

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

In the Matter of Transfer Application)
T-10238, Marion County)
)
)
)
)

FINAL ORDER
APPROVING A CHANGE IN POINTS
OF APPROPRIATION AND 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

FRED AND ELIZABETH MUELLER
6576 55TH AVENUE NE
SALEM OR 97305

Findings of Fact

Background

1. On September 11, 2006, Fred and Elizabeth Mueller filed an application to change the points of appropriation under Certificates 24171 and 28240. The Department assigned the application number T-10238.
2. Pan American Berry Growers LLC, 6586 55th Avenue NE, Salem, Oregon 97305, has been designated as a receiving landowner.
3. On September 2, 2009, the applicant sent revised pages of the application with corrected well location descriptions.
4. On October 7, 2009, the applicant submitted a letter from Pan American Berry Growers requesting an additional point of appropriation for the remaining portion of Certificate 28240.

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.

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

Certificate: 24171 in the name of HERMAN C. WACKEN (perfected under Permit G-55)
Use: IRRIGATION OF 4.8 ACRES
Priority Date: SEPTEMBER 30, 1955
Rate: 0.06 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, shall be limited to ONE-EIGHTIETH of one cubic foot per second 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: A WELL within the LITTLE PUDDING RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q
6 S	2 W	WM	33	NW NW

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	2 W	WM	33	NW NW	4.8

6. The applicant has submitted information that better describes the authorized point of appropriation for the right described by Certificate 24171 as:

Twp	Rng	Mer	Sec	Q-Q	Measured distances
6 S	2 W	WM	33	NW NW	WELL 1 - 387 FEET SOUTH AND 615 FEET EAST FROM THE SOUTHEAST CORNER OF SECTION 29

7. Transfer Application T-10238 proposes to change the authorized point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured distances
6 S	2 W	WM	28	NW SW	WELL 1 - 1650 FEET NORTH AND 1250 FEET EAST FROM THE SOUTHWEST CORNER OF SECTION 28
6 S	2 W	WM	28	NW SW	WELL 2 - 2157 FEET NORTH AND 1245 FEET EAST FROM THE SOUTHWEST CORNER OF SECTION 28

8. The second right to be transferred is as follows:

Certificate: 28240 in the name of ALAN J. VAN CLEAVE (perfected under Permit G-163)
Use: IRRIGATION OF 147.7 ACRES
Priority Date: MARCH 9, 1956
Rate: 1.11 CUBIC FEET 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, shall be 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL within the LITTLE PUDDING RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured distances
6 S	2 W	WM	28	NW SW	WELL 1 - 1650 FEET NORTH AND 1250 FEET EAST FROM THE SOUTHWEST CORNER OF SECTION 28

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Change in Point of Appropriation Acres	Additional Point of Appropriation Acres
6 S	2 W	WM	28	SE NW		19.2
6 S	2 W	WM	28	NE SW		39.7
6 S	2 W	WM	28	NW SW		10.4
6 S	2 W	WM	28	SW SW	3.0	35.4
6 S	2 W	WM	28	SE SW		40.0

9. Transfer Application T-10238 proposes to change the authorized point of appropriation for 3.0 acres for the right described by Certificate 28240 to:

Twp	Rng	Mer	Sec	Q-Q	Measured distances
6 S	2 W	WM	33	NW NW	WELL 1 - 387 FEET SOUTH AND 615 FEET EAST FROM THE SOUTHEAST CORNER OF SECTION 29

10. Transfer Application T-10238 also proposes an additional point of appropriation for 144.7 acres under the right described by Certificate 28240. The proposed additional point of appropriation is located:

Twp	Rng	Mer	Sec	Q-Q	Measured distances
6 S	2 W	WM	28	NW SW	WELL 2 - 2157 FEET NORTH AND 1245 FEET EAST FROM THE SOUTHWEST CORNER OF SECTION 28

11. Notice of the application for transfer was published on October 17, 2006, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

12. On October 14, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10238 to the applicants. The cover letter for the draft Preliminary Determination set forth a deadline of November 13, 2009, for the applicants to respond. 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.
13. On November 24, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10238 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 December 1, 2009, and in the Woodburn Independent newspaper on December 16, 23, and 30, 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)

14. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
15. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights was present within the five-year period prior to submittal of Transfer Application T-10238.
16. The proposed changes would not result in enlargement of the rights.
17. The proposed changes would not result in injury to other water rights.

Conclusions of Law

The change in point of appropriation and additional point of appropriation proposed in Transfer Application T-10238 are 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 change in points of appropriation and additional point of appropriation proposed in Transfer Application T-10238 are 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 Certificates 24171 and 28240 and any related decree.
3. Water right certificates 24171 and 28240 are cancelled. A new certificate will be issued to describe that portion of the right described by Certificate 24171 not affected by this transfer.

4. The quantity of water diverted at the new points of appropriation for the right described by Certificate 24171, shall not exceed the quantity of water lawfully available at the original point of appropriation under the right described by Certificate 24171.
5. The quantity of water diverted at the proposed additional point of appropriation (Well 2), together with that diverted at the original point of diversion (Well 1), shall not exceed the quantity of water lawfully available at the original point of appropriation under the right described by Certificate 28240.
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 each point of appropriation.
 - b. The water user shall maintain the meters or measuring devices in good working order.
 - c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.
7. Water shall be acquired from the same aquifer (water source) as the original points of appropriation.
8. 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.
9. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 5th day of FEBRUARY 2010.


for Phillip C. Ward, Director

Mailing Date: FEB 1 0 2010