

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

In the Matter of Permit G-13980, Yamhill)
County)
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PROPOSED FINAL ORDER
APPROVING ASSIGNMENT OF
WATER RIGHT PERMIT 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
EDITH PIERCE
PO BOX 92
DUNDEE, OREGON 97115

Applicant
SUSAN AND KUEN LEE
25100 NE HIDDEN MEADOWS RD
NEWBERG, OREGON 97132

Findings of Fact

Background

1. On November 21, 2016, EDITH PIERCE, and SUSAN AND KUEN LEE filed an application for partial assignment of Water Right Permit G-13980 and requested issuance of replacement permits. The Department assigned the application number T-12524.
2. On July 8, 2015, the Department cancelled Permit G-13980 in accordance with ORS 537.260. On July 27, 2015, the Department received a timely request for reconsideration of the cancellation. On July 30, 2015, the Department reinstated Permit G-13980.
3. On October 22, 2015, the Department approved an assignment of Permit G-13980 from J. D. & Edith Pierce to Edith Pierce, Lynette Pierce, Bryan Joyce, Susan and Kuen Lee, and Edward W. and Theresa E. Shepard.
4. On May 6, 2016, the Department approved an extension of time for complete application of water under Permit G-13980 to October 1, 2020.

5. The Applicant identified the following landowners within the authorized place of use, who are not participating in the request for assignment:

Name and Address	Acres	Proportionate Rate(CFS)	Twp	Rng	Sec	Q-Q	Tax Lot
Lynette Pierce 24095 NE Dayton Ave Newberg, OR 97132	1.0	0.011	3 S	2 W	19	SW SW	1402
Edward & Theresa Shepard 24315 NE Dayton Ave. Newberg, OR 97132	2.0	0.021	3 S	2 W	19	SE SW	1504
Bryan Joyce PO Box 575 Newberg, OR 97132	1.5	0.016	3 S	2 W	19	SW SW	1403

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

Permit: G-13980 in the name of Edith Pierce, Lynette Pierce, Bryan Joyce, Susan and Kuen Lee, and Edward W. and Theresa E. Shepard

Use: NURSERY OPERATIONS of 21.0 ACRES

Priority Date: OCTOBER 27, 1999

Quantity: 0.223 CUBIC FOOT PER SECOND (CFS), BEING 0.056 CFS FROM EACH WELL

Rate/Duty: The amount of water used for NURSERY OPERATIONS is limited to a diversion of 0.15 cubic foot per second per acre. For the irrigation of **containerized nursery plants**, the amount of water diverted is limited to ONE-FORTIETH of one cubic foot per second (or its equivalent) and 5.0 acre feet per acre per year. For the irrigation of **in ground nursery plants** the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre feet per acre per year. The use of water for NURSERY OPERATIONS may be made at anytime, during the period of allowed use specified above, that the use is beneficial. For the irrigation of **any other crop**, the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre feet per acre during the irrigation season of each year.

Period of Use: YEAR ROUND

Source: FOUR WELLS within the WILLAMETTE RIVER BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	2 W	WM	19	SW SW	WELL 1 - 1200 FEET NORTH AND 1250 FEET EAST FROM THE SW CORNER OF SECTION 19
3 S	2 W	WM	19	SW SW	WELL 2 - 850 FEET NORTH AND 520 FEET EAST FROM THE SW CORNER OF SECTION 19
3 S	2 W	WM	19	SE SW	WELL 3 - 500 FEET NORTH AND 1550 FEET EAST FROM THE SW CORNER OF SECTION 19
3 S	2 W	WM	19	SW SW	WELL 4 - 900 FEET NORTH AND 1020 FEET EAST FROM THE SW CORNER OF SECTION 19

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
3 S	2 W	WM	19	SW SW	15.3
3 S	2 W	WM	19	SE SW	3.1
3 S	3 W	WM	24	SE SE	2.6
Total					21.0

7. The Applicants request Permit G-13980 be split and replacement permits be issued as follows:

Permit A: Edith Pierce, Susan and Kuen Lee

Use: NURSERY OPERATIONS of 16.5 ACRES

Priority Date: OCTOBER 27, 1999

Quantity: 0.175 CUBIC FOOT PER SECOND (CFS), BEING 0.056 CFS FROM EACH WELL

Rate/Duty: The amount of water used for NURSERY OPERATIONS is limited to a diversion of 0.15 cubic foot per second per acre. For the irrigation of **containerized nursery plants**, the amount of water diverted is limited to ONE-FORTIETH of one cubic foot per second (or its equivalent) and 5.0 acre feet per acre per year. For the irrigation of **in ground nursery plants** the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre feet per acre per year. The use of water for NURSERY OPERATIONS may be made at anytime, during the period of allowed use specified above, that the use is beneficial. For the irrigation of **any other crop**, the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre feet per acre during the irrigation season of each year.

