

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-10195, Deschutes County)	CHANGE IN POINT OF
)	APPROPRIATION AND 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

JAYMIE L. KACZMAREK
18337 FRYREAR RANCH ROAD
BEND, OR 97701

Receiving Landowners

WALLACE AND LEANNE KROPF
18319 FRYREAR RANCH ROAD
BEND, OR 97701

Findings of Fact

Background

1. On June 7, 2006, Jaymie L. Kaczmarek filed an application to transfer the place of use and change the point of appropriation under Certificate 81534. The Department assigned the application number T-10195.
2. Certificate 81534 was superseded by Certificate 81675 on December 15, 2005.
3. On July 11, 2006, Certificate 81675 was superseded by Certificate 82029.
4. The Department issued a Draft Preliminary Determination on September 28, 2006, proposing to reject T-10195 because the proposed well would access ground water from a different aquifer than that accessed by the authorized well.

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.

5. On March 8, 2007, the applicant filed an amended transfer application modifying the proposed point of appropriation and place of use change under Certificate 82029 to a different well and different land than originally proposed. The revised application indicated the applicant will remain responsible for completion of the proposed changes.

6. Certificate 82029 was superseded by Certificate 83369 on May 30, 2007.

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

Certificate: 83369 in the name of JAYMIE L. KACZMAREK (perfected under Permit G-12705)

Use: IRRIGATION of 5.1 ACRES

Priority Date: AUGUST 31, 1992

Rate: 0.06 CUBIC FOOT PER SECOND (CFS)

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre feet per acre per year

Source: WELL #2 in the DESCHUTES RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
16 S	11 E	WM	4	SW SW	1,390 FEET SOUTH AND 1,020 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 4

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	11 E	WM	4	SW SW	0.8
16 S	11 E	WM	4	SE SW	4.3

8. Application T-10195 proposes to move the authorized point of appropriation approximately 1.0 mile to the north-northeast from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	11 E	WM	33	SE NE	2,500 FEET SOUTH AND 1,467 FEET EAST FROM THE NORTH ¼ CORNER OF SECTION 33

9. Application T-10195 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	11 E	WM	33	SE NE	5.1

10. Notice of the application for transfer was published on June 13, 2006, and again on March 13, 2007 because of the revisions, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notices.
11. On June 1, 2007, the Department mailed a copy of a revised draft Preliminary Determination proposing to approve Transfer Application T-10195 to the applicant. The revised draft Preliminary Determination set forth a deadline of July 2, 2007, 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.

12. On July 27, 2007, the Department issued a Preliminary Determination proposing to approve Transfer T-10195 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 July 31, 2007, and in The Bulletin newspaper on August 8, 15 and 22, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
13. 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.
14. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right is present.
15. The proposed changes would not result in enlargement of the right.
16. The proposed changes would not result in injury to other water rights.

Conclusions of Law

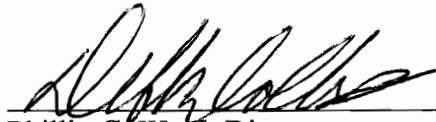
The changes in place of use and point of appropriation proposed in application T-10195 are consistent with the requirements of ORS 537.705, 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in place of use and point of appropriation proposed in application T-10195 are approved.
2. Water right certificate 83369 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
3. 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 Certificate 83369 and any related decree.
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 new 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 water shall no longer receive water as part of these rights.

7. 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.
8. 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.
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 27 day of September 2007.


Phillip C. Ward, Director

Mailing date: OCT 01 2007