

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-9948, Umatilla County) CHANGE FROM A SURFACE WATER
) POINT OF DIVERSION TO A
) GROUNDWATER POINT OF
) APPROPRIATION

Authority

ORS 540.505 to 540.580 establish 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

DUANE A. BEERS
58337 BINGHAM ROAD
ADAMS, OREGON 97810

Findings of Fact

1. On June 9, 2005, Duane A. Beers filed a transfer application to change the point of diversion for lands described under Water Right Certificate 81985 to a hydraulically connected pit well under OAR 690-380-2130. The Department assigned the application number T-9948.
2. On February 9, 2006, Judge Garry L. Reynolds of the Circuit Court of the State of Oregon for Umatilla County signed the Stipulation and Order Correcting the Decree to clarify the location of the place of use contained in water certificate 2527.
3. On April 20, 2006, the Department issued Certificate 81985 to supersede Certificate 2527, consistent with the order of the circuit court.

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. 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.

4. The water right to be transferred is as follows:

Certificate: 81985, in the name of Duane A. and Gloria Beers

Use: Irrigation of 5.0 acres

Priority Date: 1906

Rate & Duty: 0.06 cubic foot per second, subject to the provisions of paragraph 33 of Umatilla River Decree and all other conditions and limitations contained in said decree.

Source: Umatilla River, a tributary to the Columbia River

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	36 E	W.M.	13	SW SE	5.0

5. Application T-9948 proposes to change the point of diversion approximately 1800 feet downstream in a southwesterly direction to a shallow/hydraulically connected pit well located:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
3 N	36 E	WM	13	SW SE	North 79°16'31" East 3,330 feet from the SW Corner of Section 13

6. Notice of the application for transfer was published on July 5, 2005, pursuant to ORS 540.520 and OAR 690-380-4000. Oregon Department of Fish and Wildlife filed a comment in response to the notice stating there does not appear to be a potential for injury to instream or other water rights and that no fish screen or by-pass device would be required.

7. On January 16, 2007, the Department issued a preliminary determination proposing to approve Transfer T-9948 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 January 23, 2007, and in the East Oregonian on April 12, 19, and 26, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

8. A report was prepared pursuant to ORS 540.531 (2)(b) by a Department professional licensed geologist and concluded the proposed point of diversion would appropriate an unconfined aquifer that is hydraulically connected to the Umatilla River and it is estimated that pumping of the well will result in a greater than 50 percent stream depletion in less than 10 days, thereby affecting the surface water source similarly to the authorized point of diversion, in accordance with OAR 690-380-2130(2)(c) and (11)(b).

9. Water has been used within the last five years according to the terms and conditions of the right and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.

10. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right is present.

11. The file contains a letter from the Umatilla Basin Watershed Council indicating that the transfer is the result of working with Oregon Department of Fish & Wildlife and that grant money was available to rid the river of another push-up dam and eliminate further the need to maintain a ditch to deliver water. In a separate letter, ODFW staff biologist finds the transfer “fish friendly” in resolving fish passage problems and will benefit Summer Steelhead, Bull Trout, Spring Chinook, Redband Trout and Mountain Whitefish.
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

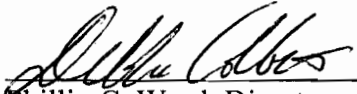
The change in surface water point of diversion to groundwater point of appropriation (hydraulically connected pit well) proposed in Transfer Application T-9948 is consistent with the requirements of ORS 540.505 to 540.580, OAR 690-380-5000 and 690-380-2130.

Now, therefore, it is ORDERED:

1. The change in surface water point of diversion to groundwater point of appropriation (hydraulically connected pit well) is approved.
2. Certificate 81985 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 81985 and any related decree.
4. Water shall be acquired from the same source as the original point of diversion. The well from which water is taken under the right shall be constructed so that the use of the pit well will affect the surface water source similarly to the use of the original authorized point of diversion.
5. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2008**. 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.
6. 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.
7. 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 pump, 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.

8. 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.
9. The quantity of water diverted at the new point of diversion (shallow well) shall not exceed the quantity of water lawfully available at the original point of diversion.
10. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 31ST day of May, 2007.


Phillip C. Ward, Director *PCW*

Mailing date: JUN 04 2007