

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

In the Matter of Transfer Application)
T-10455, Union County)
)
) **SUPERSEDING FINAL ORDER
) APPROVING ADDITIONAL POINTS
) OF APPROPRIATION**

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.

Applicant

TERRA MAGIC, INC.
PO BOX 3093
LA GRANDE, OREGON 97850

Findings of Fact

Background

1. On September 5, 2007, Terra Magic, Inc., filed an application for additional points of appropriation under Certificate 34399. The Department assigned the application number T-10455.
2. On November 15, 2007, the applicant was notified of the deficiencies found in the application and map.
3. On December 18, 2007, a representative for the applicant resolved a portion of the issues.
4. On March 3, 2008, the application map was amended.
5. On April 1, 2008, a second amendment to the application map was made.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

6. The right to be transferred is as follows:

Certificate: 34399 in the names of Sylvan B. and Martha Joy Rasmussen (perfected under Permit G-2739)
Use: Irrigation of 400.1 acres and supplemental irrigation of 54.9 acres
Priority Date: August 12, 1964
Rate: 5.6 cubic feet per second (cfs)
Limit/Duty: 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.
Source: Well 1 in the Grande Ronde River Basin

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured distances
2 S	38 E	WM	3	SW SE	Well No. 1 (UNIO 325) - 10 feet North and 2460 feet West from the SE Corner of Section 3

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	38 E	WM	2	SW SW	40.0
2 S	38 E	WM	2	SE SW	39.1
2 S	38 E	WM	3	SW SW	40.0
2 S	38 E	WM	3	SE SW	39.5
2 S	38 E	WM	3	SW SE	1.6
2 S	38 E	WM	3	SE SE	38.5
2 S	38 E	WM	4	SE SE	12.3
2 S	38 E	WM	9	NE NE	12.4
2 S	38 E	WM	10	NE NE	39.1
2 S	38 E	WM	10	NW NE	36.2
2 S	38 E	WM	10	NE NW	23.2
2 S	38 E	WM	10	NW NW	39.1
2 S	38 E	WM	11	NW NW	39.1
Total					400.1

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	38 E	WM	3	SW SE	36.4
2 S	38 E	WM	3	SE SE	1.5
2 S	38 E	WM	10	NW NE	2.0
2 S	38 E	WM	10	NE NW	15.0
Total					54.9

7. Transfer Application T-10455 proposes an additional point of appropriation at Well No. 2. The applicant proposes to deepen and re-construct Well No. 2 so as to only develop water from the volcanic and volcanoclastic aquifer of the Powder River Volcanics. The location of Well No. 2 is:

Twp	Rng	Mer	Sec	Q-Q	Measured distances
2 S	38 E	WM	3	SW SE	Well No. 2 (UNIO 51475) - 79 feet North and 2548 feet West from the SE Corner of Section 3.

8. Transfer Application T-10455 proposes an additional point of appropriation at Well No. 3, to be constructed so as to only appropriate water from the volcanic and volcanoclastic aquifer of the Powder River Volcanics and which shall be located at:

Twp	Rng	Mer	Sec	Q-Q	Measured distances
2 S	38 E	WM	3	SW SE	Well No. 3 - 40 feet North and 2460 feet West from the SE Corner of Section 3.

9. Notice of the application for transfer was published on September 18, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
10. On April 11, 2008, the Department mailed the applicant and agent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10455. The draft Preliminary Determination set forth a deadline of May 7, 2008, for the applicant to respond. The authorized agent responded and submitted an amendment to the application and map and provided an ownership and lien report on May 19, 2008.
11. On June 24, 2008, the applicant's agent 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.
12. On September 4, 2008, the Department issued a Preliminary Determination proposing to approve Transfer T-10455 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on September 18, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
13. On November 3, 2008, the applicant's agent, Peter Mohr, submitted a written request to withdraw the Preliminary Determination issued September 4, 2008. New well construction has revealed geologic data that suggests the lower water bearing zone is not in Grande Ronde basalt, but is in Powder River Volcanics instead. The new data requires changes to the conditions of approval of Transfer Application T-10455.
14. On November 20, 2008, the Department withdrew the Preliminary Determination issued September 4, 2008. Notice of the withdrawal of this Preliminary Determination was published in the Department's weekly notice on November 25, 2008.

15. On January 21, 2009, the Department e-mailed the applicant's agent a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-10455. The applicant's agent requested the Department to proceed with issuance of the revised Preliminary Determination.
16. On April 10, 2009, the Department issued a preliminary determination proposing to approve Transfer T-10455 and mailed a copy to the applicant. Additionally, notice of the preliminary determination for the transfer application was published on the Department's weekly notice on April 14, 2009, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
17. On May 18, 2009, the Department issued a final order approving Transfer T-10455, recorded at Special Order Volume 77, Pages 769 to 774. The order contains an error in Finding of fact No. 21. Finding of Fact No. 21 erroneously contains a reference to Finding of Fact No. 17; the correct reference should be to Finding of Fact No. 19.
18. This superseding order is issued with the correct reference within Finding of Fact No. 23.

