

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

In the Matter of Transfer Application) **FINAL ORDER APPROVING A**
T-7996, Umatilla County) **CHANGE FROM A SURFACE WATER**
) **POINT OF DIVERSION TO A**
) **GROUNDWATER POINT OF**
) **APPROPRIATION**

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.

Applicant

Douglas G. and Lana D. Eszler
53856 Willow Lane
Milton-Freewater, OR 97862

Findings of Fact

1. On May 7, 1998, Jack E. Mason filed an application to change the point of diversion under Certificate 9182 to a hydraulically connected well under OAR 690-380-2130. The Department assigned the application number T-7996.
2. Transfer Application T-7996 was assigned to Douglas G. and Lana D. Eszler on June 2, 2003.
3. The portion of the right to be transferred is as follows:
Certificate: 9182 in the name of LOUIS HOWTON (perfected under Permit S-6345)
Use: IRRIGATION of 5.3 ACRES
Priority Date: JUNE 6, 1924
Rate/Duty: 0.07 CUBIC FOOT PER SECOND (cfs)
Source: WALLA WALLA RIVER, a tributary to the Columbia River

Authorized Point of Diversion:

Township	Range	Meridian	Sec	¼	¼	Survey Coordinates
5 N	35 E	WM	1	NE	NW	Not specified on Certificate

Authorized Place of Use:

Township	Range	Meridian	Sec	¼	¼	Acres
6 N	35 E	WM	36	SE	SW	5.3

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, you may either 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.

- Application T-7996 proposes to change the point of diversion to a hydraulically connected well located downstream approximately 1000 feet as follows:

Township	Range	Meridian	Sec	¼ ¼	Survey Coordinates
6 N	35 E	WM	36	SE SW	10 feet North and 780 feet West from the S¼ corner of Section 36

- Notice of the application for transfer was published on May 12, 1998, pursuant to ORS 540.520 and OAR 690-380-4000.
- Water has been used within the five years prior to filing of the application according to the terms and conditions of the right, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
- A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present.
- Department staff hydrogeologists concluded that the proposed well meets all the requirements of ORS 540.531, and estimated that pumping of the well will cause a greater than 50 percent stream depletion in less than 10 days, in accordance with OAR 690-380-2130(2)(c) and (11)(b).
- The proposed change would not result in enlargement of the right.
- The proposed change would not result in injury to other water rights.
- On July 31, 2006, the Department issued a Preliminary Determination proposing to approve Transfer Application T-7996 and mailed a copy of it to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on August 8, 2006, and in a local newspaper on December 17, 24 and 31, 2006, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the Department's weekly notice or to the newspaper notice.

Conclusions of Law

The change from a surface water point of diversion to a ground water point of appropriation proposed in Transfer Application T-7996 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

- The change from a surface water point of diversion to a ground water point of appropriation proposed in Transfer Application T-7996 is approved.
- 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 9182 and any related decree.

3. Water Right Certificate 9182 is cancelled. A new certificate will be issued describing that portion of the right NOT involved in this transfer.
4. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2008**. 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.
5. The well from which water is taken under the right shall be constructed so that the use of the well will affect the surface water source similarly to the use of the original authorized point of diversion.
6. The use of water under this right shall be subject to regulation consistent with other water rights from the surface water source and to all other applicable conditions and restrictions that existed at the original point of diversion.
7. If, within five years after approval of the transfer, the Department finds that the transfer results in substantial or undue interference with an existing ground water right due to use of the well, that would not have occurred in the absence of the transfer, the new point of appropriation shall be subordinate to the existing right injured by the transfer.
8. The original point of diversion of surface water shall not be retained as an additional or supplemental point of diversion under the transferred portion of the right. However, if within five years after approval of the transfer, the Department receives a transfer application to return to the last authorized surface water point of diversion, the application shall be approved.
9. The quantity of water diverted at the new point of diversion (shallow well) shall not exceed the quantity of water lawfully available at the original point of diversion.
10. When required by the Department, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
11. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 8th day of February, 2007.



PCW
Phillip C. Ward
Director

Mailing date: FEB 12 2007

