

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

In the Matter of Transfer Application            )  
T-9616, Jackson County                            )  
  )  
  )     FINAL ORDER APPROVING A  
  )     PERMANENT DISTRICT TRANSFER;  
  )     AND PARTIAL DIMINUTION OF  
  )     WATER RIGHTS

**Authority**

ORS 540.570 to 540.580 establishes the process in which a district may submit a request to transfer a water right within district boundaries. OAR Chapter 690, Division 385 implements the statutes and provides the Department’s procedures and criteria for evaluating district 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**

TALENT IRRIGATION DISTRICT  
PO BOX 467  
TALENT, OR 97540

**Findings of Fact**

1. On December 26, 2003, Talent Irrigation District (TID) filed a district transfer application to permanently change the place of use under Certificates 79212 and 83727. The Department assigned the application number T-9616.
2. Notice of the application for transfer was published on January 19, 2004, pursuant to ORS 540.580 and OAR 690-385-4400. No comments were filed in response to the notice.
3. On September 15, 2010, the Department received clarification from TID of a portion of the place of use involved in the transfer.
4. The portion of the first right to be transferred is as follows:  
**Certificate:** 79212 in the name of TALENT IRRIGATION DISTRICT (perfected under Permits S-1382, S-1383 and S-4537)  
**Use:** Irrigation of 64.3 acres  
**Priority Dates:** MAY 23, 1912, AUGUST 20, 1915, JULY 31, 1915, SEPTEMBER 6, 1915 and JANUARY 20, 1920  
**Rate & Duty:** Limited to not more than the rate specified by source and a total diversion not to exceed 166.4 cfs from all sources. Furthermore the diversion from Bear Creek (including Ashland, Neil, Emigrant, Anderson and Wagner Creeks) with a priority of July 31, 1915 shall not exceed 87 cubic feet per

second (cfs) at one time and further, the diversion from Bear Creek (including Ashland and Neil Creeks) shall not exceed 55 cfs at one time.

**Limit:** The amount of water used for irrigation under this right, together with the amount secured under any other prior 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 during the irrigation season of each year.

**Sources:** Emigrant Creek, a tributary of Bear Creek  
 McDonald Creek, a tributary of Little Applegate River  
 Greeley Creek, a tributary of Little Applegate River  
 Bear Creek, a tributary of Rogue River  
 Neil Creek, a tributary of Bear Creek  
 Ashland Creek, a tributary of Bear Creek  
 Wagner Creek, a tributary of Bear Creek  
 Anderson Creek, a tributary of Bear Creek  
 Coleman Creek, a tributary of Bear Creek  
 Kenutchen Creek (Knudsen Creek), a tributary of Bear Creek  
 Meyers Creek (Myers Creek), a tributary of Bear Creek  
 Butler Creek, a tributary of Bear Creek  
 Keene Creek and Keen Creek Reservoir (also known as Hyatt Reservoir), constructed under Permit R-214, tributaries of Jenny Creek in the Klamath River Basin  
 Emigrant Reservoir, a tributary of Emigrant Creek

**Authorized Places of Use:**

PRIMARY IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	User Name	Notice
38 S	1 W	WM	34	NE SE	5.80	1200	Fortmiller	03-1A
38 S	1 W	WM	34	NW SE	10.10	1200	Fortmiller	03-1A
38 S	1 W	WM	34	SW SE	14.50	1200	Fortmiller	03-1A
38 S	1 W	WM	25	SW SW	14.10	3900	Moore	03-1A
38 S	1 W	WM	25	NW SW	0.20	3900	Moore	03-1A
38 S	1 W	WM	35	SE NW	7.40	3801	Moore	03-1A
38 S	1 W	WM	35	SE NW	6.90	3803	Moore	03-1A
38 S	1 W	WM	35	NE SW	1.80	3803	Moore	03-1A
38 S	2 W	WM	12	SW NW	0.62	1107	Marinak	03-8
38 S	2 W	WM	12	NW SW	2.38	1107	Marinak	03-8
38 S	2 W	WM	15	NE NE	0.28	207	Carlton	03-11
38 S	2 W	WM	15	NE NE	0.17	207	Carlton	03-11
38 S	2 W	WM	14	NW NW	0.05	207	Carlton	03-11
<b>Total</b>					<b>64.30</b>			

