

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

| | | |
|---------------------------------------|---|-------------------------------|
| In the Matter of Ground Water |) | FINAL ORDER APPROVING |
| Registration Modification Application |) | RECOGNITION OF A MODIFICATION |
| T-10859, Linn County |) | IN POINT OF APPROPRIATION, |
| |) | CHANGE IN PLACE OF USE, AND |
| |) | CHARACTER OF USE |

Authority

ORS 537.610, 537.705 and 540.505 to 540.580 establish the process in which the holder of a certificate of registration may submit a request for recognition of modifications to the place of use, character of use or point of appropriation under a ground water certificate of registration.

OAR Chapter 690, Divisions 382 and 380 implement the statutes and provide the Department's procedures and criteria for evaluating ground water registration modification applications.

Applicant

MORSE BROS. INC.
DBA: KNIFE RIVER
ATTN: JEFF STEYAERT
32260 OLD HWY 34
TANGENT OR 97389

Findings of Fact

Background

1. On April 24, 2009, KNIFE RIVER filed a ground water registration modification application to modify the point of appropriation and to modify the place of use and character of use under Ground Water Registration Application GR-2177 (Certificate of Registration GR-2086). The Department assigned the application number T-10859.

2. The ground water registration to be modified is as follows:

Registration: Application 2177 (Certificate of Registration GR-2086), in the name of Therl F. Neville (*assigned to MORSE BROS INC.*)

Use: IRRIGATION of 19.0 ACRES

Tentative

Priority Date: JULY 7, 1953

Quantity: 350 GALLONS PER MINUTE

Source: WELL 2 within the LAKE CREEK BASIN

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.

Original Point of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|-----|-----|-----|-------|--|
| 12 S | 4 W | WM | 18 | NW NW | 1191.35 FEET SOUTH AND 991.08 FEET EAST FROM THE NW CORNER OF SECTION 18 |

Original Place of Use:

| IRRIGATION | | | | | |
|------------|-----|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 12 S | 4 W | WM | 18 | NW NW | 19.0 |

- Ground Water Registration Application GR-2177 (Certificate of Registration GR-2086) does not describe the period of use; however, the Willamette Basin Program (OAR 690-502) allows irrigation from March 1 to October 31.
- Ground Water Registration Modification Application T-10859 proposes to modify the location of the original point of appropriation approximately 1.6 miles from the original well to two pumps in a sump located:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|-----|-----|-----|-------|---|
| 12 S | 5 W | WM | 1 | NW SE | POA 1: 1040 FEET SOUTH AND 180 FEET EAST FROM THE C ¹ / ₄ CORNER OF SECTION 1 |
| 12 S | 5 W | WM | 1 | NW SE | POA 2: 1040 FEET SOUTH AND 185 FEET EAST FROM THE C ¹ / ₄ CORNER OF SECTION 1 |

- Ground Water Registration Modification Application T-10859 proposes to modify the character of use under the ground water registration to INDUSTRIAL AND MINING.
- Ground Water Registration Modification Application T-10859 proposes to modify the place of use under the ground water registration to:

| INDUSTRIAL AND MINING | | | | | | |
|-----------------------|-----|-----|-----|-------|------|-----|
| Twp | Rng | Mer | Sec | Q-Q | GLot | DLC |
| 12 S | 4 W | WM | 6 | SW SW | | |
| 12 S | 4 W | WM | 7 | NW NW | | |
| 12 S | 4 W | WM | 7 | NE SW | 7 | |
| 12 S | 4 W | WM | 7 | NW SW | 8 | |
| 12 S | 4 W | WM | 7 | SW SW | | |
| 12 S | 4 W | WM | 7 | SE SW | 7 | |
| 12 S | 4 W | WM | 18 | NW NE | | |
| 12 S | 4 W | WM | 18 | NE NW | 10 | |
| 12 S | 4 W | WM | 18 | NW NW | | |
| 12 S | 5 W | WM | 1 | NW NE | | |
| 12 S | 5 W | WM | 1 | SW NE | | |
| 12 S | 5 W | WM | 1 | NE NW | | 75 |
| 12 S | 5 W | WM | 1 | NW NW | | 74 |
| 12 S | 5 W | WM | 1 | SW NW | 10 | |
| 12 S | 5 W | WM | 1 | SE NW | 9 | |
| 12 S | 5 W | WM | 1 | NE SW | 8 | |
| 12 S | 5 W | WM | 1 | NW SW | 11 | |
| 12 S | 5 W | WM | 1 | SW SW | 12 | |
| 12 S | 5 W | WM | 1 | SE SW | 7 | |

