

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

In the Matter of Transfer Application) FINAL ORDER APPROVING
T-10535, Marion County) A CHANGE IN CHARACTER
) OF USE 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

THOMAS H. DEARMOND
11463 BROADACRES ROAD NE
HUBBARD, OR 97032

Agent

DON KNAUER
PO BOX 5416
SALEM, OR 97304

Findings of Fact

Background

1. On February 12, 2008, Thomas DeArmond filed an application to change the use and create an additional point of appropriation under Certificate 83086. The Department assigned the application number T-10535. Transfer Applications T-10532, T-10533, T-10535 and Ground Water Registration Modification Application T-10534 were filed at the same time, are interrelated, and will be processed concurrently.
2. The right to be transferred is as follows:
Certificate: 83086 in the name of THOMAS H. DEARMOND (perfected under Permit G-12536)
Use: IRRIGATION of 103.55 ACRES
Priority Date: FEBRUARY 20, 1991 for 1.11 CFS and SEPTEMBER 2, 1992 for 0.18 CFS
Rate: Not to exceed 1.29 CUBIC FEET PER SECOND (CFS) in any combination, being 0.45 CFS from Well #1 and 1.09 CFS from Well #2
Source: TWO WELLS in the SENECALE CREEK BASIN
Season of Use: MARCH 1 THROUGH OCTOBER 31

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 Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
4 S	1 W	WM	30	SE SE	59	Well #2: 1000 FEET NORTH AND 50 FEET WEST FROM THE SOUTHEAST CORNER OF SECTION 30
4 S	1 W	WM	31	NE NE	59	Well #1: 607 FEET NORTH AND 812 FEET WEST FROM THE SOUTHEAST CORNER OF DLC 59

Authorized Place of Use:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres	Type of Change Proposed
4 S	1 W	WM	29	NE SW	--	58	2.30	APOA & USE
4 S	1 W	WM	29	NW SW	--	59	0.30	APOA & USE
4 S	1 W	WM	29	NW SW	--	58	23.10	APOA & USE
4 S	1 W	WM	29	SW SW	--	59	0.70	APOA & USE
4 S	1 W	WM	29	SW SW	--	59	0.80	APOA
4 S	1 W	WM	29	SW SW	3	--	6.20	APOA & USE
4 S	1 W	WM	29	SW SW	3	--	5.40	APOA
4 S	1 W	WM	29	SW SW	--	58	6.90	APOA & USE
4 S	1 W	WM	30	NE SE	--	59	4.00	APOA & USE
4 S	1 W	WM	30	NE SE	--	58	1.40	APOA & USE
4 S	1 W	WM	30	SW SE	--	59	4.60	APOA
4 S	1 W	WM	30	SE SE	--	59	8.50	APOA & USE
4 S	1 W	WM	30	SE SE	--	59	27.00	APOA
4 S	1 W	WM	31	NW NE	--	59	10.65	APOA
4 S	1 W	WM	32	NW NW	2	--	1.70	APOA
TOTAL:							103.55	

3. Transfer Application T-10535 proposes to add a point of appropriation (an existing well) for all lands listed above in Finding #2. The proposed additional point of appropriation is located approximately 575 feet southeast from existing, authorized Well #1 and approximately 1800 feet southwest from existing, authorized Well #2, and is described as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
4S	1W	WM	31	NE NE	59	Well# 3: 220 FEET NORTH AND 400 FEET WEST FROM THE SOUTHEAST CORNER OF DLC 59

4. Transfer Application T-10535 also proposes to change the character of use for a portion of the acres listed above in Finding #2 to NURSERY USE. Specifically, the following 53.4 acres (0.67 cfs, limited to 133.5 acre-feet per year, priority date February 20, 1991) are to be changed to nursery use:

NURSERY USE							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
4 S	1 W	WM	29	NE SW	--	58	2.30
4 S	1 W	WM	29	NW SW	--	59	0.30
4 S	1 W	WM	29	NW SW	--	58	23.10
4 S	1 W	WM	29	SW SW	--	59	0.70
4 S	1 W	WM	29	SW SW	3	--	6.20

NURSERY USE							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
4 S	1 W	WM	29	SW SW	--	58	6.90
4 S	1 W	WM	30	NE SE	--	59	4.00
4 S	1 W	WM	30	NE SE	--	58	1.40
4 S	1 W	WM	30	SE SE	--	59	8.50
TOTAL:							53.4

5. Additional nursery rights are proposed to be transferred onto these same lands under Transfer Applications T-10533 (14.2 acres) and T-10534 (39.2 acres) to create stacked primary nursery rights with a combined maximum duty of 5.0 acre-feet per acre (2.5 acre-feet per acre under each right).
6. Notice of the application for transfer was published on February 19, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. On June 11, 2008, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10535 to the applicant and his agent. The draft Preliminary Determination set forth a deadline of July 14, 2008, for the applicant to respond. On July 2, 2008, the applicant's agent requested additional time to respond and submit the required report of ownership and lien information. The request for additional time was granted by the Department.
8. The applicant's agent submitted the required report of ownership and lien information on August 26, 2008. This information demonstrates that the applicant is authorized to pursue this transfer.
9. On December 3, 2008, the Department issued a Preliminary Determination proposing to approve Transfer T-10535 and mailed a copy to the applicant and his agent. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on December 9, 2008, and in the *Woodburn Independent* newspaper on December 24 and 31, 2008, and January 7, 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)

10. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
11. 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 Application T-10535.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.

Conclusions of Law

The change in character of use and the additional point of appropriation proposed in Transfer Application T-10535 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 character of use and the additional point of appropriation proposed in Transfer Application T-10535 are approved.
2. Water right certificate 83086 is cancelled.
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 83086 and any related decree.
4. Water shall be acquired from the same aquifer (water source) as the original points of appropriation.
5. The quantity of water diverted at the additional point of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.
6. That portion of the place of use changed to nursery use shall be further limited to 0.67 cfs (priority date February 20, 1991), with an annual duty of 2.5 acre-feet per acre (a total of 133.5 acre-feet) over the course of the authorized season of use.
7. Prior to diverting water, the water user shall install an in-line flow meter or other suitable device for measuring and recording the quantity of water diverted. 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. The water user shall maintain and operate the measuring device as required by the Department.
8. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2010**. 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, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 10th day of February 2009.


for Phillip C. Ward, Director

Mailing date: FEB 18 2009