

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

In the Matter of Transfer Application            )  
T-11083, Clackamas County                    )  
  )  
  )     FINAL ORDER APPROVING  
  )     CHANGES IN POINT OF  
  )     APPROPRIATION AND PLACE OF  
  )     USE

**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**

ELTON D. AND DARLA A.KEMNITZ  
33711 S. DRYLAND RD.  
MOLALLA, OR 97038

**Receiving Landowner**

LAKE ENTERPRISES, INC.  
402 S. McLOUGHLIN BLVD.  
OREGON CITY, OR 97045

**Findings of Fact**

**Background**

1. On June 3, 2010, ELTON D. AND DARLA A. KEMNITZ filed an application for an additional point of appropriation and to change the place of use under Certificate 54233. The Department assigned the application number T-11083.
2. On June 21, 2010, the applicants amended Transfer Application T-11083 to change the point of appropriation and place of use, removing the request for an additional point of appropriation.
3. The portion of the right to be transferred is as follows:

**Certificate:** 54233 in the name of ELTON D. KEMNITZ (perfected under Permit G-9252)  
**Use:** IRRIGATION of 10.0 ACRES  
**Priority Date:** MARCH 17, 1981  
**Rate:** 0.13 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

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.

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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** A WELL within the ROCK CREEK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	1 E	WM	23	NE SW	1800 FEET NORTH AND 2800 FEET WEST FROM THE SE CORNER OF SECTION 23

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 E	WM	23	NE SW	8.5
5 S	1 E	WM	23	NW SW	1.5

- Transfer Application T-11083 proposes to move the authorized point of appropriation approximately 2900 feet southwest from the existing point of appropriation to a location near the following:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	1 E	WM	23	SW SW	100 FEET NORTH AND 150 FEET EAST FROM THE SW CORNER OF SECTION 23

- Transfer Application T-11083 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 E	WM	23	NW SW	5.0
5 S	1 E	WM	23	SW SW	5.0

- Notice of the application for transfer was published on June 8, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On January 25, 2011, the Department issued a draft Preliminary Determination proposing to deny Transfer Application T-11083, because the proposed point of appropriation does not develop the same aquifer (source) as that of the original authorized well. The draft Preliminary Determination cover letter set forth a deadline of February 25, 2011, for the applicants to respond.
- On February 2, 2011, the applicants notified the department they disagreed with the draft Preliminary Determination and amended Transfer Application T-11083 by proposing to drill a new well that will access the same aquifer as the authorized well. The applicant provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

9. On March 2, 2011, a 2<sup>nd</sup> draft Preliminary Determination was issued proposing to approve Transfer Application T-11083 based on the amended application. The applicants requested that the Department proceed with issuance of a Preliminary Determination.
10. On March 7, 2011, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11083 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on March 8, 2011, and in the Molalla Pioneer newspaper on March 30, and April 6 and 13, 2011, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.

***Transfer Review Criteria (OAR 690-380-4010)***

11. 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.
12. The proposed point of appropriation as proposed would develop the same aquifer (source) as that of the original authorized well (CLAC 2618). The authorized well (CLAC 2618) is drilled to a depth of 322 feet and produces from the water bearing zones in the Columbia River Basalt Group aquifer system.
13. A well, pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
14. The proposed change would not result in enlargement of the right.
15. The proposed change would not result in injury to other water rights.

**Conclusions of Law**

The change in point of appropriation and change in place of use proposed in Transfer Application T-11083 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 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 54233 and any related decree.
2. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
3. Water right certificate 54233 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.

4. The quantity of water diverted at the new 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.
  - 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. The former place of use of the transferred right shall no longer receive water under the right.
7. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2012**. 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 changes and full beneficial use of the water.
8. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 16 day of May 2011.

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

Mailing Date:           **MAY 19 2011**