

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

In the Matter of Transfer Application) FINAL ORDER
T-10417, Umatilla County) APPROVING A CHANGE IN PLACE
) OF USE AND POINT 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

TOM and JUDITH L. KENNEDY
71433 SW LAKE DRIVE
PENDLETON, OR 97801

Findings of Fact

Background

1. On June 27, 2007 Tom and Judith Kennedy filed an application to change the place of use and point of appropriation under a portion of Certificate 76524. The Department assigned the application number T-10417.
2. The portion of the right to be transferred is as follows:
Certificate: 76524 in the name of DAVID L. UMBARGER (perfected under Permit G-8964)
Use: IRRIGATION of 40.0 ACRES
Priority Date: MARCH 13, 1980
Rate: 0.50 CUBIC FOOT PER SECOND
Limit/Duty: ONE-EIGHTIETH of one cubic foot per second per acre, not to exceed 3.0 ACRE-FEET per acre irrigated during the irrigation season of each year
Source: A WELL within the PATAWA CREEK basin

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.

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
2 N	33 E	WM	32	SW SW	1320 FEET NORTH AND 1310 FEET EAST FROM SW CORNER OF SECTION 32.

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
2 N	33 E	WM	32	NW SE	40.0

3. Application T-10417 proposes to change the place of use of the above described lands under Certificate 76524 to:

Proposed Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
2 N	32 E	WM	35	NE SW	8.6
2 N	32 E	WM	35	NW SW	6.9
2 N	32 E	WM	35	SW SW	9.0
2 N	32 E	WM	35	SE SW	14.4
2 N	32 E	WM	35	SW SE	0.7
2 N	32 E	WM	35	SE SE	0.4
TOTAL:					40.0

4. Application T-10417 also proposes to change the point of appropriation for the new place of use described above approximately three miles due west to a new well located:

Proposed Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
2 N	32 E	WM	35	NW SW	1040 FEET SOUTH AND 1047 FEET EAST FROM THE W $\frac{1}{4}$ CORNER OF SECTION 35

5. Notice of the application for transfer was published on July 3, 2007 pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. On March 11, 2007 the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10417 to the applicant. The draft Preliminary Determination set forth a deadline of April 11, 2008 for the applicant to respond. On March 21, 2008 the applicant requested that the Department proceed with issuance of a Preliminary Determination.
7. On April 2, 2008 the Department issued a preliminary determination proposing to approve Transfer T-10417 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 8, 2008 and in *The Pendleton Record* newspaper on April 17, 24 and May 1, 2008 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)

8. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
9. The Department has determined that the proposed point of appropriation (UMAT 55751) located as described in Findings of Fact #4 above, will develop the same source of water as the authorized existing wells (UMAT 1060/1061).
10. A well, 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 Application T-10417.
11. The proposed changes will not result in enlargement of the right.
12. The proposed changes will not result in injury to other water rights.

Conclusions of Law

The changes in place of use and point of appropriation proposed in application T-10417 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 changes in place of use and point of appropriation proposed in application T-10417 are approved.
2. Water right certificate 76524 is cancelled. Certificate 84206 will be issued describing that portion of the right not affected by this transfer.
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 76524 and any related decree.
4. Water shall be acquired from the same aquifer (water source) as the original point of appropriation (UMAT 1060/1061).
5. The quantity of water diverted at the new point of appropriation (well) shall not exceed the quantity of water lawfully available at the original point of appropriation.
6. The former place of use of the transferred right shall no longer receive water under the right.
7. Prior to diverting water, the water user shall install an in-line flow meter or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the measuring device 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 device as required by the Department.

8. The approved changes shall be completed and full beneficial use of the water shall be made on or before October 1, 2009. 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 changes and full beneficial use of the water.
9. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 3rd day of June 2008.



Phillip C. Ward, Director

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Mailing Date: JUN 20 2008