

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-10226, Marion County) CHANGE IN POINT OF DIVERSION

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

PAUL KRAEMER
PO BOX 930
MOUNT ANGEL OR 97362

Findings of Fact

1. On August 16, 2006, Paul Kraemer filed a transfer application to change the point of diversion under Certificate 50849. The Department assigned the application number T-10226.

2. The portion of the right to be transferred is as follows:
Certificate: 50849 in the name of MT ANGEL ABBEY (perfected under Permit S-40232)
Use: IRRIGATION of 117.2 ACRES
Priority Date: FEBRUARY 19, 1976
Rate: 1.47 CUBIC FEET PER SECOND
Limit/Duty: ONE-EIGHTIETH of one cfs per acre, not to exceed 2.5 acre-feet per acre irrigated during the irrigation season of each year
Source: ABIQUA CREEK, tributary to PUDDING RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
6 S	1 W	WM	24	SW NW	800 FEET NORTH and 700 FEET EAST from the W¼ CORNER, SECTION 24

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.

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	1 W	WM	13	SW SW	50	2.8
6 S	1 W	WM	13	SE SW	50	21.6
6 S	1 W	WM	13	SW SE	50	5.6
6 S	1 W	WM	24	NW NE	50	4.0
6 S	1 W	WM	24	NE NW	50	38.0
6 S	1 W	WM	24	NW NW	50	20.0
6 S	1 W	WM	24	SW NW	50	7.6
6 S	1 W	WM	24	SE NW	50	17.6

3. Application T-10226 proposes to move the authorized point of diversion approximately 1,000 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	1 W	WM	24	SE NW	50	70 FEET NORTH and 1390 FEET EAST from the W ¼ CORNER, SECTION 24

4. Notice of the application for transfer was published on August 22, 2006 pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice. However, the Oregon Department of Fish and Wildlife did request inclusion of a condition requiring installation of proper fish screens.
5. On December 22, 2006, the Department issued a preliminary determination proposing to approve Transfer T-10226 and mailed a copy to the applicants. Additionally, notice of the preliminary determination for the transfer application was published on the Department's weekly notice on February 2, 2006, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
6. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion is eligible for screening cost share funds. However, funds may not be currently available. If cost share funds do not become available, the water user must screen prior to diversion of water regardless of cost share funding availability.
7. Water has been used within the last five years according to the terms and conditions of the rights, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
8. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.

9. The proposed change would not result in enlargement of the right.
10. The proposed change would not result in injury to other water rights.

Conclusions of Law

The proposed change in point of diversion in application T-10226 is consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in point of diversion proposed in application T-10226 is approved.
2. Certificate 50849 is cancelled. A new certificate will be issued describing that portion of the right not involved in 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 50849 and any related decree.
4. The approved changes 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 quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.
6. Prior to diverting water, 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.
7. Prior to diversion of water, the water user shall install a fish screening or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.

8. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 12th day of February, 2007.


Phillip C. Ward, Director *FW*

Mailing date: FEB 15 2007