BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Permits G-11197 and)	PROPOSED FINAL ORDER
G-12957, Marion County)	APPROVING ASSIGNMENT OF
)	WATER RIGHT PERMITS AND
)	ISSUANCE OF REPLACEMENT
)	WATER RIGHT PERMITS

Authority

ORS 537.225 establishes the process in which a water right permit holder may submit a request for full or partial assignment of a water right permit and issuance of replacement permits. OAR chapter 690, Division 325 establishes the requirements and procedures to be used by the Department to evaluate an application by a landowner of record holding a water right permit for irrigation, nursery, temperature control, stock watering or agricultural water use, to assign all or part of the water right permit and to issue a replacement permit to reflect an assignment from the current permit holder to one or more additional permit holders.

Applicant

SHAWN AND KIMBERLY SCHURTER 10520 SUNNYVIEW ROAD NE SALEM, OREGON 97317

Findings of Fact

Background

- 1. On October 7, 2016, SHAWN AND KIMBERLY SCHURTER filed an application for partial assignment of Water Right Permits G-11197 and G-12957 and requested issuance of replacement permits. The Department assigned the application number T-12497.
- 2. On July 15, 2016, the Department approved extension of times for both permits for complete application of water to October 1, 2021.
- 3. On September 4, 2007, the Department approved partial assignment of Permits G-11197 and G-12957 from Richard Kuenzi to Charles Mueller and Rita Mueller.
- 4. On December 11, 2015, the Department approved partial assignment of Permits G-11197 and G-12957 from Richard Kuenzi to Shawn and Kimberly Schurter.
- 5. On October 12, 2016, the Department contacted the acting agent regarding deficiencies in the application tables and the map. On October 20, 2016, the agent submitted amended application pages and amended maps, resolving the deficiencies.

Pursuant to OAR 690-325-0100, any person may file a protest or standing statement within 45 days after the date of publication of notice of this Proposed Final Order.

The Applicants identified the following landowners within the authorized place of use for both permits, who are not participating in the request for assignment:

Name and Address Charles and Rita Mueller 10570 Sunnyview Road NE Salem, OR 97317

7. The first Permit to be modified and assigned is as follows:

Permit: G-11197 in the name of RICHARD KUENZI

Use: IRRIGATION of 144.0 ACRES

Priority Date: APRIL 24, 1990

Ouantity: 1.8 CUBIC FEET PER SECOND

Rate/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: ONE WELL within the PUDDING RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	1 W	WM	20	sw sw	550 FEET NORTH AND 580 FEET EAST FROM THE SW CORNER OF SECTION 20

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	1 W	WM	19	NE SE	1.1
· 7 S	1 W	WM	19	SE SE	25.6
7 S	1 W	WM	20	SW SW	29.1
7 S	1 W	WM	20	SE SW	12.1
7 S	1 W	WM	29	NE NW	13.7
7 S	1 W	WM	29	NW NW	30.8
7 S	1 W	WM	30	NE NE	30.0
7 S	1 W	WM	30	NW NE	1.6
				Total	144.0

8. The Applicants request Permit G-11197 be split and replacement permits be issued as follows:

Permit A: **Shawn and Kimberly Schurter**

IRRIGATION of 43.4 ACRES Priority Date: APRIL 24, 1990

Quantity: 0.54 CUBIC FEET PER SECOND

Rate/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

Use:

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:

ONE WELL within the PUDDING RIVER BASIN

Authorized Point of Appropriation:

[Twp	Rng	Mer	Sec	Q-Q	Measured Distances
	7 S	1 W	WM	20	sw sw	550 FEET NORTH AND 580 FEET EAST FROM THE SW CORNER OF SECTION 20

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	1 W	WM	19	NE SE	1.1
7 S	1 W	WM	19	SE SE	22.3
7 S	1 W	WM	20	SW SW	0.1
7 S	1 W	WM	30	NE NE	18.3
7 S	1 W	WM	30	NW NE	1.6
				Total	43.4

Permit B: Charles and Rita Mueller

Use: IRRIGATION of 100.6 ACRES

Priority Date: APRIL 24, 1990

Quantity:

1.26 CUBIC FEET PER SECOND

Rate/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:

ONE WELL within the PUDDING RIVER BASIN

Authorized Point of Appropriation:

Tv	vp	Rng	Mer	Sec	Q-Q	Measured Distances
7	S	1 W	WM	20	sw sw	550 FEET NORTH AND 580 FEET EAST FROM THE SW CORNER OF SECTION 20

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	1 W	WM	19	SE SE	3.3
7 S	1 W	WM	20	SW SW	29.0
7 S	1 W	WM	20	SE SW	12.1
7 S	1 W	WM	29	NE NW	13.7
7 S	1 W	WM	29	NW NW	30.8
7 S	1 W	WM	30	NE NE	11.7
				Total	100.6

9. The second Permit to be modified and assigned is as follows:

Permit:

G-12957 in the name of RICHARD KUENZI

Use:

SUPPLEMENTAL IRRIGATION of 144.0 ACRES

Priority Date: APRIL 28, 1995

Quantity:

0.8 CUBIC FOOT PER SECOND

Rate/Duty:

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-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre-feet for each acre irrigated during the irrigation

season of each year.

