

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

In the Matter of Transfer Application T-8876, Malheur County))	FINAL ORDER APPROVING CHANGE IN PLACE OF USE AND POINTS OF APPROPRIATION
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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

THOMAS E. HOPPER
 5399 JOHN DAY HWY
 JAMIESON, OREGON 97909

Findings of Fact

1. Thomas E. Hopper filed an application to transfer the point of appropriation and place of use under Certificates 58992 and 58993. The Department assigned the application number T-8876.

2. The FIRST right to be modified, as evidenced by Certificate 58992, was perfected under Permit G-8306 with a date of priority of SEPTEMBER 25, 1978. The right allows the use of WELL No. 1, in the WILLOW CREEK BASIN, for IRRIGATION OF 288.4 ACRES. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 1.34 cubic feet per second, if available at the original well: LOT 1, NE¼ NE¼, SECTION 6, T 16 S, R 43 E, W.M.; WELL No. 1 - 250 FEET SOUTH AND 760 FEET WEST FROM THE NE CORNER, SECTION 6.

3. The SECOND right to be modified, as evidenced by Certificate 58993, was perfected under Permit G-9013 with a date of priority of NOVEMBER 13, 1979. The right allows the use of WELLS No. 2 AND No. 3, in the WILLOW CREEK BASIN, for SUPPLEMENTAL IRRIGATION OF 288.4 ACRES. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 2.26 cubic feet per second, or its equivalent in case of rotation measured at the wells: NE¼ NW¼, SECTION

This is a final order in other than 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 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

31, T 15 S, R 43 E, W.M.; SE $\frac{1}{4}$ NE $\frac{1}{4}$, SECTION 6, T 16 S, R 43 E, W.M.; WELL No.2 - 4440 FEET NORTH AND 3150 FEET WEST; WELL No. 3 - 1920 FEET SOUTH AND 500 FEET WEST BOTH FROM THE NE CORNER SECTION 6.

4. The authorized place of use for primary irrigation Certificate 58992 and supplemental irrigation Certificate 58993 is as follows:

(Lot 4) SW $\frac{1}{4}$ SW $\frac{1}{4}$ 4.5 ACRES

SE $\frac{1}{4}$ SW $\frac{1}{4}$ 16.5 ACRES

NE $\frac{1}{4}$ SE $\frac{1}{4}$ 3.6 ACRES

NW $\frac{1}{4}$ SE $\frac{1}{4}$ 7.0 ACRES

SW $\frac{1}{4}$ SE $\frac{1}{4}$ 26.8 ACRES

SE $\frac{1}{4}$ SE $\frac{1}{4}$ 7.0 ACRES

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SW $\frac{1}{4}$ NW $\frac{1}{4}$ 24.2 ACRES

SE $\frac{1}{4}$ NW $\frac{1}{4}$ 2.8 ACRES

NE $\frac{1}{4}$ SW $\frac{1}{4}$ 8.8 ACRES

NW $\frac{1}{4}$ SW $\frac{1}{4}$ 22.1 ACRES

SECTION 5

(LOT 1) NE $\frac{1}{4}$ NE $\frac{1}{4}$ 19.6 ACRES

(LOT 2) NW $\frac{1}{4}$ NE $\frac{1}{4}$ 40.0 ACRES

SW $\frac{1}{4}$ NE $\frac{1}{4}$ 32.1 ACRES

SE $\frac{1}{4}$ NE $\frac{1}{4}$ 23.7 ACRES

(LOT 3) NE $\frac{1}{4}$ NW $\frac{1}{4}$ 30.6 ACRES

SE $\frac{1}{4}$ NW $\frac{1}{4}$ 14.4 ACRES

NE $\frac{1}{4}$ SE $\frac{1}{4}$ 4.7 ACRES

SECTION 6

TOWNSHIP 16 SOUTH, RANGE 43 EAST, W.M.

