

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-9969, Umatilla County) CHANGE IN POINT OF
) APPROPRIATION

ORS 537.705 and 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of appropriation, point of diversion, 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

PATRICIA K. VAN DE COEVERING
25620 SE REBMAN ROAD
BORING, OR 97009

W. WAYNE & MARGARET L. YORK
43906 JERICO LANE
PENDLETON, OR 97801

Findings of Fact

1. On July 11, 2005, Danny Smith filed a transfer application to change the point of appropriation (the authorized well) for two new subdivided tax lots under Certificate 61391. The Department assigned the application number T-9969. On September 12, 2006 the transfer was assigned to the new applicants listed above.

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

Certificate: 61391 in the name of DANNY RAY AND PERRIE KIM SMITH (perfected under Permit G-9221)

Use: IRRIGATION of 14.33 ACRES

Priority Date: February 5, 1981

Rate: 0.18 CUBIC FOOT PER SECOND (CFS)

Limit/Duty: 1/80 of ONE CUBIC FOOT PER SECOND per acre, not to exceed 3.0 acre-feet per acre irrigated during the irrigation season of each year

Source: A WELL within the McKAY CREEK BASIN

This is a final order in other than 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.

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
2 N	32 E	WM	34	SE NE	1330 FEET SOUTH AND 590 FEET WEST FROM THE NE CORNER OF SECTION 34

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
2 N	32 E	WM	34	NE NE	201	5.00
2 N	32 E	WM	34	NE NE	202	6.14
2 N	32 E	WM	34	SE NE	202	3.19
TOTAL						14.33

- Application T-9969 proposes to move the authorized point of appropriation for the above described lands approximately 600 feet northwest to Well#2 and approximately 200 feet east to Well#3 located:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Survey Coordinates
2 N	32 E	WM	34	NE NE	201 (VanDeCoeving)	WELL 2 – SOUTH 48 DEGREES 23 MINUTES 28 SECONDS WEST, 1336 FEET FROM THE NE CORNER OF SECTION 34
2 N	32 E	WM	34	SE NE	202 (York)	WELL 3 – SOUTH 16 DEGREES 5 MINUTES 23 SECONDS WEST, 1421 FEET FROM THE NE CORNER OF SECTION 34

- On July 19, 2005, notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
- On February 16, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-9969 to the applicant. The draft Preliminary Determination set forth a deadline of March 19, 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 by the deadline.
- On April 13, 2007, the Department issued a Preliminary Determination proposing to approve Transfer T-9969 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 April 17, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
- 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.

8. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
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 proposed change in the point of appropriation in application T-9969 is consistent with the requirements of ORS 537.705, ORS 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore, it is ORDERED:


1. The change in point of appropriation proposed in Transfer Application T-9969 is approved.
2. Water right Certificate 61391 is cancelled. A new certificate will be issued confirming that portion of the right NOT modified by the provisions of this transfer.
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 61391 and any related decree.
4. The quantity of water diverted at the new points of appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation, further limited as follows:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Maximum Rate (cfs)	Point of Appropriation
2 N	32 E	WM	34	NE NE	201	5.00	0.06	Well #2
2 N	32 E	WM	34	NE NE	202	6.14	0.12	Well #3
2 N	32 E	WM	34	SE NE	202	3.19		

5. The source of water shall be acquired from the same aquifer (water source) as the original point of appropriation and shall be limited to groundwater production from no deeper than 530 feet below land surface.
6. When required by the Department, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
7. 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.

8. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 19th day of June, 2007.

PCW

Phillip C. Ward, Director

Mailing date: ~~JUN 21 2007~~