

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

In the Matter of Transfer Application)	FINAL ORDER
T-6947, Marion County)	APPROVING CHANGES IN POINTS
)	OF DIVERSION AND CHANGES IN
)	PLACES OF USE, PARTIAL
)	CANCELLATION OF A WATER
)	RIGHT, AND PARTIAL DIMINUTION
)	OF A WATER RIGHT

Authority

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, 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.

Applicant

KRAEMER FARMS
13318 DOMINIC RD NE
MOUNT ANGEL, OR 97362

Findings of Fact

Background

1. On April 6, 1993, KRAEMER FARMS filed an application to change the points of diversion and place of use under Certificates 42316 and 42318. The Department assigned the application number T-6947.
2. On February 10, 2012, Pacific Hydrogeology, Inc., agent on behalf of the applicant, amended Transfer Application T-6947 to include a change in place of use for Certificates 81537 and 87357.

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.

3. On February 24, 2012, Pacific Hydrogeology, Inc., agent on behalf of the applicant, amended Transfer Application T-6947 to include a change in point of diversion for the portion of Certificate 42316 not affected by the previously requested change in place of use.

4. The first right to be transferred is as follows:

Certificate: 42316 in the name of HAROLD KRAEMER (perfected under Permit S-30332)
Use: IRRIGATION OF 67.1 ACRES
Priority Date: APRIL 1, 1965
Rate: 0.84 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: ZOLLNER CREEK, tributary to the PUDDING RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 W	WM	3	NE NE	400 FEET SOUTH AND 780 FEET WEST FROM THE NE CORNER OF SECTION 3

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Change in place of use and point of diversion acres	Change in point of diversion only acres
6 S	1 W	WM	3	NE NE	12.6	14.5
6 S	1 W	WM	3	SE NE		40.0

5. Transfer Application T-6947 proposes to move the authorized point of diversion approximately 200 feet east to New POD 1 and 950 feet southeast to New POD 2, located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 W	WM	3	NE NE	NEW POD 1 - 400 FEET SOUTH AND 750 FEET WEST FROM THE NE CORNER OF SECTION 3
6 S	1 W	WM	3	NE NE	NEW POD 2 - 1020 FEET SOUTH AND 190 FEET WEST FROM THE NE CORNER OF SECTION 3

6. Transfer Application T-6947 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 W	WM	34	SE SW	5.2
6 S	1 W	WM	3	NW NE	7.4

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

Certificate: 81537 in the name of KRAEMER FARMS (perfected under Permit G-6669)

Use: SUPPLEMENTAL IRRIGATION OF 12.6 ACRES

Priority Date: SEPTEMBER 18, 1974

Rate: 0.16 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year, and shall be further limited to appropriation of water only to the extent that it does not impair or substantially interfere with existing surface rights of others.

Sources: KRAEMER WELL (ORIGINAL), RODY WELL, AND KRAEMER WELL NO. 2, all within the ZOLLNER CREEK BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 W	WM	3	NE NE	KRAEMER WELL (ORIGINAL) - 460 FEET SOUTH AND 940 FEET WEST FROM THE NE CORNER OF SECTION 3
6 S	1 W	WM	2	SW NW	RODY WELL - 1990 FEET SOUTH AND 90 FEET EAST FROM THE NW CORNER OF SECTION 2
6 S	1 W	WM	3	NW NE	KRAEMER WELL NO. 2 - 1200 FEET SOUTH AND 550 FEET EAST FROM THE N¼ CORNER OF SECTION 3

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 W	WM	3	NE NE	12.6

8. Transfer Application T-6947 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 W	WM	34	SE SW	5.2
6 S	1 W	WM	3	NW NE	7.4

9. The portion of the third right to be transferred is as follows:

Certificate: 42318 in the name of HAROLD KRAEMER (perfected under Permit S-33617)
Use: IRRIGATION OF 39.6 ACRES
Priority Date: MAY 23, 1968
Rate: 0.38 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: ZOLLNER CREEK, tributary to the PUDDING RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 W	WM	2	NW NW	1160 FEET SOUTH AND 810 FEET EAST FROM THE NW CORNER OF SECTION 2

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 W	WM	2	NE NW	7.0
6 S	1 W	WM	2	NW NW	27.2
6 S	1 W	WM	2	SW NW	3.4
6 S	1 W	WM	2	SE NW	2.0

10. Transfer Application T-6947 proposes to move the authorized point of diversion approximately 1600 feet northwest to New POD 1 and 900 feet northwest to New POD 2, located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 W	WM	3	NE NE	NEW POD 1 - 400 FEET SOUTH AND 750 FEET WEST FROM THE NE CORNER OF SECTION 3
6 S	1 W	WM	3	NE NE	NEW POD 2 - 1020 FEET SOUTH AND 190 FEET WEST FROM THE NE CORNER OF SECTION 3

11. Transfer Application T-6947 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 W	WM	3	NW NE	3.7
6 S	1 W	WM	3	NE NW	35.9