5. Transfer Application T-9616 proposes to change the places of use to:

**Proposed Places of Use:**

PRIMARY IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	User Name	Notice
38 S	1 W	WM	25	SW SW	14.10	3900	Moore	03-1A
38 S	1 W	WM	25	NW SW	0.20	3900	Moore	03-1A

PRIMARY IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	User Name	Notice
38 S	1 W	WM	35	SE NW	7.40	3801	Moore	03-1A
38 S	1 W	WM	35	SE NW	6.90	3803	Moore	03-1A
38 S	1 W	WM	35	NE SW	1.80	3803	Moore	03-1A
38 S	1 W	WM	34	NE SE	5.80	1200	Fortmiller	03-1A
38 S	1 W	WM	34	NW SE	10.10	1200	Fortmiller	03-1A
38 S	1 W	WM	34	SW SE	14.50	1200	Fortmiller	03-1A
38 S	2 W	WM	12	NE SW	1.80	1101	Marinak	03-8
38 S	2 W	WM	12	NE SW	1.20	1107	Harper	03-8
38 S	2 W	WM	15	NE NE	0.15	205	Deason	03-11
38 S	2 W	WM	15	SE NE	0.35	205	Deason	03-11
<b>Total</b>					<b>64.3</b>			

6. The portion of the second right to be transferred is as follows:

**Certificate:** 83727 in the name of the U.S. BUREAU OF RECLAMATION (perfected under Permit S-25915)

**Use:** IRRIGATION of 24.7.1 acres

**Priority Date:** SEPTEMBER 6, 1915 and JUNE 8, 1953

**Rate & Duty:** Limited to not more than the rate specified by source

**Limit:** The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FORTIETH of one cubic foot per second (or its equivalent) and 4.5 acre-feet for each acre irrigated during the irrigation season of each year.

**Sources:** Emigrant Creek and Emigrant Reservoir (constructed under Permit R-2209) tributaries of Bear Creek

South Fork Little Butte Creek, a tributary of Little Butte Creek

Conde Creek, a tributary of South Fork Little Butte Creek

Dead Indian Creek, a tributary of South Fork Little Butte Creek

Bear Creek, a tributary of Rogue River

Daley Creek, a tributary of South Fork Little Butte Creek

Beaver Dam Creek, a tributary of South Fork Little Butte Creek

Pole Bridge Creek, a tributary of South Fork Little Butte Creek

Deadwood Creek, a tributary of South Fork Little Butte Creek

Keene Creek and Keene Creek Reservoir, tributaries of Jenny Creek

Grizzly Creek and Howard Prairie Reservoir (constructed under Permit R-2210) tributaries of Jenny Creek

Soda Creek, a tributary of Grizzly Creek

Little Beaver Creek, a tributary of Jenny Creek

**Authorized Places of Use:**

PRIMARY IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	User Name	Notice
37 S	1 W	WM	27	SW NW	5.76	500	Crystal Springs	03-7A
37 S	1 W	WM	27	SW NW	4.88	501	Crystal Springs	03-7A
37 S	1 W	WM	27	SE NW	0.22	501	Crystal Springs	03-7A
37 S	1 W	WM	27	SE NW	1.27	800	Crystal Springs	03-1

