

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

In the Matter of Transfer Application) FINAL ORDER APPROVING
T-10033, Deschutes 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.

Applicants

TIM and WENDY DiPAOLO
c/o EMMETT RANCH, LLC
BOX 724
BOLINAS, CA 94924

DAVID and MARLENE LUDI
c/o EMMETT RANCH, LLC
19595 SE MARTIN RD.
SANDY, OR 97055

KENNETH R. and DEBORAH A. TISHER
c/o EMMETT RANCH, LLC
2044 NE TRENTON
BEND, OR 97701

Agent

JOHN A. SHORT
DESCHUTES IRRIGATION, LLC
PO BOX 1830
BEND, OR 97709

Findings of Fact

Background

1. On December 7, 2005, John Short, Agent for Emmett Ranches, LLC, filed an application for additional points of appropriation under Certificate 82185. The Department assigned the application number T-10033.

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.

2. The right to be transferred is as follows:

Certificate: 82185 in the name of Tim and Wendy DiPaolo, David and Marlene Ludi, Steven and Linda Mohr, Kenneth and Deborah Tisher (perfected under Permit G-9841)

Use: SUPPLEMENTAL IRRIGATION of 44.5 ACRES

Priority Date: JULY 13, 1981

Rate: 0.56 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL within the SQUAW CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
14 S	11 E	WM	23	NE NE	600 FEET SOUTH AND 820 FEET WEST FROM THE NE CORNER OF SECTION 23

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
14 S	11 E	WM	13	SW SW	25.5
14 S	11 E	WM	14	SE SE	5.5
14 S	11 E	WM	23	NE NE	7.5
14 S	11 E	WM	24	NW NW	6.0

3. Transfer Application T-10033 proposes to add two additional points of appropriation (wells) for the above described right, being approximately 750 feet north to Well #2 and approximately 1300 feet north to Well #3 from the authorized existing well. These wells are located as follows:

Twp	Rng	Mer	Sec	Q - Q	Well I.D.#	Survey Coordinates
14 S	11 E	WM	14	SE SE	DESC 1976	POA #2 - 125 FEET NORTH AND 420 FEET WEST FROM THE SE CORNER OF SECTION 14
14 S	11 E	WM	14	SE SE	TBA	POA #3 - 610 FEET NORTH AND 250 FEET WEST FROM THE SE CORNER OF SECTION 14

4. Notice of the application for transfer was published on December 13, 2005, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
5. On November 16, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10033 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of December 17, 2009, for the applicants to respond. The agent for the applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.

6. On December 17, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10033, consistent with the draft sent on November 16, 2009, and mailed a copy to the applicant and agent. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on December 22, 2009, pursuant to ORS 540.520 and OAR 690-380-4020.
7. No protests were filed in response to the Department's weekly notice; however, the Department, subsequent to the issuance of the Preliminary Determination, recognized that the Preliminary Determination issued on December 17, 2009, lacked information specific to a Settlement Agreement dated November 29, 2006, in which the Certificate Holders, Water Watch and the Department agreed to add certain conditions to the water right. The November 29, 2006 Settlement Agreement stipulated that that the Certificate Holders shall never submit a future transfer to change the character of use of Certificate 82185 from supplemental irrigation to primary irrigation. In addition, the Settlement Agreement stipulated that the authorized use of water under Certificate 82185 is limited only to a period of time when either the primary source water right certificate is not available or is regulated off by the Watermaster.
8. To facilitate the incorporation of the conditions described above into future certificates for the right, the Department determined to issue a revised Preliminary Determination, including the conditions in Finding of Fact No. 7, and to publish the notice of the revised Preliminary Determination for T-10033, initiating a second 30-day period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision.
9. On December 21, 2009, the agent for the applicant requested additional time to complete the change and make full beneficial use of the water under this transfer application. Given the economic climate, the deadline for completing the change and making full beneficial use of the water is extended to October 1, 2014.
10. On January 26, 2009, the Department issued a Revised Preliminary Determination as set forth in Finding of Fact No. 8 and mailed copies to the applicants, applicants' agent, and WaterWatch of Oregon. Additionally, notice of the Revised Preliminary Determination for the transfer application was published on the Department's weekly notice on January 26, 2010, pursuant to ORS 540.520 and OAR 690-380-4020.

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. A well, 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-10033.

13. The Department has determined that the proposed additional points of appropriation will develop the same source of water as the authorized existing well (DESC 1969).
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 additional points of appropriation proposed in Transfer Application T-10033 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

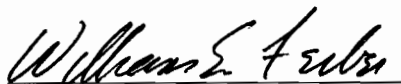
Now, therefore, it is ORDERED:

1. The additional points of appropriation proposed in Transfer Application T-10033 are approved.
2. This water right is subject to the Settlement Agreement Including Deed Restriction Running with the Property dated November 29, 2006, entered under Water Right Application G-10444, Permit 9841.
3. 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 82185, the Stipulated Agreement dated November 29, 2006, and any related decree.
4. No water may be appropriated under this right unless the primary right, or any substituted primary right, becomes unavailable as a result of acts, events or occurrences that are not caused by or are beyond the control of the holders of this right.
5. This right may not be converted into a primary water right by transfer, amendment or otherwise.
6. Water right certificate 82185 is cancelled.
7. The quantity of water diverted at the new additional points 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.
8. Water from the new points of appropriation shall be acquired from the same aquifer (water source) as the original point of appropriation (DESC 1969).
9. 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. The water user shall maintain the meters or measuring devices in good working order. 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.

10. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2014**. 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 change and full beneficial use of the water.
11. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued that includes conditions of the Settlement Agreement dated November 29, 2006 (Conditions 4 and 5 above).

Dated at Salem, Oregon this 26th day of February 2010.


For Phillip C. Ward, Director

Mailing Date: MAR 05 2010