

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

In the Matter of Transfer Application) FINAL ORDER
T-11034, Umatilla County) APPROVING A CHANGE IN POINT OF
) APPROPRIATION TO REFLECT
) HISTORIC USE

Authority

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the 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

VERGIE BROADFOOT
52132 HWY 332
MILTON-FREEWATER, OR 97862

Agent / Trustee

LINDA BROADFOOT-WALCKER
51203 FRUITVALE RD.
MILTON-FREEWATER, OR 97862

Findings of Fact

Background

1. On March 18, 2010, Linda Broadfoot-Walcker, having Power of Attorney for her mother, Vergie Broadfoot, filed a transfer application for authorization of an historic point of appropriation under a portion of Certificate 26521. The Department has assigned the application number T-11034.
2. The portion of the right to be transferred is as follows:
Certificate: 26521 in the name of EDWIN L. MCEWEN (perfected under Permit U-611)
Use: SUPPLEMENTAL IRRIGATION of 18.4 ACRES
Priority Date: MARCH 12, 1954
Rate: 0.39 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-FORTIETH 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 4.5 ACRE-FEET per acre for each acre irrigated during the irrigation season of each year.

This is a final 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 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.

Source: McEWEN WELL within the JOHNSON CREEK BASIN

Authorized Point of Appropriation:

| Twp | Rng | Mer | Sec | Q - Q | Measured Distances |
|-----|------|-----|-----|-------|---|
| 6 N | 35 E | WM | 29 | NW NW | 725 FEET SOUTH AND 825 FEET EAST FROM THE NW CORNER OF SECTION 29 |

Authorized Place of Use:

| SUPPLEMENTAL IRRIGATION | | | | | |
|-------------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q - Q | Acres |
| 6 N | 35 E | WM | 29 | NE NW | 4.8 |
| 6 N | 35 E | WM | 29 | NW NW | 13.6 |

- Transfer Application T-11034 proposes to change the point of appropriation southeast approximately 160 feet to reflect historical use for the above described lands to a well located:

Proposed Point of Appropriation:

| Twp | Rng | Mer | Sec | Q - Q | Measured Distances |
|-----|------|-----|-----|-------|--|
| 6 N | 35 E | WM | 29 | NW NW | 780 FEET SOUTH AND 1025 FEET EAST FROM THE NW CORNER OF SECTION 29 |

- Notice of the application for transfer was published on March 30, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

Transfer Review Criteria (ORS 540.532 and OAR 690-380-2120)

- Pursuant to OAR 690-380-2120(2)(a), evidence has been submitted that the actual, current point of appropriation for the water right in question, as described in Finding of Fact #3, has been in use for more than 10 years.
- Pursuant to OAR 690-380-2120(2)(c), the Watermaster provided a statement on March 25, 2010, that to his knowledge there has been no complaint of injury due to the use of water at the actual, current point of appropriation, prior to the transfer request.
- The Department did not identify any affected water rights pursuant to OAR 690-380-2120(3).
- Water has been used within the last five years according to the terms and conditions of the right. There is no evidence available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
- 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-11034.
- The Department has determined that the proposed point of appropriation (UMAT 5092), will develop the same source of water as the authorized existing well (UMAT 4808). The existing well produces water from a shallow water bearing zone in the alluvial material. The

proposed new well shall only appropriate ground water from same water reservoir consistent with OAR 690-380-2110 (2).

11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.

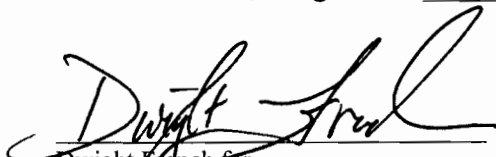
Conclusions of Law

The proposed change in point of appropriation to reflect historical use in application T-11034 is consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change proposed in T-11034 is approved and effective immediately.
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 26521 and any related decree.
3. Water right Certificate 26521 is cancelled. Certificate 86794 will be issued to describe the change in point of appropriation for the portion of the right included in T-11034. Certificate 86795 shall be issued to describe the portion of Certificate 26521 not modified by this order. Together, the new Certificates shall supersede Certificate 26521.
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 appropriation.
5. The Director may require the water user to install a totalizing flow meter or other suitable measuring device at the new point of appropriation. If the Director notifies the water user to install a totalizing flow meter or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meter(s) or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.

Dated at Salem, Oregon this 18 day of January 2011.


Dwight French for
PHILLIP C. WARD, DIRECTOR

Mailing date: JAN 19 2011