PRIMARY IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	User Name	Notice
37 S	1 W	WM	27	SE NW	2.00	800	Crystal Springs	03-2
37 S	1 W	WM	27	SE NW	1.00	800	Crystal Springs	03-3
37 S	1 W	WM	27	SE NW	1.29	500	Crystal Springs	03-4
37 S	1 W	WM	27	SE NW	2.51	800	Crystal Springs	03-4
37 S	1 W	WM	27	NW SW	1.65	700	Hutchins	03-6
37 S	1 W	WM	27	NW SW	3.25	906	Hutchins	03-9
38 S	2 W	WM	15	NE NE	0.50	207	Carlton	03-10
39 S	1 E	WM	12	NE NE	0.38	109	Miller	03-3A
<b>Total:</b>					<b>24.71</b>			

SUPPLEMENTAL IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	User Name	Notice
38 S	1 W	WM	34	NE SE	5.80	1200	Fortmiller	03-1A
38 S	1 W	WM	34	NW SE	10.10	1200	Fortmiller	03-1A
38 S	1 W	WM	34	SW SE	14.50	1200	Fortmiller	03-1A
38 S	1 W	WM	25	SW SW	14.10	3900	Moore	03-1A
38 S	1 W	WM	25	NW SW	0.20	3900	Moore	03-1A
38 S	1 W	WM	35	SE NW	7.40	3801	Moore	03-1A
38 S	1 W	WM	35	SE NW	6.90	3803	Moore	03-1A
38 S	1 W	WM	35	NE SW	1.80	3803	Moore	03-1A
38 S	2 W	WM	14	NW NW	0.05	207	Carlton	03-11
38 S	2 W	WM	15	NE NE	0.28	207	Carlton	03-11
38 S	2 W	WM	15	NE NE	0.17	207	Carlton	03-11
<b>Total</b>					<b>61.30</b>			

7. Transfer Application T-9616 proposes to change the places of use to:

**Proposed Places of Use:**

PRIMARY IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	User Name	Notice
38 S	1 W	WM	2	SW NE	3.92	200	London	03-7A
38 S	1 W	WM	2	SE NW	2.35	200	London	03-7A
38 S	1 W	WM	2	NE SW	1.82	200	London	03-7A
38 S	1 W	WM	2	NW SE	2.49	200	London	03-7A
38 S	1 W	WM	2	SW SE	0.28	200	London	03-7A
38 S	1 E	WM	20	SW SE	3.25	902	Perry	03-9
38 S	1 E	WM	30	NE NW	0.75	2102	Shaver	03-6
38 S	1 E	WM	30	SE NW	0.30	2102	Shaver	03-6
38 S	1 E	WM	30	SE NW	0.60	2200	Shaver	03-6
38 S	2 W	WM	12	SW NE	1.27	200	Perry	03-1
38 S	2 W	WM	12	NW NE	0.77	207	Patterson	03-2
38 S	2 W	WM	12	SW NE	1.23	207	Hoffman	03-2
38 S	2 W	WM	12	SW NE	1.00	209	Hoffman	03-3
38 S	2 W	WM	12	SW NE	3.80	216	Wolfe	03-4
38 S	2 W	WM	15	NE NE	0.50	209	Benton	03-10
39 S	1 E	WM	12	NW NE	0.19	305	Miller	03-3A
39 S	1 E	WM	12	NW NE	0.19	343	Settle	03-3A
<b>Total:</b>					<b>24.71</b>			

SUPPLEMENTAL IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	User Name	Notice
38	1 W	WM	25	SW SW	14.10	3900	Moore	03-1A
38	1 W	WM	25	NW SW	0.20	3900	Moore	03-1A
38	1 W	WM	35	SE NW	7.40	3801	Moore	03-1A
38	1 W	WM	35	SE NW	6.90	3803	Moore	03-1A
38	1 W	WM	35	NE SW	1.80	3803	Moore	03-1A
38	1 W	WM	34	NE SE	5.80	1200	Fortmiller	03-1A
38	1 W	WM	34	NW SE	10.10	1200	Fortmiller	03-1A
38	1 W	WM	34	SW SE	14.50	1200	Fortmiller	03-1A
38	2 W	WM	15	NE NE	0.15	205	Deason	03-11
38	2 W	WM	15	SE NE	0.35	205	Deason	03-11
<b>Total:</b>					<b>61.30</b>			

8. The district permanent transfer application satisfies the criteria of OAR 690-385-4000, contains the information required under OAR 690-385-2000, and includes maps meeting the requirements of OAR 690-385-2200.
9. The water rights are subject to transfer as defined in OAR 690-385-0100(17).
10. The proposed change in places of use will not result in enlargement of the rights.
11. The proposed change in places of use will not result in injury to other water rights.

