BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application T-10813, Klamath County)	FINAL ORDER APPROVING AN ADDITIONAL 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

DAVID ROGERS 26366 GAP RD. BROWNSVILLE, OR 97327-9720

Findings of Fact

Background

1. On March 12, 2009, David Rogers filed an application for an additional point of appropriation under Certificate 42656. The Department assigned the application number T-10813.

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

Certificate: 42656 in the name of the E

42656 in the name of the Estate of Marshall W. Poole, Dorothea M. Poole, and Robert

Moisio (perfected under Permit G-3796)

Use:

Irrigation of 15.8 acres and supplemental irrigation of 23.7 acres

Priority Date:

August 22, 1967

Rate:

0.49 cubic foot per second

Limit/Duty:

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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year; provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same lands and shall not exceed the limitation

allowed herein

Source:

A well within the Sprague River Basin

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec Q-Q Measured Distances		
34 S	8 E	WM	28	B SE SE 90 FEET NORTH AND 950 FEET WEST THE SE CORNER OF SECTION 28	

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 Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	
34 S	8 E	WM	27	NE SW	0.3	
34 S	8 E	WM	27	SE SW	3.5	
34 S	8 E	WM	27	SW SE	12.0	

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	
34 S	8 E	WM	27	SW SE	8.7	
34 S	8 E	WM	34	NW NE	10.2	
34 S	8 E	WM	34	NE NW	4.8	

3. Transfer Application T-10813 proposes an additional point of appropriation (KLAM 1064 / KLAM 53639) located approximately 1.2 miles from the existing point of appropriation (KLAM 1055 / KLAM 1056) at the following location:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	
34 S	8 E	WM	34	SE NE	1550 FEET SOUTH AND 4870 FEET EAST FROM SW CORNER, SECTION 27	

- 4. Notice of the application was published on March 24, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 5. On August 4, 2009, the Department mailed the draft Preliminary Determination approving Transfer Application T-10813 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 3, 2009 for the applicant to respond. The applicant requested that the Department proceed with the issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
- 6. On September 14, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10813 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 September 22, 2009, and in the Herald and News newspaper on October 2, 9, and 16, 2009, 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)

- 7. Water has been used 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.
- 8. A pump and ditch delivery 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 Transfer Application T-10813.
- 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 additional point of appropriation proposed in Transfer Application T-10813 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:

- 1. The additional point of appropriation proposed in application T-10813 is approved.
- 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 Certificate 42656 and any related decree.
- 3. Water right certificate 42656 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
- 4. The quantity of water diverted at the additional 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.
- 5. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
- 6. Water use measurement conditions:
 - a. Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at the new point of appropriation.
 - b. The water user shall maintain the meter or measuring device in good working order.
 - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.
- 7. The approved change shall be completed and full beneficial use of the water shall be made on or before October 1, 2011. 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 change and full beneficial use of the water.
- 8. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Ore	egon this / day of November	_ 2009.
Phillip C. Ward, Dir		
Mailing Date:	DEC 1 1 2009	