

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

In the Matter of Transfer Application)
T-9571, Deschutes County)

FINAL ORDER
APPROVING A CHANGE IN POINT OF
APPROPRIATION AND PLACE OF USE

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

WELDON WANKIER
67405 HARRINGTON LOOP ROAD
BEND OR 97701

Findings of Fact

1. On 29 September 2003, Weldon Wankier filed an application to transfer the place of use under Certificates 74142, 74143, and the inchoate right from T-5591. The Department assigned the application number T-9571.
2. On 18 February 2005, Certificate 81220 was issued to confirm changes made in T-5591.
3. On 16 March 2005, the application was amended to include a change in point of appropriation for a portion of one right (Certificate 74142).
4. On 2 June 2005, the application and map were amended to make the proposed transfer reflect changes to specific water rights rather than to pooled rights.
5. On 1 August 2005, the application and map were amended to reflect more accurately the rights of record.

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.

6. The portion of the first right to be modified is as follows:

Certificate: 74142 in the name of Larry K. & Barbara J. Sharpf (Permit G-7092)

Use: SUPPLEMENTAL IRRIGATION of 2.5 ACRES

Priority Date: DECEMBER 26, 1976

Rate: 0.03 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3 acre-feet per acre per year

Source: A WELL in the SQUAW CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	10 E	WM	26	NE SE	2750 FEET SOUTH & 1310 FEET WEST FROM NE CORNER, SECTION 26

7. Application T-9571 and the accompanying affidavit propose to cancel the right to use up to 0.03 cfs for the following place of use:

Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	26	NW NE	2.5

8. The portion of the first right to be transferred is as follows:

Certificate: 74142 in the name of Larry K. and Barbara J. Sharpf (perfected under Permit G-7092)

Use: SUPPLEMENTAL IRRIGATION of 34.9 ACRES

Priority Date: DECEMBER 26, 1976

Rate: 0.44 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3 acre-feet per acre per year

Source: A WELL in the SQUAW CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	10 E	WM	26	NE SE	2750 FEET SOUTH & 1310 FEET WEST FROM NE CORNER, SECTION 26

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	26	NW NE	20.6
15 S	10 E	WM	26	SW NE	10.0
15 S	10 E	WM	26	NE NW	2.1
15 S	10 E	WM	26	NW SE	2.2

9. Application T-9571 proposes to move the authorized point of appropriation for the right to use up to 0.14 cfs approximately 1000 feet eastward to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	10 E	WM	26	NE SE	30 FEET SOUTH AND 400 FEET WEST OF E 1/4 CORNER, SECTION 26

10. Application T-9571 proposes to change the place of use of the right to use up to 0.14 cfs described in Finding of Fact #8 to:

Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	26	SE NE	5.4
15 S	10 E	WM	26	NE SE	5.9

11. Application T-9571 proposes to change the place of use of the right to use up to the balance of the right (0.30 cfs) to:

Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	26	NW NE	5.5
15 S	10 E	WM	26	SW NE	10.0
15 S	10 E	WM	26	NE NW	6.0
15 S	10 E	WM	26	SE NW	2.1

12. On 29 December 1997, an order was issued (Special Order v. 51, p. 1408) diminishing to supplemental use 7.0 acres of the primary rights described by Certificate 65925, the parent right of Certificate 74143. The diminishment was not reflected in Certificate 74143, and is being incorporated here as part of the changes proposed in T-9571. The acreage diminished is as follows:

Primary Diminished to Supplemental					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	26	NW NE	2.1
15 S	10 E	WM	26	SW NE	0.4
15 S	10 E	WM	26	SE NW	3.5

13. Thus, the portion of the second right to be transferred is as follows:

Certificate: 74143 in the name of Larry K. and Barbara J. Sharpf (perfected under Permit G-7092)

Use: IRRIGATION of 2 ACRES

Priority Date: DECEMBER 26, 1976

Rate: 0.017 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3 acre-feet per acre per year

Source: A WELL in the SQUAW CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	10 E	WM	26	NE SE	2750 FEET SOUTH & 1310 FEET WEST FROM NE CORNER, SECTION 26

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	26	SE NW	2.0

14. Application T-9571 proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	26	NW SE	1.3

15. The applicant filed an affidavit to diminish the remaining 0.7 acre to supplemental use, and transfer it to a like primary as described in Finding of Fact #16.

16. The portion of the third right to be transferred is as follows (per Finding of Fact #12):

Certificate: 74143 in the name of LARRY K SHARPF (perfected under Permit G-7092)

Use: SUPPLEMENTAL IRRIGATION of 6.3 ACRES

Priority Date: DECEMBER 26, 1976

Rate: 0.077 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3 acre-feet per acre per year

Source: A WELL in the SQUAW CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	10 E	WM	26	NE SE	2750 FEET SOUTH & 1310 FEET WEST FROM NE CORNER, SECTION 26

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	26	NW NE	2.1
15 S	10 E	WM	26	SE NW	4.2

17. Application T-9571 proposes to change the place of use to:

Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	26	NE SE	6.3

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

Certificate: 81220 in the name of Weldon Wankier (confirmed by Squaw Creek decree)

Use: IRRIGATION of 4.7 ACRES

Priority Date: NOVEMBER 1904

Rate: 0.094 CUBIC FEET PER SECOND

Limit: ONE-FIFTIETH cfs per acre

Source: SQUAW CREEK, tributary to DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	10 E	WM	28	SW SE	710 FEET NORTH & 2640 FEET WEST FROM SE CORNER, SECTION 28

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	26	NE NW	2.6
15 S	10 E	WM	26	SE NW	2.1

19. Application T-9571 proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	26	NW SE	4.7

20. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
21. 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.
22. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right is present.
23. The proposed change would not result in enlargement of the right.
24. The proposed change would not result in injury to other water rights.
25. No comments were received in response to notice of the Preliminary Determination.

Conclusions of Law

The changes in point of appropriation and place of use proposed in application T-9571 appear to be consistent with the requirements of ORS 537.705, 540.505 to 540.580, and OAR 690-380-5000, and will be approved provided that protests are not filed pursuant to OAR 690-380-4030.

Now, therefore, it is ORDERED:


The changes proposed in T-9571 are approved; subsequent use of water shall be subject to the following conditions:

1. The right to 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 74142, 74143, 81220 and any related decree.
2. Water at the new point of appropriation shall be acquired from the same aquifer (water source) as the original point of appropriation, namely the volcanic aquifer, NOT the shallow alluvial aquifer.
3. The proposed change shall be completed on or before October 1, 2006.
4. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department by October 1, 2007.
5. The quantity of water diverted at the new point of appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.

6. The former place of use of the transferred water shall no longer receive water as part of these rights.
7. When required by the Department, the water user shall install and maintain an in-line flow meter or other suitable device for measuring and recording the quantity of water appropriated. 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.
8. The rights proposed for cancellation under Certificate 74142 are cancelled, and those proposed for diminishment under Certificate 74143 are diminished to supplemental use.
9. Certificates 74142, 74143, and 81220 are cancelled; Certificates 81475, 81476, and 81477 shall be issued respectively to describe the remaining rights unaffected by T-9571.
10. The receiving landowner responsible for completion of the new point of appropriation for 11.3 acres shall be:

Doug & Barbara Burke
16829 Greenbrier Road
Lake Oswego OR 97034

Dated at Salem, Oregon this 21st day of September 2005.


For Phillip C. Ward, Director

Mailing date: SEP 22 2005