

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12785, Deschutes County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF
)	APPROPRIATION AND PARTIAL
)	CANCELLATION OF A WATER
)	RIGHT

Authority

Oregon Revised Statutes (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. Oregon Administrative Rules (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

NEILS TRUST
7220 FALCON CREST DR
REDMOND, OR 97756

Receiving landowner

GARY AND DEBORAH TRENT JOINT TRUST
7245 FALCON CREST DR
REDMOND, OR 97756

Findings of Fact

1. On December 11, 2017, NEILS TRUST filed an application to change the point of appropriation under Certificates 52185, 52191, and 60348. The Department assigned the application number T-12785.
2. Notice of the application for transfer was published on December 19, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On April 3, 2018, the Department contacted Neils Trust by written correspondence to notify the applicant and the applicant's agent of the deficiencies in the application. The Department requested that the deficiencies be resolved by May 3, 2018.
4. On April 9, 2018, the applicant's Agent requested to remove Certificate 52185 from T-12785, and provided a revised application and Table 2.

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.
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5. On April 12, 2018, the Department received a Revocable Living Trust Agreement, identifying Frank Neil Chase as the trustor and trustee.
6. On April 16, 2018, the applicant's agent submitted a revised map to correctly identify the acres being transferred to the additional point of appropriation.
7. On May 2, 2018, the applicant's agent submitted District Water Right Transfer Supplemental Form D, confirming consent to changes of the water right by Swalley Irrigation District.
8. On May 30, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12785 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 2, 2018, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
9. On June 15, 2018, the applicant's agent requested five years to complete full beneficial use of the water under T-12785.
10. On June 19, 2018, the applicant's agent revised the application. Gary and Deborah Trent Joint Trust is the receiving landowner who will be responsible for completion of the changes.
11. The portion of the first right to be transferred is as follows:

Certificate: 52191 in the name of FRANK N. and GEORGANN A. CHASE (perfected under Permit G-6284)

Use: IRRIGATION of 5.3 ACRES

Priority Date: DECEMBER 19, 1974

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, 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 3 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL within the DESCHUTES RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	12 E	WM	14	SW SE	150 FEET NORTH AND 1640 FEET WEST FROM THE SE CORNER OF SECTION 14

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	12 E	WM	14	SW SE	5.3

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

Certificate: 60348 in the name of FRANK N. CHASE (perfected under Permit G-10406)
Use: IRRIGATION of 0.5 ACRE AND SUPPLEMENTAL IRRIGATION of 5.3 ACRES
Priority Date: FEBRUARY 1, 1984
Rate: 0.07 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, 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year. The right shall be limited to any deficiency in the available supply of any prior right for the same land and shall not exceed the limitation allowed herein.
Source: A WELL within the DESCHUTES RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	12 E	WM	14	NW SE	1968 FEET NORTH AND 1497 FEET WEST FROM THE SE CORNER OF SECTION 14

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	12 E	WM	14	NW SE	0.2
15 S	12 E	WM	14	SW SE	0.3
Total					0.5

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	12 E	WM	14	SW SE	5.3

13. Transfer Application T-12785 proposes to move the authorized points of appropriation, approximately 750-1130 feet from the existing points of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from original well location measured in feet (ft.)	
						DESC 386	DESC 3588
15 S	12 E	WM	14	SW SE	1270 FEET NORTH AND 1780 FEET WEST FROM THE SE CORNER OF SECTION 14	1,129.4 ft.	753.3 ft.

Transfer Review Criteria (OAR 690-380-4010)

14. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
15. A pump, pipeline, and irrigation system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-12785.
16. The proposed change would not result in enlargement of the rights.
17. The proposed change would not result in injury to other water rights.
18. All other application requirements are met.

Partial Cancellation of a Water Right

19. On May 14, 2018, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Frank N. Chase. The right to be cancelled is as follows:

Certificate: 52191 in the name of FRANK N. and GEORGANN A. CHASE (perfected under Permit G-6284)
Use: IRRIGATION of 0.2 ACRE
Priority Date: DECEMBER 19, 1974
Rate: 0.002 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, 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 3 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL within the DESCHUTES RIVER BASIN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	12 E	WM	14	SW SE	150 FEET NORTH AND 1640 FEET WEST FROM THE SE CORNER OF SECTION 14

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	12 E	WM	14	SW SE	0.2

20. On May 14, 2018, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Frank N. Chase. The right to be cancelled is as follows:

Certificate: 60348 in the name of FRANK N. CHASE (perfected under Permit G-10406)

Use: IRRIGATION of 0.5 ACRE AND SUPPLEMENTAL IRRIGATION of 0.2 ACRE

Priority Date: FEBRUARY 1, 1984

Rate: 0.01 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, 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year. The right shall be limited to any deficiency in the available supply of any prior right for the same land and shall not exceed the limitation allowed herein.

Source: A WELL within the DESCHUTES RIVER BASIN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	12 E	WM	14	NW SE	1968 FEET NORTH AND 1497 FEET WEST FROM THE SE CORNER OF SECTION 14

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	12 E	WM	14	NW SE	0.2
15 S	12 E	WM	14	SW SE	0.3
Total					0.5

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	12 E	WM	14	SW SE	0.2

Determination and Proposed Action

The change in point of appropriation proposed in Transfer Application T-12785 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the abandoned rights should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned rights will be cancelled.

If Transfer Application T-12785 is approved, the final order will include the following:

1. *The change in point of appropriation proposed in Transfer Application T-12785 is approved. The portions of the rights that have been abandoned are cancelled.*
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 52191, 60348, and any related decree.*

3. *Water right Certificates 52191 and 60348 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer and cancellation.*
4. *The quantity of water diverted at the new point of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.*
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 each new point of appropriation.*
 - b. *The water user shall maintain the meters or measuring devices in good working order.*
 - c. *The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
7. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2023**. 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 change and full beneficial use of the water.*
9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this JUN 28, 2018.


Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

This Preliminary Determination was prepared by Corey Courchane. If you have questions about the information in this document, you may reach me at 503-986-0825 or corey.a.courchane@oregon.gov

Protests should be addressed to the attention of Water Rights Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members 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>