

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING AN
T-9906, Marion County)	ADDITIONAL POINT OF DIVERSION,
)	AN ADDITIONAL POINT OF
)	APPROPRIATION AND CHANGES IN
)	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

PAUL KRAEMER
13523 MARQUAM ROAD NE
MT. ANGEL, OREGON 97362

Findings of Fact

1. On April 5, 2005, Paul Kraemer filed an application for an additional point of diversion and a change in place of use under Certificate 48479 and for an additional point of appropriation and a change in place of use under Certificate 40097. The Department assigned the application number T-9906.
2. On August 16, 2006, the applicant's agent, Pacific Hydrogeology, Inc., submitted a revised transfer application and map to amend the location of the proposed additional point of diversion under Certificate 48479.

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order in other than a 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.

3. The portion of the FIRST right to be transferred is as follows:
Certificate: 48479 in the name of ROBERT C. BROBERG (perfected under Permit S-13619)
Use: IRRIGATION of 8.6 ACRES
Priority Date: APRIL 25, 1939
Rate: 0.11 CUBIC FOOT PER SECOND (cfs)
Limit/Duty: ONE-EIGHTIETH of one cfs per acre, not to exceed 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year.
Source: ABIQUA CREEK, tributary to the PUDDING RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
6 S	1 W	WM	23	SE NE	2330 FEET SOUTH AND 560 FEET EAST FROM THE MOST SOUTHERLY SW CORNER OF GIBSON DLC 54

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	1 W	WM	23	NE NE	50	4.6
6 S	1 W	WM	23	SE NE	50	4.0
TOTAL:						8.6

4. Transfer Application T-9906 proposes an additional point of diversion approximately 0.5 mile upstream from the authorized point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	1 W	WM	24	SE NW	50	70 FEET NORTH AND 1390 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 24

5. Transfer Application T-9906 also proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	1 W	WM	24	NW NE	50	0.7
6 S	1 W	WM	24	NE NW	50	0.8
6 S	1 W	WM	24	SW NW	50	7.1
TOTAL:						8.6

6. The portion of the SECOND right to be transferred is as follows:
Certificate: 40097 in the name of AMMON BROTHERS, INC. (perfected under Permit G-3961)
Use: SUPPLEMENTAL IRRIGATION of 8.6 ACRES
Priority Date: JANUARY 22, 1968
Rate: 0.08 CUBIC FOOT PER SECOND (cfs)
Limit/Duty: ONE-EIGHTIETH of one cfs per acre, not to exceed 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year, provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein.
Source: A WELL in the ABIQUA CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	1 W	WM	14	SE SE	50	640 FEET NORTH AND 1490 FEET EAST FROM THE NE CORNER OF LOT 1, SECTION 23, T 6 S, R 1 W, W.M.

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	1 W	WM	23	NE NE	50	4.6
6 S	1 W	WM	23	SE NE	50	4.0
TOTAL:						8.6

7. Application T-9906 proposes an additional point of appropriation approximately 0.5 mile southeast from the existing authorized point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	1 W	WM	24	SW NW	50	690 FEET NORTH AND 990 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 24

8. Application T-9906 also proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	1 W	WM	24	NW NE	50	0.7
6 S	1 W	WM	24	NE NW	50	0.8
6 S	1 W	WM	24	SW NW	50	7.1
TOTAL:						8.6

9. Notice of the application for transfer was published on April 12, 2005, pursuant to ORS 540.520 and OAR 690-380-4000. Comments were filed by Elizabeth Orr on May 11, 2005, in response to the notice. The comments focused on the following issues: whether the transfer application is complete; whether the proposed additional well would develop the same aquifer as the original authorized well; the nature in which the proposed additional well will be utilized; and the effects that the proposed additional well may have on ground water and surface water sources.
10. Also in response to the notice described in Finding #9 above, the Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion is eligible for screening cost share funds. However, funds may not be currently available. If cost share funds do not become available, the water user must screen prior to diversion of water at the new point of diversion regardless of cost share funding availability.

11. On October 23, 2006, the Department mailed a copy of the draft preliminary determination proposing approval of Transfer Application T-9906 to the applicant. On November 22, 2006, the applicant notified the Department by e-mail to proceed with issuance of the preliminary determination.
12. On December 22, 2006, the Department issued a preliminary determination proposing to approve Transfer Application T-9906 and mailed a copy to the applicant and to the person who submitted comments as described in Finding #9 above. Additionally, notice of the preliminary determination for the transfer application was published on the Department's weekly notice on January 2, 2007, and in a local newspaper on January 17, 24, and 31, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the Department's weekly notice or to the newspaper notice.
13. Water has been used within the last five years according to the terms and conditions of the rights, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
14. A pump, pipeline, storage reservoir (being a water distribution holding area/bulge in the system) and sprinkler system sufficient to use the full amount of water allowed under the existing right is present.
15. The Department determined on September 19, 2005, that the additional well proposed in Transfer T-9906 likely develops water from the same basalt aquifer as the existing authorized well under Certificate 40097; that pumping impacts will not differ much over short distances except in the immediate area of the well; and that the proposed additional well will be located farther away than the existing authorized well to other permitted wells in the area.
16. There are several intervening points of diversion between the existing authorized point of diversion under Certificate 48479 and the proposed additional point of diversion. However, the use of water at the proposed additional point of diversion can be conditioned to avoid injury to the intervening points of diversion and to avoid enlargement of the certificate (see proposed condition #6 under the "Conclusions of Law" section below).
17. The proposed changes would not result in enlargement of the rights.
18. The proposed changes would not result in injury to other water rights.

Conclusions of Law


The additional point of diversion, additional point of appropriation and changes in place of use proposed in application T-9906 are consistent with the requirements of ORS 537.705, 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in point of diversion, point of appropriation and place of use proposed in Transfer Application T-9906 are approved.
2. The right to 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 Certificates 48479 and 40097 and any related decree.
3. Water Right Certificates 48479 and 40097 are cancelled. New certificates will be issued to describe those portions of the rights evidenced by Certificates 48479 and 40097 not affected by this transfer.
4. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2008**. 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.
5. Water from the additional point of appropriation (well) shall be acquired from the same aquifer (water source) as the original point of appropriation.
6. The quantity of water diverted at the additional point of appropriation (well), 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.
7. The quantity of water diverted at the additional point of diversion, together with that diverted at the old point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
8. The former place of use of the transferred water shall no longer receive water as part of these rights.
9. Prior to diverting water at the new point of appropriation, the water user shall install and maintain an in-line flow meter or other suitable device for measuring and recording the quantity of water appropriated. 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.
10. Prior to diversion of water, the water user shall install a fish screening or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.

11. When satisfactory proof of the completed changes is received, new certificates confirming the portions of the rights transferred will be issued.

Dated at Salem, Oregon this 15th day of March 2007.



FNE Phillip C. Ward,
Director

Mailing date: MAR 19 2007