

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-10502, 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

Eric Vetterlein
1100 SW Sixth Avenue #1200
Portland OR 97204

Receiving Landowner

Stephen King
3655 NW Thurman
Portland, OR 97210

Findings of Fact

Background

1. On December 10, 2007, Eric Vetterlein (Desert Springs Ranch) filed an application to change the point of appropriation and place of use under Certificate 61097. The Department assigned the application number T-10502.
2. The portion of the right to be transferred is as follows:

Certificate: 61097 in the name of DONALD H. VETTERLEIN (perfected under Permit G-8846)
Use: IRRIGATION of 5.0 ACRES
Priority Date: MARCH 4, 1980
Rate: 0.06 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

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.

acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL within the DEEP CANYON BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	11 E	WM	19	SW SW	1200 FEET NORTH AND 450 FEET EAST FROM SW CORNER OF SECTION 19

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
15 S	11 E	WM	19	SW SW	4	5.0

- Transfer Application T-10502 proposes to move the authorized point of appropriation approximately 3 miles from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	11 E	WM	4	SE SE	990 FEET NORTH AND 362 FEET WEST FROM SE CORNER OF SECTION 4

- Transfer Application T-10502 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	4	SE SE	5.0

- Stephen King is the receiving landowner and will be responsible for completion of the proposed changes after the final order is issued.
- Notice of the application for transfer was published on December 25, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On May 19, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10502 to the applicant. The cover letter that accompanied the draft Preliminary Determination set forth a deadline of June 22, 2009, 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.
- On August 6, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10502 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 August 11, 2009, and in The Bulletin newspaper on September 16, 23 and 30, 2009, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

9. This transfer application is being processed concurrently with transfer applications T-10503, T-10791 and T-10806 which all propose changes to Certificate 61097.

Transfer Review Criteria (OAR 690-380-4010)

10. 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.
11. 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 Transfer Application T-10502.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.

Conclusions of Law

The change in point of appropriation and change in place of use proposed in Transfer Application T-10502 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 change in point of appropriation and change in place of use proposed in Transfer Application T-10502 are approved.
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 61097 and any related decree.
3. Water right certificate 61097 is cancelled. A new certificate will be issued describing the portion of the right not affected by this transfer or Transfer Applications T-10503, T-10791, and T-10806.
4. The quantity of water diverted at the new point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.
5. Water use measurement conditions:
 - a. 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.
 - b. The water user shall maintain the meters or measuring devices in good working order.

- c. 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.
6. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
 7. The former place of use of the transferred right shall no longer receive water under the right.
 8. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. 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 17th day of December 2009.


Phillip C. Ward, Director

Mailing date: DEC 22 2009