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

Certificate: 87357 in the name of KRAEMER FARMS (perfected under Permit S-53657)

Use: PRIMARY IRRIGATION OF 41.0 ACRES

Priority Date: APRIL 26, 1990

Rate: 0.118 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Period of Use: MARCH 1 THROUGH JUNE 30

Source: ZOLLNER CREEK, tributary to the PUDDING RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 W	WM	3	NE NE	POD 1 - 400 FEET SOUTH AND 750 FEET WEST FROM THE NE CORNER OF SECTION 3
6 S	1 W	WM	3	NE NE	POD 2 - 1020 FEET SOUTH AND 190 FEET WEST FROM THE NE CORNER OF SECTION 3

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 W	WM	3	NW NE	5.1
6 S	1 W	WM	3	NE NW	35.9

13. Transfer Application T-6947 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 W	WM	2	NE NW	7.0
6 S	1 W	WM	2	NW NW	21.2
6 S	1 W	WM	2	SW NW	2.4
6 S	1 W	WM	2	SE NW	2.0
6 S	1 W	WM	3	NE NE	8.4

14. Notice of the application for transfer was published on April 14, 1993, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

15. On September 17, 2012, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-6947 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 17, 2012, 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.

16. On November 16, 2012, the Department issued a Preliminary Determination proposing to approve Transfer Application T-6947 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on November 20, 2012, and in the Silverton-Appeal Tribune newspaper on November 28, December 5 and 12, 2012, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

Transfer Review Criteria [OAR 690-380-4010(2)]

- 17. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
- 18. A pump, pipeline, and sprinkler 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-6947.
- 19. The proposed changes would not result in enlargement of the rights.
- 20. The proposed changes would not result in injury to other water rights.

Partial Cancellation of a Water Right

1. On February 27, 2012, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Ray Stafford, agent for Kraemer Farms. The right to be cancelled is as follows:

Certificate: 87357 in the name of KRAEMER FARMS (perfected under Permit S-53657)

Use: IRRIGATION OF 6.0 ACRES

Priority Date: APRIL 26, 1990

Rate: 0.017 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Period of Use: MARCH 1 THROUGH JUNE 30

Source: ZOLLNER CREEK, tributary to the PUDDING RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 W	WM	3	NE NE	POD 1 - 400 FEET SOUTH AND 750 FEET WEST FROM THE NE CORNER OF SECTION 3
6 S	1 W	WM	3	NE NE	POD 2 - 1020 FEET SOUTH AND 190 FEET WEST FROM THE NE CORNER OF SECTION 3

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 W	WM	3	NW NE	6.0

Partial Diminution of a Water Right

1. On February 27, 2012, an affidavit requesting to diminish a water right from two wells was received from Ray Stafford, agent for Kraemer Farms. The right to be diminished is as follows:

Certificate: 81537 in the name of KRAEMER FARMS (perfected under Permit G-6669)

Use: SUPPLEMENTAL IRRIGATION OF 67.1 ACRES

Priority Date: SEPTEMBER 18, 1974

Rate: 0.84 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year, and shall be further limited to appropriation of water only to the extent that it does not impair or substantially interfere with existing surface rights of others.

Sources: NORB WELL AND ESCH WELL in the ZOLLNER CREEK BASIN

Authorized Points of Appropriation to be Diminished:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 W	WM	3	SW NW	NORB WELL - 1730 FEET SOUTH AND 270 FEET EAST FROM THE NW CORNER OF SECTION 3
6 S	1 W	WM	4	NE NE	ESCH WELL - 50 FEET SOUTH AND 340 FEET WEST FROM THE NE CORNER OF SECTION 4

Conclusions of Law

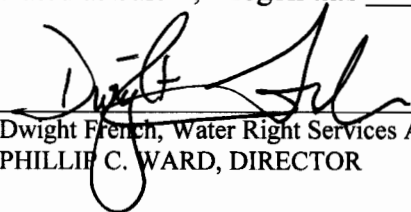
The changes in points of diversion and places of use proposed in Transfer Application T-6947 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000, the abandoned portion of a right is cancelled, and the right requested to be diminished is diminished.

Now, therefore, it is ORDERED:

1. The changes in points of diversion and places of use proposed in Transfer Application T-6947 are approved. The portion of the right described by Certificate 87357 that has been abandoned is cancelled. The right described by Certificate 81537 that has been requested to be diminished is diminished.

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 42316, 81537, 42318, 87357, and any related decree.
3. Water right certificates 42316, 81537, 42318, and 87357 are cancelled. A new certificate will be issued describing the portion of the right described by Certificate 87357 **not** affected by this transfer and cancellation. A new certificate will be issued to confirm the diminishment of the portion of the right described by Certificate 81537 **not** affected by the proposed change in place of use.
4. The quantity of water diverted at the new points of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.
5. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
6. The former place of use of the transferred rights shall no longer receive water under the rights.
7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2014**. 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, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 31 day of January 2013.


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

Mailing date: FEB 01 2013