# BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application	)	FINAL ORDER APPROVING A
T-9779, Malheur County	)	CHANGE IN POINT OF
	)	APPROPRIATION

ORS 537.705 and 540.505 to 540.580 establishes 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**

### Receiving Landowners - Tax Lot 2605

Jake Elfering 525 Reiter Dr. Ontario, OR 97914 Richard F. and Leah L. Gannon 1736 2<sup>nd</sup> Avenue West Vale, OR 97918

#### **Findings of Fact**

- 1. On September 7, 2004, Jake Elfering filed a transfer application to add a point of appropriation under Certificate 55313. The Department assigned the application number T-9779.
- 2. At the time the application was filed, the receiving landowners were Darrold and Kathryn Willis for Tax Lot 2601 and Marion and Janice Dowell for Tax Lot 2605.
- 3. On November 21, 2005, Marion and Janice Dowell sold their property on Tax Lot 2605 in Section 7, Township 18 south, Range 45 east, W.M., to Richard F. and Leah L. Gannon.
- 4. Due to the property sale described in Finding #3 above, Transfer T-9779 was partially assigned to Richard F. and Leah L. Gannon on December 1, 2005.
- 5. On May 31, 2006, the Gannons clarified that the intent of Transfer T-9779 was to change the authorized point of appropriation for a portion of land (3.9 acres) under Certificate 55313 located on their property only, being Tax Lot 2605 in Section 7, Township 18 south, Range 45 east, W.M. Therefore, it is evident that the original intent of Transfer Application T-9779 was to not make any change to the water right appurtenant to Tax Lot 2601 in Section 7, Township 18 south, Range 45 east, W.M.

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 137-004-0080 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.

The portion of the right to be transferred is as follows:

Certificate:

55313 in the name of JAKE W. ELFERING

Use:

**IRRIGATION of 3.9 ACRES** 

Priority Date: APRIL 23, 1980

Quantity:

0.049 CUBIC FOOT PER SECOND (CFS)

Rate/Duty:

ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre-feet per acre per year

Source:

A SUMP, tributary to WILLOW CREEK

#### **Authorized Point of Diversion:**

Township		Range		Meridian	Sec	1/4	1/4	Survey Coordinates
18	S	45	Е	W.M.	7	SW	SE	80 feet North and 360 feet East from the South ¼ corner of Section 7

#### **Authorized Place of Use:**

Tow	nship	Rai	nge	Meridian	Sec	1/4 1/4	1/4 1/4 Tax Lot	
18	S	45	Е	W.M.	7	SW SE	2605	3.9

Application T-9779 proposes to change the point of appropriation in the sump to:

Township		Range		Meridian	Sec	1/4 1/4		Survey Coordinates
18	S	45	Е	W.M.	7	SW S	SE	100 feet North and 525 feet East from the South ¼ corner of Section 7

- 8. Notice of the application for transfer was published on October 12, 2004, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
- 9. Notice of the preliminary determination for the transfer application was published on the Department's weekly notice on December 27, 2005, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the Department's weekly notice.
- 10. 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.
- 11. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
- 12. The proposed change would not result in enlargement of the right.
- 13. The proposed change would not result in injury to other water right.
- 14. Upon completion, the receiving landowners for tax lot 2605 will be Richard F. and Leah L. Gannon.

## Conclusions of Law

The additional point of appropriation proposed in application T-9779 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:

- The additional point of appropriation proposed in application T-9779 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 55313 and any related decree.
- Water Right Certificate 55313 is cancelled. A remaining right certificate shall be issued for the portion of the certificate not affected by this transfer.
- The approved changes shall be completed and full beneficial use of the water shall be made on or before October 1, 2007. 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.
- The quantity of water diverted at the additional point of appropriation, together with that diverted at the old point of diversion, shall not exceed the quantity of water lawfully available at the original point of appropriation.
- When required by the Department, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
- When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 3/57 day of

Mailing date: AUG 0 2 2006