

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

In the Matter of Transfer Application) FINAL ORDER APPROVING AN
T-10566, Umatilla County) ADDITIONAL POINT OF
) APPROPRIATION, CHANGE IN
) PLACE OF USE, AND PARTIAL
) CANCELLATION OF A WATER
) RIGHT

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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

MELANIE WEEKS
19810 S. FERGUSON ROAD
OREGON CITY, OR 97045

Findings of Fact

Background

1. On March 19, 2008, Melanie Weeks filed an application to change the place of use, and add an additional point of appropriation under Certificate 53749. The Department assigned the application number T-10566.
2. On March 30, 2009, the applicant submitted a revised map of the proposed changes and two Affidavits for Partial Cancellation of a Water Right Certificate requesting to voluntarily cancel 2.0 acres of irrigation use appurtenant to tax lots 100 and 101, in the SE ¼ of the NE ¼ of Section 34, T2N, R32E.

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.

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

Certificate: 53749 in the name of CHARLES ROGER MONTEE (perfected under Permit G-8969)

Use: IRRIGATION of 2.0 ACRES

Priority Date: JUNE 27, 1980

Rate: 0.025 CUBIC FOOT PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3 acre-feet per acre per year

Source: A WELL, a tributary of MCKAY CREEK in the MIDDLE COLUMBIA-UMATILLA BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	32 E	WM	34	SE NE	2300 FEET SOUTH AND 870 FEET WEST FROM THE NE CORNER OF SECTION 34

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	32 E	WM	34	SE NE	2.0

4. Application T-10566 proposes to add an authorized point of appropriation approximately 920 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	32 E	WM	34	SW NE	1490 FEET SOUTH AND 1330 FEET WEST FROM THE NE CORNER OF SECTION 34

5. Application T-10566 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	32 E	WM	34	SW NE	2.0

6. Notice of the application for transfer was published on April 1, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. The transfer application map initially submitted did not match the right of record. Specifically, the acreage identified as the portion of the right to be moved, when added to the acreage identified as the portion remaining, did not equal the total acreage allowed in the right by ¼ ¼ section, as evidenced by Certificate 53749 and the Claim of Beneficial Use map. Also, the proposed place of use appeared to extend from the SW NE into the SE NE of Section 34, T2N, R32E, W.M., however the acreage breakdown of the proposed place of use into section quarter quarters appeared not to acknowledge any acreage in the SE NE.

8. On October 6, 2008, the Department issued a letter to notify the applicant's agent of the discrepancies in the map. The Department requested that the deficiencies be resolved by November 30, 2008. No response was received to the letter by that date, however on March 30, 2009, the applicant's agent submitted a revised map and affidavits of partial cancellation. A cover letter explained that some portions of the original place of use had been abandoned due to the building of houses, driveways and other buildings. The map also corrected the proposed location in relation to section quarter quarters.
9. The application indicates that the land from which the right is proposed to be moved is owned by Mike Wagner. The applicant, Melanie Weeks, is the current owner of record for the land to which the transfer proposes to move the place of use, and will be responsible for completion of the changes.
10. On April 9, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10566 to the applicant. The draft Preliminary Determination set forth a deadline of May 12, 2009, for the applicant to respond. The applicant requested the Department to extend the deadline for completion of the changes to October 1, 2012 due to the difficult economic conditions, requested the Department to proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
11. On October 23, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10566 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 October 27, 2009, 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)

12. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
13. 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 Application T-10566.
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.

Partial Cancellation of a Water Right

16. On March 30, 2009, affidavits certifying that portions of a water right have been abandoned and requesting cancellation of the portions of the right were received from Michael K.

Wagner and Diane Cort-Wagner (1.6 acres) and from Greg and Deborah Wagner (0.4 acre). The portion of the right to be cancelled is as follows:

Certificate: 53749 in the name of CHARLES ROGER MONTEE (perfected under Permit G-8969)

Use: IRRIGATION of 2.0 ACRES

Priority Date: JUNE 27, 1980

Rate: 0.025 CUBIC FOOT PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3 acre-feet per acre per year

Source: A WELL, a tributary of MCKAY CREEK in the MIDDLE COLUMBIA-UMATILLA BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	32 E	WM	34	SE NE	2300 FEET SOUTH AND 870 FEET WEST FROM THE NE CORNER OF SECTION 34

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	32 E	WM	34	SE NE	2.0

Conclusions of Law

The changes in place of use and an additional point of appropriation proposed in application T-10566 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the abandoned portion of the right should be cancelled.

Now, therefore, it is ORDERED:

1. The changes in place of use and an additional point of appropriation proposed in application T-10566 are approved. The portion of the right that has been abandoned is cancelled.
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 53749 and any related decree.
3. Water right certificate 53749 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation.
4. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
5. 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.
6. The former place of use of the transferred right shall no longer receive water under the right.

7. When required by the Department, the water user shall install, maintain and operate an in-line flow meter or other suitable device for measuring and recording the quantity of water diverted. 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.
8. 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 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.
9. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 30th day of November 2009.


Phillip C. Ward, Director *ra*

Mailing date: DEC 11 2009