Period of Use: YEAR ROUND

Source: THREE WELLS within the WILLAMETTE RIVER BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	2 W	WM	19	SW SW	WELL 1 - 1200 FEET NORTH AND 1250 FEET EAST FROM THE SW CORNER OF SECTION 19
3 S	2 W	WM	19	SW SW	WELL 2 - 850 FEET NORTH AND 520 FEET EAST FROM THE SW CORNER OF SECTION 19
3 S	2 W	WM	19	SE SW	WELL 3 - 500 FEET NORTH AND 1550 FEET EAST FROM THE SW CORNER OF SECTION 19

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
3 S	2 W	WM	19	SW SW	12.8
3 S	2 W	WM	19	SE SW	1.1
3 S	3 W	WM	24	SE SE	2.6
Total					16.5

Permit B: Lynette Pierce, Edward & Theresa Shepard, Bryan Joyce

Use: NURSERY OPERATIONS of 4.5 ACRES
Priority Date: OCTOBER 27, 1999
Quantity: 0.048 CUBIC FOOT PER SECOND (CFS)
Rate/Duty: The amount of water used for NURSERY OPERATIONS is limited to a diversion of 0.15 cubic foot per second per acre. For the irrigation of **containerized nursery plants**, the amount of water diverted is limited to ONE-FORTIETH of one cubic foot per second (or its equivalent) and 5.0 acre feet per acre per year. For the irrigation of **in ground nursery plants** the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre feet per acre per year. The use of water for NURSERY OPERATIONS may be made at anytime, during the period of allowed use specified above, that the use is beneficial. For the irrigation of **any other crop**, the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre feet per acre during the irrigation season of each year.
Period of Use: YEAR ROUND
Source: FOUR WELLS within the WILLAMETTE RIVER BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	2 W	WM	19	SW SW	WELL 1 - 1200 FEET NORTH AND 1250 FEET EAST FROM THE SW CORNER OF SECTION 19
3 S	2 W	WM	19	SW SW	WELL 2 - 850 FEET NORTH AND 520 FEET EAST FROM THE SW CORNER OF SECTION 19
3 S	2 W	WM	19	SW SW	WELL 4 - 900 FEET NORTH AND 1020 FEET EAST FROM THE SW CORNER OF SECTION 19
3 S	2 W	WM	19	SE SW	WELL 3 - 500 FEET NORTH AND 1550 FEET EAST FROM THE SW CORNER OF SECTION 19

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
3 S	2 W	WM	19	SW SW	2.5
3 S	2 W	WM	19	SE SW	2.0
Total					4.5

8. 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 January 10, 2017, pursuant to ORS 537.325(3)(e) and OAR 690-325-0080. No comments were filed in response to the notice. In addition on January 3, 2017, 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 located.

Split a Permit Review Criteria

9. The Department has verified the mailing address of each owner of the authorized place of use identified on the map contained in the application as follows:

Name and Address	Acres	Proportionate Rate	Twp	Rng	Sec	Q-Q	Tax Lot
Edith Pierce PO Box 92 Dundee, OR 97115	11.0	0.146	3 S	2 W	19	SW SW	1400,1401,1404, 1405,1500,1505
	0.2		3 S	2 W	19	SE SW	1505
	2.6		3 S	3 W	24	SE SE	1400,1404
Susan and Kuen Lee 25100 NE Hidden Meadows Rd Newberg, OR 97132	1.8	0.029	3 S	2 W	19	SW SW	2600
	0.9		3 S	2 W	19	SE SW	2600
Lynette Pierce 24095 NE Dayton Ave Newberg, OR 97132	1.0	0.011	3 S	2 W	19	SW SW	1402
Edward and Theresa Shepard 24315 NE Dayton Ave Newberg, OR 97132	2.0	0.021	3 S	2 W	19	SE SW	1504
Bryan Joyce PO Box 575 Newberg, OR 97132	1.5	0.016	3 S	2 W	19	SW SW	1403

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

- 10. The deeds supplied with the application, match the properties proposed for assignment. OAR 690-325-0070(1)(b).
- 11. The applicants 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).
- 12. The assignment and issuance of replacement permits, as outlined in Finding of Fact #7 above, will not result in injury to other water right holders. OAR 690-325-0070(1)(d).
- 13. The assignment and issuance of replacement permits, as outlined in Finding of Fact #7 above, will not result in enlargement of the permit. OAR 690-325-0070(1)(d).
- 14. The assignment and issuance of replacement permits does not alter any other terms of Permit # G-13980.

Conclusions of Law

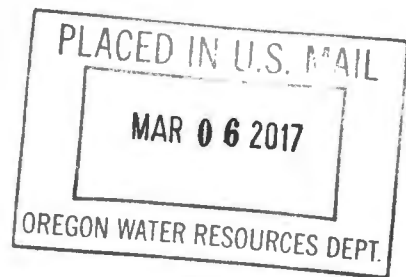
The assignment and issuance of replacement permits proposed by Application T-12524 are consistent with the requirements of ORS 537.225 and OAR Chapter 690, Division 325. If no protests are filed, an Order will be issued which will include the following:

Now, therefore, it is ORDERED:

1. *The assignment and issuance of replacement permits proposed by Application T-12524 are approved.*
2. *Permit G-13980, in the names of Edith Pierce, Lynette Pierce, Bryan Joyce, Susan and Kuen Lee, and Edward W. and Theresa E. Shepard, is cancelled. Permit X-XXXXX, in the names of Edith Pierce and Susan and Kuen Lee, and Permit X-XXXXX in the names of Lynette Pierce, Edward and Theresa Shepard and Bryan Joyce, are issued to supersede Permit G-13980.*
3. *All other terms and conditions under Permit G-13980 are incorporated into Permits X-XXXXX and X-XXXXX (new permits).*

Dated at Salem, Oregon this 28 day of February, 2017.


Dwight French, Water Right Services Administrator, for
THOMAS M. BYLER, DIRECTOR



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>