	290 FEET NORTH AND 250 FEET EAST FROM THE SW CORNER OF SECTION 30

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
15 S	11 E	WM	30	NW SW	3	0.5
15 S	11 E	WM	30	SW SW	4	4.3

8. Transfer Application T-11132 proposes to move the authorized point of appropriation approximately 937 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
15 S	11 E	WM	30	SW SW	4	829 FEET NORTH AND 680 FEET EAST FROM THE SW CORNER OF SECTION 30

9. Transfer Application T-11132 proposes to change the character of use from supplemental irrigation to primary irrigation upon cancellation of the layered primary right as per OAR 690-380-2320.
10. Supplemental irrigation was established under Application G-11586/Permit G-10670 prior to November 10, 1992. The portion of the water use in Lot 3 (NW SW) of Section 30 was supplemental to Certificate 850 (priority date 1904), and the portion of the water use in Lot 4 (SW SW) was supplemental to Certificate 263 (priority date 1902). Both rights were in the name of Squaw Creek Irrigation Company.
11. Primary water right Certificate 850 was canceled September 12, 1997, during the HB3111 process as recorded in Special Order Volume 51 Page 1408. No 1904 priority primary irrigation remained in Lot 3 (NW SW) after issuance of the order. However, the layered supplemental right under Permit G-10670 was not cancelled.
12. Pursuant to ORS 540.670, upon cancellation of the underlying primary water right, the commission may issue a new water right certificate changing a supplemental water right to a primary right. However, on September 1, 2005, when Certificate 81614 was issued, the portion in Lot 3 (NW SW) was listed as supplemental irrigation, even though no underlying primary right existed for that location at the time.
13. On June 7, 2010, Certificate 81614 was cancelled and superseded by Certificate 86336, perpetuating the scrivener's error, listing this portion as supplemental irrigation with no underlying primary. The portion of the supplemental right that was layered with the cancelled primary right is:

**Certificate:** 86336 in the name of RAYMOND L. CURRY and WAYNE and CONNIE MITCHELL (perfected under Permit G-10670)

**Use:** PRIMARY IRRIGATION of 2.16 ACRES

**Priority Date:** SEPTEMBER 25, 1986

**Rate:** 0.03 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 provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein.

**Source:** A WELL within the SQUAW CREEK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
15 S	11 E	WM	30	SW SW	4	290 FEET NORTH AND 250 FEET EAST FROM THE SW CORNER OF SECTION 30

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
15 S	11 E	WM	30	NW SW	3	2.16

**Partial Cancellation of a Water Right**

- On September 15, 2010, affidavits certifying that a portion of a water right has been abandoned and a request to cancel the right was received from Christopher J. Chapanar and Marc Thalacker, manager of the Squaw Creek Irrigation District. The portion of the right to be cancelled is as follows:

**Certificate:** 79496 in the name of SQUAW CREEK IRRIGATION DISTRICT  
(confirmed by Squaw Creek Decree)  
**Use:** IRRIGATION OF 4.3 ACRES AND DOMESTIC USE  
**Priority Date:** SEPTEMBER, 1902  
**Rate:** 0.09 CUBIC FOOT PER SECOND  
**Source:** SQUAW CREEK, tributary to the DESCHUTES RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	29	SW SE	850 FEET NORTH AND 2550 FEET WEST FROM THE SE CORNER OF SECTION 29 - REVERTED POD

**Authorized Place of Use to be Cancelled:**

IRRIGATION and DOMESTIC USE					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	11 E	WM	30	SW SW	4.3

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

- Water has been used within the last five years prior to the submittal of Transfer Application T-11132 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 was present within the five-year period prior to submittal of Transfer Application T-11132.
17. On September 15, 2010, Michele Sims, agent for Raymond Curry, submitted documentation establishing the quantity of water historically used under the supplemental water right. The evidence establishes that the full measure of the right has been historically used for supplemental irrigation, as water from the primary surface water source was not available.
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.

### **Conclusions of Law**

The changes in point of appropriation and character of use proposed in Transfer Application T-11132 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. The listing of the right in Lot 3 (NW SW) of Section 30 as supplemental irrigation is a scrivener's error in the certificate that should be corrected in the record.

### **Now, therefore, it is ORDERED:**

1. The change in point of appropriation and change in character of use proposed in application T-11132 are approved. The portion of the right that has been abandoned is cancelled and the scrivener's error is corrected to list the acres in Lot 3 (NW SW) of Section 30 as primary irrigation.
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 86336 and any related decree.
3. Water right certificate 86336 is cancelled. A new certificate will be issued describing the portion of the right not affected by this transfer and correcting the scrivener's error.
4. Water right certificate 79496 is cancelled. A new certificate will be issued describing the portion of the right not affected by this transfer.
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 the new point of appropriation.
  - b. The water user shall maintain the meter or measuring device in good working order.

- c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.
6. The amount of water used for primary irrigation (0.06 cfs), together with the amount secured under any other right existing for the same lands, should be limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and should be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated (total of 14.4 acre-feet) during the irrigation season of each year.
7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2020**. 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.
8. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 28 day of June, 2013.

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

Mailing date: JUL 03 2013