

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

In the Matter of Transfer Application)
T-10791, Deschutes County)
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)

FINAL ORDER APPROVING
CHANGES IN POINT OF
APPROPRIATION AND PLACE OF
USE, AND PARTIAL CANCELLATION
OF A WATER RIGHT

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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant	Agent	Receiving Landowner
Eric Vetterlein 1100 SW Sixth Avenue #1200 Portland OR 97204	Michele Sims Fred Ast and Associates P.O. Box 751 Sisters, OR 97759	Gary and Nancy Hostick P.O. Box 1906 Sisters, OR 97759

Findings of Fact

Background

1. On February 25, 2009, ERIC VETTERLEIN filed an application for Desert Springs Ranch Limited Partnership, to change the point of appropriation and place of use of a water right under Certificate 61097 and to cancel a portion of a water right under Certificate 75569. The Department assigned the application number T-10791.

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 3.0 ACRES
Priority Date: MARCH 4, 1980
Rate: 0.04 CUBIC FOOT PER SECOND

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.

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3 acre-feet per acre per year
Source: A WELL in the DEEP CANYON BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
15 S	11 E	WM	19	SW SW	4	1200 FEET NORTH AND 450 FEET EAST FROM THE SW CORNER OF SECTION 19

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	11 E	WM	30	NE NE	3.0

- Application T-10791 proposes to move the authorized point of appropriation approximately 2.2 miles southeast from the existing point of appropriation to a new well to be drilled at:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	11 E	WM	32	NE NE	525 FEET SOUTH AND 930 FEET WEST FROM THE NE CORNER OF SECTION 32

- Application T-10791 also proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	11 E	WM	32	NE NE	3.0

- Gary and Nancy Hostick are the receiving landowners and will be responsible for completion of the proposed changes after the final order is issued.
- This transfer application is being processed concurrently with transfer applications T-10502, T-10503 and T-10806 which all propose changes to Certificate 61097.
- The Department has determined that the "TO" lands are covered by Certificate 75569 and upon approval the rights would become layered unless that portion of Certificate 75569 is simultaneously transferred to other land or cancelled.
- Notice of the application for transfer was published on March 10, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On August 5, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10791 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 8, 2009, for the applicant to respond. On August 10, 2009, 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 12, 2009, Michele Sims, the applicant's agent, notified the Department that Finding of Fact #3 in the draft incorrectly identified the proposed well as an existing well, when in fact a new well is proposed to be drilled. This document reflects that correction.

10. On October 13, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10791 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 October 20, 2009, and in The Bulletin newspaper on October 31, November 7 and 14, 2009, pursuant to ORS 540.520 and OAR 690-380-4020. (No) protests were filed in response to the notice.

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 pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-10791.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.

Partial Cancellation of a Water Right

15. ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.
16. On June 19, 2009, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Gary and Nancy Hostick. The right to be cancelled is as follows:

Certificate: 75569 in the name of MATILDA MCCALLISTER (confirmed by decree of the Circuit Court of the State of Oregon for Crook County. The decree is of record at Salem, in the Order Record of the Water Resources Director, in Volume 1, at page 471. The date of priority is 1901.)

Use: IRRIGATION of 10 ACRES.

Priority Date: 1901

Rate: 0.20 CUBIC FOOT PER SECOND

Source: WYCHUS CREEK (formerly known as SQUAW CREEK), tributary to the DESCHUTES RIVER

Authorized Place of Use to be Cancelled:

Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	11 E	WM	32	NE NE	10.0

Conclusions of Law

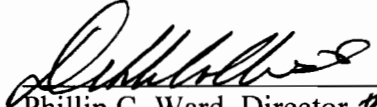
The change in point of appropriation and change in place of use proposed in Transfer Application T-10791 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled.

Now, therefore, it is ORDERED:

1. The change in point of appropriation and change in place of use proposed in application T-10791 are approved. The portion of the right that has been abandoned is cancelled.
2. Water right certificate 61097 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer or by transfer applications T-10502, T-10503 and T-10806.
3. Water right certificate 75569 is cancelled. A new certificate will be issued describing that portion of the right not cancelled by this order.
4. 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.
5. 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.
6. The former place of use of the transferred right shall no longer receive water under the right.
7. 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 the new point of appropriation.
 - b. The water user shall maintain the meter or measuring device in good working order.
 - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.
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 portion of the right transferred will be issued.

Dated at Salem, Oregon this 17th day of December 2009.


Phillip C. Ward, Director *pn*

Mailing date: DEC 22 2009