

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

In the Matter of Transfer Application)
T-10449, Deschutes County) FINAL ORDER APPROVING A
) CHANGE IN POINT OF
) APPROPRIATION

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

DON JACOBSON
PO BOX 1629
SISTERS, OR 97759

Findings of Fact

Background

1. On August 27, 2007, Don Jacobson filed an application to change the point of appropriation under Certificates 82717 and 82718. The Department assigned the application number T-10449.
2. The first right to be transferred is as follows:
 - Certificate:** 82717 in the name of DON JACOBSON (perfected under Permit G-10624)
 - Use:** IRRIGATION of 5.34 ACRES
 - Priority Date:** JANUARY 16, 1985
 - Rate:** 0.07 CUBIC FOOT PER SECOND, if lawfully available at the original point of appropriation, being located NW¼ NE¼, Section 31, T 15S, R 11E., W.M.; 80 feet South and 2290 feet West from the NE corner of Section 31
 - 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

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.

irrigated, and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year

Source: A WELL, within the Deschutes River Basin

Authorized Point of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | Survey Coordinates |
|------|------|-----|-----|-------|---|
| 14 S | 10 E | WM | 35 | SE NW | 1372 FEET SOUTH AND 1446 FEET EAST FROM THE NW CORNER OF SECTION 35 |

Authorized Place of Use:

| Twp | Rng | Mer | Sec | Q-Q | Acres |
|------|------|-----|-----|-------|-------|
| 14 S | 10 E | WM | 35 | NW NE | 4.29 |
| 14 S | 10 E | WM | 35 | SW NE | 0.78 |
| 14 S | 10 E | WM | 35 | NE NW | 0.20 |
| 14 S | 10 E | WM | 35 | SE NW | 0.07 |

3. Transfer Application T-10449 proposes to move the authorized point of appropriation approximately 18 feet South and 344 feet East from the existing point of appropriation to:

| Twp | Rng | Mer | Sec | Q-Q | Survey Coordinates |
|------|------|-----|-----|-------|---|
| 14 S | 10 E | WM | 35 | SE NW | 1390 FEET SOUTH AND 1790 FEET EAST FROM THE NW CORNER OF SECTION 35 |

4. The second right to be transferred is as follows:

Certificate: 82718 in the name of DON JACOBSON (perfected under Permit G-10624)

Use: IRRIGATION of 10.0 ACRES

Priority Date: JANUARY 16, 1985

Rate: 0.12 CUBIC FOOT PER SECOND, if lawfully available at the original point of appropriation, being located NW¹/₄ NE¹/₄, Section 31, T 15 S, R 11 E., W.M.; 80 feet South and 2290 feet West from the NE corner of Section 31, or its equivalent in case of rotation, measured at the well

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

Source: A WELL, within the Deschutes River Basin

Authorized Point of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | Survey Coordinates |
|------|------|-----|-----|-------|---|
| 14 S | 10 E | WM | 35 | SE NW | 1372 FEET SOUTH AND 1446 FEET EAST FROM THE NW CORNER OF SECTION 35 |

Authorized Place of Use:

| Twp | Rng | Mer | Sec | Q-Q | Acres |
|------|------|-----|-----|-------|-------|
| 14 S | 10 E | WM | 35 | NW NE | 7.87 |
| 14 S | 10 E | WM | 35 | SW NE | 0.22 |

| Twp | Rng | Mer | Sec | Q-Q | Acres |
|------|------|-----|-----|-------|-------|
| 14 S | 10 E | WM | 35 | NE NW | 1.79 |
| 14 S | 10 E | WM | 35 | SE NW | 0.12 |

5. Transfer Application T-10449 proposes to move the authorized point of appropriation approximately 18 feet South and 344 feet East from the existing point of appropriation to:

| Twp | Rng | Mer | Sec | Q-Q | Survey Coordinates |
|------|------|-----|-----|-------|---|
| 14 S | 10 E | WM | 35 | SE NW | 1390 FEET SOUTH AND 1790 FEET EAST FROM THE NW CORNER OF SECTION 35 |

6. Notice of the application for transfer was published on September 4, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. On May 8, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10449 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 10, 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, including a notarized affidavit consenting to the proposed transfer from the co-owner (Brenda Jacobson) of the property to which water rights Certificates 82717 and 82718 are appurtenant.
8. On August 27, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10449 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 September 1, 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)

9. Water has been used within the last five years. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
10. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-10449.
11. The proposed change would not result in enlargement of the rights.
12. The proposed change would not result in injury to other water rights.

Conclusions of Law

The change in point of appropriation proposed in Transfer Application T-10449 is 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 proposed in Transfer Application T-10449 is 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 Certificates 82717 and 82718 and any related decree.
3. Water right Certificates 82717 and 82718 are cancelled.
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. The Director may require the water user to install a totalizing flow meter or other suitable measuring devices at each point of appropriation. If the Director notifies the water user to install totalizing flow meters 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 meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.
6. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
7. The approved change 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 change and full beneficial use of the water.
8. When satisfactory proof of the completed change is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 2nd day of October 2009.



Phillip C. Ward, Director *rw*

Mailing date: OCT 08 2009