5. The applicant proposes to change the place of use and points of appropriation to:

THOMAS HOPPER PROPERTY TABLE I			
PROPOSED WELLS LOCATIONS: Well #1: (LOT 1), NE¼ NE¼, SECTION 6, T 16 S, R 43 E, W.M.; 250 FEET SOUTH AND 760 FEET WEST FROM THE NE CORNER, SECTION 6.			
Well #2: NE¼ NW¼, SECTION 31, T 15 S, R 43 E, W.M.; 4440 FEET NORTH AND 3150 FEET WEST FROM THE NE CORNER SECTION 6			
Rate from both wells: 1.59 Cubic foot per second (CFS) being 0.59 CFS 9/25/1978 and 1.0 CFS 11/13/1979 dates of priority			
¼ ¼	ACRES	CERTIFICATE 58992	CERTIFICATE 58993
SW¼ NE¼	11.9	ADD WELL 2	CHANGE TO WELL 1,2
SE¼ NW¼	12.7	ADD WELL 2	CHANGE TO WELL 1,2
NE¼ SW¼	1.5	ADD WELL 2	CHANGE TO WELL 1,2
SW¼ SW¼	4.5	ADD WELL 2	CHANGE TO WELL 1,2
(Lot 4) SE¼ SW¼	9.1	ADD WELL 2	CHANGE TO WELL 1,2
NE¼ SE¼	3.7	ADD WELL 2	CHANGE TO WELL 1,2
NW¼ SE¼	24.3	ADD WELL 2	CHANGE TO WELL 1,2
SW¼ SE¼	18.2	ADD WELL 2	CHANGE TO WELL 1,2
SE¼ SE¼	11.0	ADD WELL 2	CHANGE TO WELL 1,2
SECTION 31			
TOWNSHIP 15 SOUTH, RANGE 43 EAST, W.M.			
(Lot 1) NE¼ NE¼	15.6	ADD WELL 2	CHANGE TO WELL 1,2
(Lot 2) NW¼ NE¼	14.9	ADD WELL 2	CHANGE TO WELL 1,2
Total:	127.4	Acres	
SECTION 6			
TOWNSHIP 16 SOUTH, RANGE 43 EAST, W.M.			

RAINWATER PROPERTY TABLE II			
PROPOSED WELLS LOCATIONS: Well #3: SE $\frac{1}{4}$ NE $\frac{1}{4}$, SECTION 6, T 16 S, R 43 E, W.M.; 1920 FEET SOUTH AND 500 FEET WEST FROM THE NE CORNER, SECTION 6.			
Well #4: SW $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 5, T 16 S, R 43 E, W.M.; 1475 FEET SOUTH AND 190 FEET EAST FROM THE NE CORNER SECTION 6			
Rate for Both Wells: 2.01 CFS being 0.75 CFS 9/25/1978 and 1.26 CFS 11/13/1979 dates of priority			
$\frac{1}{4}$ $\frac{1}{4}$	ACRES	CERTIFICATE 58992	CERTIFICATE 58993
SW $\frac{1}{4}$ NW $\frac{1}{4}$	24.2	CHANGE TO WELL 3, 4	CHANGE TO WELL 3, 4
SE $\frac{1}{4}$ NW $\frac{1}{4}$	2.8	CHANGE TO WELL 3, 4	CHANGE TO WELL 3, 4
NE $\frac{1}{4}$ SW $\frac{1}{4}$	8.8	CHANGE TO WELL 3, 4	CHANGE TO WELL 3, 4
NW $\frac{1}{4}$ SW $\frac{1}{4}$	22.1	CHANGE TO WELL 3, 4	CHANGE TO WELL 3, 4
SECTION 5			
(Lot 1) NE $\frac{1}{4}$ NE $\frac{1}{4}$	0.4	CHANGE TO WELL 3,4	CHANGE TO WELL 3,4
(Lot 2) NW $\frac{1}{4}$ NE $\frac{1}{4}$	8.4	CHANGE TO WELL 3,4	CHANGE TO WELL 3,4
SW $\frac{1}{4}$ NE $\frac{1}{4}$	29.0	CHANGE TO WELL 3,4	CHANGE TO WELL 3,4
SE $\frac{1}{4}$ NE $\frac{1}{4}$	35.0	CHANGE TO WELL 3,4	CHANGE TO WELL 3,4
(Lot 3) NE $\frac{1}{4}$ NW $\frac{1}{4}$	20.2	CHANGE TO WELL 3,4	CHANGE TO WELL 3,4
SE $\frac{1}{4}$ NW $\frac{1}{4}$	5.4	CHANGE TO WELL 3,4	CHANGE TO WELL 3,4
NE $\frac{1}{4}$ SE $\frac{1}{4}$	4.7	CHANGE TO WELL 3,4	CHANGE TO WELL 3,4
Total:	161.0	Acres	
SECTION 6			
TOWNSHIP 16 SOUTH, RANGE 43 EAST, W.M.			