| INDUSTRIAL AND MINING | | | | | | |
|-----------------------|-----|-----|-----|-------|------|-----|
| Twp | Rng | Mer | Sec | Q-Q | GLot | DLC |
| 12 S | 5 W | WM | 1 | NW SE | | |
| 12 S | 5 W | WM | 1 | SW SE | 13 | |
| 12 S | 5 W | WM | 1 | SE SE | | |
| 12 S | 5 W | WM | 12 | NE NE | 1 | |
| 12 S | 5 W | WM | 12 | NW NE | 13 | |
| 12 S | 5 W | WM | 12 | SW NE | 2 | |
| 12 S | 5 W | WM | 12 | SE NE | 2 | |
| 12 S | 5 W | WM | 12 | NE NW | 13 | |
| 12 S | 5 W | WM | 12 | SE NW | | |
| 12 S | 5 W | WM | 12 | NE SW | 6 | |
| 12 S | 5 W | WM | 12 | NW SE | | |

7. The best currently available information indicates that beneficial use of water for irrigation of crops in the area would not likely exceed 2.5 acre-feet per acre on 19.0 acres for a total volume of 47.5 acre-feet per year (19.0 acres x 2.5 acre-feet per acre = 47.5 acre-feet).
8. Notice of the application for ground water registration modification was published on May 5, 2009, pursuant to OAR 690-382-0600. No comments were filed in response to the notice.
9. On March 12, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10859 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 12, 2010, 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.
10. On April 23, 2010, the Department issued a Preliminary Determination proposing to approve Transfer T-10859 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 April 27, 2010, and in the Democrat-Herald newspaper on May 5, 12, and 19, 2010 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

Review Criteria for Ground Water Registration Modification Applications [OAR 690-382-0700(2)]

11. The proposed modifications, if not conditioned to the maximum beneficial use for the original character of use, could result in an enlargement of the right. However, if the right is conditioned to limit the annual volume for industrial and mining use to 47.5 acre feet, the changes would not result in an enlargement of the right.
12. The proposed modifications would not result in a state Scenic Waterway not receiving previously available water during periods in which streamflows are less than the quantities determined by the Department to be necessary to meet the requirements of ORS 390.835.

13. The proposed modifications, as conditioned, would not result in injury to other water rights.

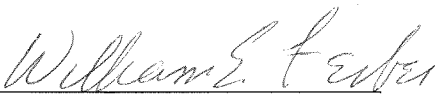
Conclusions of Law

The modification in point of appropriation, place of use and character of use proposed in Ground Water Registration Modification T-10859 are consistent with the requirements of ORS 537.610, 537.705, 540.505 to 540.580 and OAR 690-382-1000.

Now, therefore, it is ORDERED:

1. The modifications to Registration Application 2177 (Certificate of Registration GR-2086) proposed in Ground Water Registration Modification Application T-10859 are recognized. Recognition of the modifications shall not be construed as a final determination of the right to appropriate ground water under the certificate of registration or modification. Such a determination will occur in an adjudication proceeding under ORS 537.670 to 537.695.
2. 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 Registration Application GR-2177 (Certificate of Registration GR-2086) and any related decree.
3. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
4. The quantity of water diverted at the new points of appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation.
5. The annual volume for industrial and mining use shall not exceed 47.5 acre-feet per year.
6. Water shall no longer be appropriated for the former character of use as part of this ground water certificate of registration.
7. The former place of use of the modified ground water registration shall no longer receive water as part of the ground water certificate of registration.
8. Prior to diverting water at the new points of appropriation, the water user shall install and maintain an in-line flow meter or other suitable device for measuring and recording the quantity of water appropriated. 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.

Dated at Salem, Oregon this 23rd day of June 2010.



By- Phillip C. Ward, Director

Mailing Date: JUN 24 2010