

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-10439, Lane County)	CHANGE FROM A SURFACE WATER
)	POINT OF DIVERSION TO A
)	GROUNDWATER POINT OF
)	APPROPRIATION AND CHANGE IN
)	PLACE OF USE

Authority

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

RICHARD HUNSAKER
PO BOX 444
WALTERVILLE OR 97489

Findings of Fact

Background

1. On August 3, 2007, RICHARD HUNSAKER filed an application to change from a surface water point of diversion to a groundwater point of appropriation and to change the place of use under Certificate 28874. The Department assigned the application number T-10439.
2. On August 31, 2007, a Department hydrogeologist determined that the proposed well location would not yield the required hydraulic connection to the stream.
3. On February 29, 2009, the Department received a letter from the applicant requesting the Department not to deny the transfer, but to consider a new hydrogeologist report with revised information on well location.
4. On March 23, 2009, a letter was sent to the applicant requesting that the transfer application and map be revised to propose a specific location for the new point of appropriation as well as a hydrogeologist analysis addressing the revised point of appropriation.

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.

- On August 20, 2009, a new map with approved well location and documents showing hydraulic connection were received.
- The portion of the right to be transferred is as follows:

Certificate: 28874 in the name of JOHN E. HAMER (confirmed by Permit 23994)
Use: IRRIGATION of 10 ACRES
Priority Date: DECEMBER 6, 1955
Rate: 0.04 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: MCKENZIE RIVER, tributary to the WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	2 W	WM	26	SE NW	UNAVAILABLE

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
17 S	2 W	WM	26	NE NW	68	7.0
17 S	2 W	WM	26	NW NW	68	3.0

- Transfer Application T-10439 proposes to change the surface water point of diversion to a point of appropriation approximately 4 miles upstream from the existing point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	1 W	WM	29	SE SE	WELL 1 - 1100 FEET EAST AND 925 FEET NORTH OF SOUTHWEST CORNER OF SECTION 29.

- Transfer Application T-10439 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	1 W	WM	29	NW SW	6.4
17 S	1 W	WM	29	SW SW	3.6

- Notice of the application for transfer was published on August 14, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

10. On August 27, 2009, the Department mailed a copy of the Draft Preliminary Determination proposing to approve Transfer Application T-10439 to the applicants. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
11. On September 29, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-1043910439 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 October 6, 2009, and in the Eugene Register-Guard newspaper on October 10, 17 and 24, 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(2)]

12. 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.
13. A 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 Transfer Application T-10439.
14. Modeling with the best available information and use of the Jenkins model suggests the proposed well will meet the requirements of ORS 540.531. Pumping of the well will likely cause at least a 50 percent stream depletion within 10 days, in accordance with OAR 690-380-2130(2)(c) and (11)(b).
15. The proposed changes would not result in enlargement of the right.
16. The proposed changes would not result in injury to other water rights.

Conclusions of Law

The change from a surface water point of diversion to a groundwater point of appropriation and change in place of use proposed in Transfer Application T-10439 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-2130 and 690-380-5000.

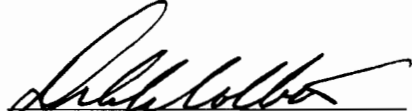
Now, therefore, it is ORDERED:

1. The change from a surface water point of diversion to a groundwater point of appropriation and change in place of use proposed in application T-10439 are approved.

2. Water right certificate 28874 is cancelled. A new certificate 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 28874 and any related decree.
4. The quantity of water diverted at the point of appropriation shall not exceed the quantity of water lawfully available at the original point of diversion.
5. The Director may require the water user to install a totalizing flow meter or other suitable measuring device at the point of appropriation. If the Director notifies the water user to install totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.
6. The former place of use of the transferred portion of the right shall no longer receive water under the right.
7. 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.
8. 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.
9. 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.
10. 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.
11. The approved changes 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 changes and full beneficial use of the water.

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

Dated at Salem, Oregon this 24th day of November 2009.


Phillip C. Ward, Director *pc*

Mailing date: DEC 11 2009