6. An affidavit was received from Thomas and Joyce Hopper, owners of certain land and the water rights appurtenant to it. A portion of Certificates 58992 and 58993 has been abandoned and is requested to be canceled.
7. The FIRST right is a PORTION of the right described by Certificate 58992, State Record of Water Right Certificates. The abandoned water right is from Well No. 1, in the WILLOW

CREEK BASIN. The date of priority is SEPTEMBER 25, 1978. The abandoned right is for IRRIGATION OF 38.6 ACRES.

8. The SECOND right is a PORTION of the right described by Certificate 58993, State Record of Water Right Certificates. The abandoned water right is from Wells No. 2 and No. 3, in the WILLOW CREEK BASIN. The date of priority is NOVEMBER 13, 1979. The abandoned right is for SUPPLEMENTAL IRRIGATION OF 38.6 ACRES.
9. A description of the place of use of the abandoned rights for both Certificates 58992 and 58993 is as follows:

SW $\frac{1}{4}$ NE $\frac{1}{4}$ 7.7 ACRES
SE $\frac{1}{4}$ NW $\frac{1}{4}$ 12.7 ACRES
NE $\frac{1}{4}$ SW $\frac{1}{4}$ 1.5 ACRES
NW $\frac{1}{4}$ SE $\frac{1}{4}$ 16.7 ACRES
SECTION 31

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10. An affidavit was received from Norman and Kathleen Rainwater, owners of certain land and the water right appurtenant to it. Certificate 79973 has been abandoned and is requested to be canceled. The right is described by Certificate 79973, State Record of Water Right Certificates. The abandoned water right is from ONE WELL in the GUM CREEK BASIN. The date of priority is MARCH 27, 1986. The abandoned right is for SUPPLEMENTAL IRRIGATION OF 56.7 ACRES.
11. A description of the place of use of the abandoned right is as follows:

SW $\frac{1}{4}$ NW $\frac{1}{4}$ 22.2 ACRES
NW $\frac{1}{4}$ SW $\frac{1}{4}$ 12.0 ACRES
SECTION 5

SE $\frac{1}{4}$ NE $\frac{1}{4}$ 17.8 ACRES
NE $\frac{1}{4}$ SE $\frac{1}{4}$ 4.7 ACRES
SECTION 6

TOWNSHIP 16 SOUTH, RANGE 43 EAST, W.M.

12. ORS 540.621 provides: "Whenever the owner of a perfected and developed water right certifies under oath to the Water Resources Commission that the water right has been abandoned by the owner and that the owner desires cancellation thereof, the Commission shall enter an order canceling the water right."

Certificate 58993 was issued to authorize the makeup in any deficiency of supply from the primary sources listed on Certificate 58992. Certificate 58993 should have been issued as IRRIGATION.

Certificate 58992 allows for the use of 1.34 CFS. The full rate at ONE-EIGHTIETH CFS per acre for 288.4 acres is 3.60 CFS.

Certificate 58993 authorizes 3.57 CFS, however only 2.26 CFS is necessary to makeup the deficiency of supply to achieve a full rate at ONE-EIGHTIETH CFS per acre.

Therefore, Certificate 58993 should read "The right is limited to not more than 2.26 CFS with a priority date of November 13, 1979".

13. 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.
14. 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.
15. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right is present.
16. The proposed change would not result in enlargement of the right.
17. The proposed change would not result in injury to other water rights.

Conclusions of Law

The changes in point of appropriation and place of use proposed in application T-8874 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 changes in point appropriation and place of use proposed in application T-8876 are approved.
2. Water right certificates 58992 and 58993 are cancelled. The abandoned rights evidenced by the portions of certificates 58992 and 58993 not transferred and the entirety of certificate 79973 are cancelled.
3. The proposed changes 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 points of appropriation (wells), together with the quantity diverted at the old points of appropriation, shall not exceed the quantity of water lawfully available from the original points of appropriation.
6. When required by the Department the water user shall install an in-line flow meter or other suitable device for measuring and recording the quantity of water used. The type and plans

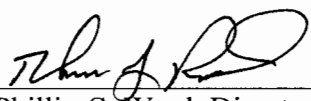
of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.

7. Water shall be acquired from the same aquifer as the original points of appropriation.
8. The former place of use shall no longer be irrigated as part of this water right.
9. The receiving landowners for the land described in Table II are:

NORMAN AND KATHLEEN RAINWATER
36127 PLAGMANN DRIVE NE
ALBANY, OREGON 97321

10. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

WITNESS the signature of the Water Resources Director, affixed NOVEMBER 22, 2004.



For Phillip C. Ward, Director

Mailing date: NOV 29 2004