***Partial Diminution of Water Rights***

12. Certificates 9469 and 20303. On September 15, 2010, Talent Irrigation District submitted affidavits for diminishment. The affidavits of Eric J. Wimmer and Stacey Shaver, residing at 591 West Valley View Road, Ashland, OR 97520, state they are the owners of the land and the water rights appurtenant as evidenced by Certificates 9469 and 20303, State Record of Water Right Certificates. The affidavit request a portion of the water rights appurtenant to the property be diminished from a primary irrigation right to a right for supplemental irrigation.
13. Pursuant to OAR 690-017-002(a), the Department has determined that Eric J. Simmer and Stacy Shaver are the recorded owners, as established by county deed records, of property which portions of the water rights evidenced by Certificates 9469 and 20303 are appurtenant.
14. Certificate 9469 allows for the use of up to 0.05 cubic foot per second (cfs) from a Spring, a tributary of Bear Creek for irrigation of 15.0 acres under a December 13, 1920 priority date.
15. Certificate 20303 allows the use of 0.438 cfs from an Unnamed Stream and Reservoir (constructed under Permit R-1403), tributaries of Bear Creek for supplemental irrigation of 15.0 acres and irrigation of 20.0 acres.
16. The portions of Certificates 9469 and 20303 which have been requested to be diminished are as follows:

Certificate	Use	Rate	Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot
9469	Irrigation	0.005	38 S	1 E	WM	30	NE NW	0.75	2102
9469	Irrigation	Included above	38S	1 E	WM	30	SE NW	0.30	2102
9469	Irrigation	Included above	38S	1 E	WM	30	SE NW	0.60	2200
20303	Irrigation	0.020	38 S	1 E	WM	30	NE NW	0.75	2102
20303	Irrigation	Included above	38S	1 E	WM	30	SE NW	0.30	2102
20303	Irrigation	Included above	38S	1 E	WM	30	SE NW	0.60	2200

17. Certificate 16044. On September 15, 2010, Talent Irrigation District submitted affidavits for diminishment. The affidavit of Donald S. and Traute M. Moore, Trustees of the Donald S. Moore and Traute Maria Moore Inter Vivos Revocable Trust, 2700 Quail Run, Talent, OR 97540, state they are the owners of the land and the water right appurtenant as evidenced by Certificate 16044, State Record of Water Right Certificates. The affidavit requests a portion of the water right appurtenant to the property has been diminished from a primary irrigation right to a right for supplemental irrigation.
18. On September 20, 2010, TID submitted an amended page 1 of the affidavit of Donald S. and Traute M. Moore, Trustees of the Donald S. Moore and Traute Maria Moore Inter Vivos Revocable Trust, correcting the number of acres to be diminished under Certificate 16044.
19. Pursuant to OAR 690-017-002(a), the Department has determined that Donald S. and Traute M. Moore, Trustees of the Donald S. Moore and Traute Maria Moore Inter Vivos Revocable Trust are the recorded owners, as established by county deed records, of property which portion of the water right evidenced by Certificate 16044 is appurtenant.
20. Certificate 16044 allows for the use of up to 2.13 cubic feet per second from Wagner Creek, a tributary of Bear Creek for irrigation of 370.3 acres and stock, under an 1854 priority date.
21. The portion of Certificate 16044 requested to be diminished is as follows:

Use	Rate	Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot
Irrigation	0.002	38 S	1 W	WM	35	SE NW	0.30	3803
Irrigation	0.010	38 S	1 W	WM	35	NE SW	1.80	3803

