

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

In the Matter of Transfer Application) **FINAL ORDER**
T-11659, Clackamas County) **APPROVING 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

BERRY PRO LLC
PO BOX 379
WOODBURN, OR 97071

Findings of Fact

1. On September 3, 2013, BERRY PRO LLC filed an application for an additional point of appropriation under Certificate 88216. The Department assigned the application number T-11659.
2. Notice of the application for transfer was published on September 10, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 31, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11659 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 3, 2014, 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 February 11, 2014, the applicant’s agent, Jim Schuette, acting for the applicant, has requested to amend the preliminary determination to change the date of completion from October 1, 2015 to October 1, 2016.

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. On March 3, 2014, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11659 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on March 11, 2014, and in the Canby Herald Newspaper on March 12 and 19, 2014, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.

6. The right to be transferred is as follows:

Certificate: 88216 in the names of JAMES C. BROWN, CAROL M. BROWN, LEROY L. BROWN, AND CYNTHIA BROWN (perfected under Permit G-10114)

Use: IRRIGATION OF 22.3 ACRES

Priority Date: MAY 31, 1983

Rate: 0.15 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL, within the BEAR CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	1 E	WM	27	SW SW	43	340 FEET NORTH AND 1170 FEET EAST FROM THE SW CORNER OF SECTION 27

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
4 S	1 E	WM	34	NE NW	1	0.1
4 S	1 E	WM	34	SE NW	2	22.2

7. Transfer Application T-11659 proposes an additional point of appropriation approximately 2290 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	1 E	WM	34	SW NW	43	WELL 5 - 50 FEET NORTH AND 980 FEET WEST FROM THE SE CORNER OF DLC 43

Transfer Review Criteria (OAR 690-380-4010)

8. 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.

9. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-11659.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.
12. All other application requirements are met.

Conclusions of Law

The additional point of appropriation proposed in Transfer Application T-11659 is 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 additional point of appropriation proposed in Transfer Application T-11659 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 88216 and any related decree.
3. Water right certificate 88216 is cancelled.
4. The quantity of water diverted at the additional point of appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.
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 (new and existing).
 - 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, 2016**. 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.

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

Dated at Salem, Oregon this 21 day of April, 2014.



Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing Date APR 28 2014