Period of Use: March 1 through October 31

Source:

A WELL within the PUDDING RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	1 W	WM	20	SW SW	900 FEET NORTH AND 390 FEET EAST FROM THE SW CORNER OF SECTION 20

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	1 W	WM	19	SE SE	26.7
7 S	1 W	WM	20	NW SW	0.1
7 S	1 W	WM	20	SW SW	29.1
7 S	1 W	WM	20	SE SW	12.3
7 S	1 W	WM	29	NE NW	13.4
7 S	1 W	WM	29	NW NW	30.8
7 S	1 W	WM	30	NE NE	30.0
7 S	1 W	WM	30	NW NE	1.6
				Total	144.0

10. The Applicants request Permit G-12957 be split and replacement permits be issued as follows:

Permit A:

Shawn and Kimberly Schurter

Use:

SUPPLEMENTAL IRRIGATION of 44.0 ACRES

Priority Date: APRIL 28, 1995

Quantity:

0.24 CUBIC FOOT PER SECOND

Rate/Duty:

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-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre-feet for each acre irrigated during the irrigation

season of each year.

Period of Use: March 1 through October 31

Source:

A WELL within the PUDDING RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	1 W	WM	20	sw sw	900 FEET NORTH AND 390 FEET EAST FROM THE SW CORNER OF SECTION 20

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	1 W	WM	19	SE SE	23.4
7 S	1 W	WM	20	NW SW	0.1
7 S	1 W	WM	20	SW SW	0.6
7 S	1 W	WM	30	NE NE	18.3
7 S	1 W	WM	30	NW NE	1.6
				Total	44.0

Permit B: Charles and Rita Mueller

Use: SUPPLEMENTAL IRRIGATION of 100.0 ACRES

Priority Date: APRIL 28, 1995

Quantity: 0.56 CUBIC FOOT PER SECOND

Rate/Duty: 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-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre-feet for each acre irrigated during the irrigation

season of each year.

Period of Use: March 1 through October 31

Source: A WELL within the PUDDING RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	1 W	WM	20	sw sw	900 FEET NORTH AND 390 FEET EAST FROM THE SW CORNER OF SECTION 20

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres	
7 S	1 W	WM	19	SE SE	3.3	
7 S	1 W	WM	20	SW SW	28.5	
7 S	1 W	WM	20	SE SW	12.3	
7 S	1 W	WM	29	NE NW	13.4	
7 S	1 W	WM	29	NW NW	30.8	
7 S	1 W	WM	30	NE NE	11.7	
				Total	100.0	

11. Notice of the application for the assignment of the water right permit and request for issuance of replacement water right permits was published in the Department's weekly notice on November 22, 2016, pursuant to ORS 537.325(3)(e) and OAR 690-325-0080. No comments were filed in response to the notice. In addition, the Department provided copies of the draft Proposed Final Order, draft replacement permits, the application, map, and existing water right permit to each owner of land upon which the water right permit is appurtenant.

Split a Permit Review Criteria

12. The Department has verified the mailing address of each owner of the authorized place of use identified on the map for Permit G-11197, contained in the application as follows:

Name and Address	Acres	Proportionate Rate	Twp	Rng	Sec	Q-Q	Tax Lot
Shawn and Kimberly Schurter 10520 Sunnyview Rd. NE Salem, Oregon 97317	1.1	0.54	7 S	1 W	19	NE SE	1900
	22.3		7 S	1 W	19	SE SE	
	0.1		7 S	1 W	20	SW SW	
	18.3		7 S	1 W	30	NE NE	
	1.6		7 S	1 W	30	NW NE	
	3.3	1.26	7 S	1 W	19	SE SE	2600
	29.0		7 S	1 W	20	SW SW	
Charles and Rita Mueller 10570 Sunnyview Rd. NE Salem, Oregon 97317	12.1		7 S	1 W	20	SE SW	
	13.7		7 S	1 W	29	NE NW	
	30.8		7 S	1 W	29	NW NW	
	11.7		7 S	1 W	30	NE NE	

OAR 690-325-0070(1)(a).

