



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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May 7, 2013

VIA E-MAIL

Applicant

CHRISTOPHER & NICOLE CHAPANAR
3635 ASH STREET
NORTH BEND, OR 97459
cchapanar@charter.net

Agent

FRED AST, JR. AND ASSOCIATES
ATTN: MICHELE SIMS
P.O. BOX 751
SISTERS, OR 97759
sims.mw@gmail.com

SUBJECT: Water Right Transfer Application T-11132

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication and in the Bend Bulletin newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the last date of newspaper publication.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at (503) 986-0890 or Dorothy.I.Pedersen@wrdd.state.or.us if I may be of assistance.

Sincerely,

Dorothy I. Pedersen
Transfer Program Advisor

cc: T-11132
Jeremy T. Giffin, District 11 Watermaster (*via e-mail*)



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

In the Matter of Transfer Application)
T-11132, Deschutes County)
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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.

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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 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

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.

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. 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

7. 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

8. 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.
9. 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.
10. 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.
11. 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.
12. 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

13. 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: 0.10 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)

14. 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.
15. 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.
16. 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.
17. The proposed change would not result in enlargement of the right.

18. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The changes in point of appropriation and character of use proposed in Transfer Application T-11132 appear to be 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. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the portion of the abandoned right will be cancelled.

If Transfer Application T-11132 is approved, the final order will include the following:

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 8 day of May, 2013.


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

This Preliminary Determination was prepared by Carrie Matthews. If you have questions about the information in this document, you may reach me at 541-523-8224 x 36 or Carrie.R.Matthews@wrд.state.or.us.