

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

In the Matter of Transfer Application) FINAL ORDER APPROVING
T-10825, Marion County) ADDITIONAL POINTS 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

NEIL MILLER
22281 RIVER ROAD
ST PAUL OR 97137

Findings of Fact

Background

1. On March 18, 2009, NEIL MILLER filed an application for two additional points of appropriation under Certificate 54195. The Department assigned the application number T-10825.
2. The right to be transferred is as follows:

Certificate: 54195 in the name of JOHN MCKAY (perfected under Permit G-6447)

Use: IRRIGATION of 45.5 ACRES

Priority Date: MAY 5, 1975

Rate: 0.57 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL in the MISSION 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.

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	2 W	WM	8	NE NE	74	880 FEET SOUTH AND 590 FEET WEST FROM THE NE CORNER OF SECTION 8

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	2 W	WM	5	SE SW	74	4.5
4 S	2 W	WM	5	SW SE	74	13.4
4 S	2 W	WM	8	NE NE	74	17.6
4 S	2 W	WM	8	NW NE	74	9.8
4 S	2 W	WM	8	SE NE	74	0.2

3. Transfer Application T-10825 proposes two additional points of appropriation approximately 500 feet from the existing point of appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	2 W	WM	8	NE NE	74	WELL 2 - 960 FEET SOUTH AND 460 FEET WEST FROM THE NE CORNER OF SECTION 8
4 S	2 W	WM	8	NE NE	74	WELL 3 - 490 FEET SOUTH AND 720 FEET WEST FROM THE NE CORNER OF SECTION 8

4. Notice of the application for transfer was published on April 7, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
5. On February 25, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10825 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 26, 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.
6. On April 28, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10825 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 May 4, 2010, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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-10825.
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.

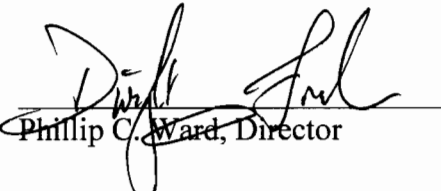
Conclusions of Law

The additional points of appropriation proposed in Transfer Application T-10825 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 additional points of appropriation proposed in Transfer Application T-10825 are 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 54195 and any related decree.
3. Water right certificate 54195 is cancelled.
4.
 - 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.
5. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
6. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. 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.
7. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 7 day of June 2010.


Phillip C. Ward, Director

Mailing date: JUN 08 2010