BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-13479, Baker County)	CHANGE IN POINT OF
)	APPROPRIATION

Authority

Oregon Revised Statutes (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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

ADAM KERNS AGRICULTURAL CONSTRUCTION INC. 13685 WILLOW CREEK LN HAINES, OR 97833

Findings of Fact

- 1. On June 29, 2020, ADAM KERNS/AGRICULTURAL CONSTRUCTION INC. filed an application to change the point of appropriation under Certificate 58970. The Department assigned the application number T-13479.
- 2. Notice of the application for transfer was published on July 7, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 3. On September 4, 2020, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13479 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 5, 2020, for the applicant to respond. The applicant 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.
- 4. On November 3, 2020, the Department issued a Preliminary Determination proposing to approve Transfer Application T-13479 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on November 10, 2020, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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 right to be transferred is as follows:

Certificate: 58970 in the name of JAMES E. KERNS (perfected under Permit G-7629)

Use: SUPPLEMENTAL IRRIGATION of 97.9 ACRES

Priority Date: JUNE 17, 1977

Rate: 0.36 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 acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year. THE RIGHT SHALL BE LIMITED TO ANY

DEFICIENCY IN THE AVAILABLE SUPPLY OF ANY PRIOR RIGHT

FOR THE SAME LAND AND SHALL NOT EXCEED THE

LIMITATION ALLOWED HEREIN.

Source: JAMES KERNS WELL in the WILLOW CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	
7 S	38 E	WM	35	sw sw	JAMES KERNS WELL - 30 FEET NORTH AND 1000 FEET EAST FROM THE SW CORNER OF SECTION 35	

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	
7 S	38 E	WM	35	SW SW	39.2	
8 S	38 E	WM	2	NE NW	29.2	
8 S	38 E	WM	2 .	NW NW	29.5	
			_	Total	97.9	

6. Transfer Application T-13479 proposes to move the authorized point of appropriation approximately 380 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	38 E	WM	35	sw sw	WELL 2 - 30 FEET NORTH AND 620 FEET EAST FROM THE SW CORNER OF SECTION 35

Transfer Review Criteria (OAR 690-380-4010)

- 7. 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.
- 8. 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-13479.
- 9. The proposed change would not result in enlargement of the right.

- 10. The proposed change would not result in injury to other water rights.
- 11. All other application requirements are met.

Conclusions of Law

The change in point of appropriation proposed in Transfer Application T-13479 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-500.

Now, therefore, it is ORDERED:

- 1. The change in point of appropriation proposed in Transfer Application T-13479 is 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 Certificate 58970 and any related decree.
- 3. Water right Certificate 58970 is cancelled.
- 4. The quantity of water diverted at the new point of appropriation (Well 2), shall not exceed the quantity of water lawfully available at the original point of appropriation (James Kerns Well).
- 5. 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.
- 6. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
- 7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2022**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the change and full beneficial use of the water.

Dated in Salem, Oregon on DEC 24 2020
To Jaranu
Lisa J Jaramillo, Transfer and Conservation Section Manager, for THOMAS M BYLER, DIRECTOR
Oregon Water Resources Department

Mailing date: DEC 27 2020

8. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

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