22. Certificate 15922. TID submitted an affidavit of Edwin M. and Karen A. Kerwin, 955 Dead Indian Memorial Road, Ashland, OR 97520, stating they are the owners of the land and the water right appurtenant as evidenced by Certificate 15922, State Record of Water Right Certificates. The affidavit further states a portion of the water right appurtenant to the property has been diminished from a primary right to a right for supplemental irrigation.
23. Pursuant to OAR 690-017-002(a), the Department has determined that Edwin M. and Karen A. Kerwin are the recorded owners, as established by county deed records, of property which portion of the water right evidenced by Certificate 15922 is appurtenant.

24. Certificate 15922 allows for the use of up to 0.54 cubic foot per second from Walker Creek, a tributary of Bear Creek for irrigation of 43.0 acres, domestic and stock.

25. The portion of Certificate 15922 that has been diminished is as follows:

Use	Rate	Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Notice
Irrigation	0.005	39 S	2 E	WM	7	NE NE	0.38	1400	03-3A

26. Certificate 23641. On September 15, 2010, Talent Irrigation District submitted affidavits for diminishment. The affidavit of James Cabeceiras or Martha E. Wright-Cabeceiras, Co-Trustees of Cabeceiras-Wright Trust, 3464 Darrell Drive, Medford, OR 97501, states they are the owners of the land and the water right appurtenant as evidenced by Certificate 23641, State Record of Water Right Certificates. The affidavit further requests a portion of the water right appurtenant to the property be diminished from a primary irrigation right to a right for supplemental irrigation.

27. Pursuant to OAR 690-017-002(a), the Department has determined that James Cabeceiras or Martha E. Wright-Cabeceiras, Co-Trustees of Cabeceiras-Wright Trust are the recorded owners, as established by county deed records, of property which portion of the water right evidenced by Certificate 23641 is appurtenant.

28. Certificate 23641 allows the use of 0.10 cubic foot per second of water from Crooked Creek and Holmes Reservoir, a tributary of Bear Creek, for irrigation of 8.3 acres under a June 23, 1952 priority date.

29. The portion of Certificate 23641 to be diminished is as follows:

Use	Rate	Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot
Irrigation	0.008	38 S	2 E	WM	12	SW NW	0.62	700
Irrigation	0.028	38 S	2 E	WM	12	NW SW	2.38	700

### Conclusions of Law

The proposed changes in place of use as proposed in Transfer Application T-9840 satisfy the requirements of ORS 540.574(3) and 540.580. The Director of the Water Resources Department concludes that portions of the rights evidenced by Water Right Certificates 9469, 20303, 16044, 15922, and 23641 have been diminished in accordance with the provisions of ORS 540.510 and shall be diminished.

### Now, therefore, it is ORDERED:

1. The proposed changes in place of use to the water rights evidenced by Certificates 79212 and 83727 are 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 Certificates 79212 and 83727 and any related decree.
3. The former places of use shall no longer be irrigated as part of these water rights.
4. The approved changes shall be completed and full beneficial use of the water shall be made on or before October 1, 2012.

5. A Claim of Beneficial Use (COBU) shall be submitted by the applicant to the Department by October 1, 2013.
6. The water rights appurtenant to the lands described in Findings of Fact #16, #21, #25, and #29 are diminished to supplemental irrigation.
7. Water right Certificates 9469, 20303, 16044, 15922 and 23641 are cancelled. New certificates will be issued describing the portion of the right not modified by this order and reflecting the diminishments.
8. Water right certificates 79212 and 83727 are modified. The Department will issue superseding certificates describing the rights when it determines that is necessary for record keeping.

Dated at Salem, Oregon this 29 day of September, 2010.



\_\_\_\_\_  
Dwight French for  
PHILLIP C. WARD, DIRECTOR

Mailing Date: **SEP 30 2010** \_\_\_\_\_