Transfer Review Criteria (OAR 690-380-4010)

19. There is not sufficient evidence that would demonstrate that the right is subject to forfeiture under ORS 540.610.
20. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-10455.
21. According to the well constructor, the proposed Well No. 3 is cased to a depth of 998 feet below land surface (bls). The casing is therefore set throughout the entirety of a clay unit which is 205 feet in thickness and is initially encountered at 786 feet bls and ends at 991 feet bls. The geologic unit immediately below the clay has been interpreted to be Powder River Volcanics. The original target aquifer, the Grande Ronde Basalt, would be another estimated one thousand or more feet below 991 feet bls.
22. The Department finds that developing water-bearing zones within the volcanic and volcanoclastic units of the Powder River Volcanics below the clay unit would meet the intent of developing the basalt aquifer stated in the Preliminary Determination of September 4, 2008.
23. The Department finds that the well construction described in Finding No. 21 would not allow commingling between the shallow alluvial and deep volcanic and volcanoclastic water-bearing zones.

24. Well No. 1 (UNIO 325) was constructed to a depth of 1061 feet deep. As a result the shallow alluvial aquifer and the deeper underlying volcanic and volcanoclastic aquifer of the Powder River Volcanics were commingled and (UNIO 325) did not meet well construction standards. There was an attempt to repair Well No. 1 in 2003 (UNIO 51447). This well is the authorized well for Certificate 34399.
25. Based on information available, the department finds that Well No. 1 (UNIO 325) developed 2.8 cubic feet per second (cfs) from the alluvial aquifer and 2.8 cfs from the deeper underlying volcanic and volcanoclastic aquifer.
26. Developing more water from the volcanic and volcanoclastic aquifer than what was available at the original well would be considered enlargement of Certificate 34399. Enlargement will not occur if Condition No. 5 below is met.
27. The issuance of a final order approving this transfer does **not** relieve the applicant from complying with the requirements for construction standards for all wells, as may be required by OAR Chapter 690, Division 200, Well Construction and Maintenance.
28. On May 15, 2008, the applicant requested a condition regarding the use of the authorized Well No. 1. The condition requires that Well No. 1 shall be dedicated as an “emergency use” or “back-up well” when the proposed well or wells become inoperable. The condition also requires that prior to withdrawing water from Well No. 1, the applicant shall notify the local Watermaster in writing.
29. The proposed changes, as conditioned, would not result in injury to other water rights.
30. The applicant requested that the completion deadline be extended until 2013.

Conclusions of Law

The additional points of appropriation proposed in Transfer Application T-10455 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The additional points of appropriation proposed in Transfer Application T-10455 are approved.
2. Water right certificate 34399 is cancelled.
3. 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 34399 and any related decree.

4. The proposed additional points of appropriation shall acquire water from only a single aquifer and therefore be limited to development of the volcanic and volcanoclastic aquifer of the Powder River Volcanics below the clay unit. The wells shall be cased and sealed to a minimum depth of 10.0 feet into the clay unit to ensure that water is developed only from underlying volcanic and volcanoclastic aquifer.
5. The quantity of water diverted from the proposed additional points of appropriation is limited to 2.8 cfs from the volcanic and volcanoclastic aquifer of the Powder River Volcanics. The quantity of water diverted from Well No. 1 shall not exceed a cumulative total of 2.8 cfs from the volcanic and volcanoclastic aquifer and 2.8 cfs from the alluvial aquifer, however, any withdrawal from Well No. 1 shall be for emergency use only should Well No. 2 or Well No. 3 become inoperable to the extent that the applicant is unable to withdraw ground water.
6. Prior to any groundwater withdrawal from Well No. 1, the applicant shall notify the local Watermaster in writing.
7. Well No. 1 shall not be used more than 30 days for emergency purposes only during the irrigation season of each year, absent obtaining further written approval from the Watermaster with such approval not to be unreasonably withheld based on considerations of hardship. Emergency use of Well No. 1 shall be implemented only when pump failure, power failure, well collapse, or other well failure occurs.
8. Prior to diverting water, the water user shall install an in-line totalizing flow meter or other suitable measuring device on each well for measuring and recording the quantity of water appropriated. The type and plans of the measuring devices must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain and operate the measuring devices as required by the Department.
9. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2013**. A Claim of Beneficial Use prepared by a Certified Water Rights 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.
10. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 15th day of June 2009.


Phillip C. Ward, Director *tw*

Mailing Date: JUN 22 2009