13. The Department has verified the mailing address of each owner of the authorized place of use identified on the map for Permit G-12957, contained in the application as follows:

Name and Address	Acres	Proportionate Rate	Twp	Rng	Sec	Q-Q	Tax Lot
	23.4	0.24	7 S	1 W	19	SE SE	1900
Shawn and Kimberly Schurter	0.1		7 S	1 W	20	NW SW	
10520 Sunnyview Rd. NE	0.6		7 S	1 W	20	SW SW	
Salem, Oregon 97317	18.3		7 S	1 W	30	NE NE	
	1.6		7 S	1 W	30	NW NE	
	3.3	0.56	7 S	1 W	19	SE SE	2600
	28.5		7 S	1 W	20	SW SW	
Charles and Rita Mueller	12.3		7 S	1 W	20	SE SW	
10570 Sunnyview Rd. NE Salem, Oregon 97317	13.4		7 S	1 W	29	NE NW	
	30.8		7 S	1 W	29	NW NW	
	11.7		7 S	1 W	30	NE NE	

OAR 690-325-0070(1)(a).

- 14. The deed supplied with the application, matches the property proposed for assignment. OAR 690-325-0070(1)(b).
- 15. The applicant affirmed the most recent water use under the permit has been exercised within the relevant terms and conditions of the water right permit. OAR 690-325-0070(1)(c).
- 16. The assignment and issuance of replacement permits, as outlined in Finding of Facts #8 and #10 above, would not result in injury to other water right holders. OAR 690-325-0070(1)(d).
- 17. The assignment and issuance of replacement permits, as outlined in Finding of Facts #8 and #10 above, would not result in enlargement of the permit. OAR 690-325-0070(1)(d).

18. The assignment and issuance of replacement permits does not alter any other terms of Permits # G-11197 and G-12957.

Conclusions of Law

The assignment and issuance of replacement permits proposed by Application T-12497 are consistent with the requirements of ORS 537.225 and OAR Chapter 690, Division 325. If no protests are filed, an Order will be issued which will include the following:

Now, therefore, it is ORDERED:

- 1. The assignment and issuance of replacement permits proposed by Application T-12497 are approved.
- 2. Permit G-11197, in the name of Richard Kuenzi, is cancelled. Permit G-17694, in the names of Shawn and Kimberly Schurter, and Permit G-17695 in the names of Charles and Rita Mueller, are issued to supersede Permit G-11197.
- 3. Permit G-12957, name of Richard Kuenzi, is cancelled. Permit G-17696, in the names of Shawn and Kimberly Schurter, and Permit G-17697 in the names of Charles and Rita Mueller, are issued to supersede Permit G-12957.
- 4. All other terms and conditions under Permit G-11197 are incorporated into Permits G-17694 and G-17695.
- 5. All other terms and conditions under Permit G-12957 are incorporated into Permits G-17696 and G-17697.

Dated at Salem, Oregon this ____ day of January, 2017.

Dwight French, Water Right Services Administrator, for

THOMAS M. BYLER, DIRECTOR

JAN 1 0 2016

Mailing Date:

This Proposed Final Order was prepared by Sarah Henderson. If you should have any questions, please do not hesitate to contact me at 503-986-0890 or sarah.a.henderson@oregon.gov.

Protest Rights:

A record landowner, an applicant, an assignee, an affected water right permit holder, or other interested person may protest the Proposed Final Order. Pursuant to OAR 690-325-0100, protests must: 1) provide a detailed explanation of why the proposed order does not conform with the criteria under ORS 537.225, and a description of the changes to the order that are necessary to correct the nonconformity; and 2) raise all reasonably ascertainable issues at the time the protest is filed. The issues must directly pertain to whether the replacement water right permits are authorized under and in conformance with ORS 537.225. In addition, protests must be accompanied by the appropriate protest fees. Protests must be received by the Department no later than 45 days after the notice is published in the Department's weekly notice. If no protests are filed, the Department will issue a final order consistent with the Proposed Final Order.

The Proposed Final Order may be viewed free of charge online at: http://apps.wrd.state.or.us/apps/wr/wrinfo/. Persons interested in receiving a copy of a Proposed Final Order must pay a statutorily-required fee of \$25. Any person paying \$25 to receive a PFO by mail will also receive a copy of the Final Order when it is issued.

Notice Regarding Servicemembers: Active duty service members have a right to stay proceedings under the federal Servicemembers Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: http://legalassistance.law.af.mil