

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

In the Matter of Transfer Application	)	FINAL ORDER APPROVING AN
T-10327, Klamath County	)	ADDITIONAL POINT OF
	)	APPROPRIATION, A CHANGE IN
	)	PLACE OF USE, AND A CHANGE IN
	)	CHARACTER 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**

LISKEY FARMS INC.  
4650 LOWER KLAMATH LAKE RD.  
KLAMATH FALLS, OR 97603

**Findings of Fact**

**Background**

1. On February 28, 2007, Liskey Farms Inc. filed an application to change the character of use, add a point of appropriation, and change the place of use under Certificate 67664. The Department assigned the application number T-10327.
2. On May 1, 2007, the applicant submitted a transfer application map, identifying the proposed additional point of appropriation, place of use and character of use requested under Transfer T-10327.
3. On May 1, 2007, Tracy Liskey of Liskey Farms, Inc., stated that fish culture and space heating had occurred year round.
4. The applicant submitted a revised application on May 8, 2007, further clarifying the proposed changes under Transfer T-10327.
5. The right to be transferred is as follows:  
**Certificate:** 67664 in the name of LISKEY FARMS, INC. (perfected under Permit G-9547)  
**Use:** SPACE HEATING and FISH CULTURE

This is an 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 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.

**Priority Date:** AUGUST 17, 1981

**Rate:** 4.9 CUBIC FEET PER SECOND (CFS), being 2.2 CFS from Well 1 and 2.7 CFS from Well 2

**Source:** WELL 1 and WELL 2, in the Lower Klamath Lake Basin

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
40 S	9 E	WM	34	SW NE	1	Well 1 - 1520 FEET SOUTH AND 1780 FEET WEST FROM THE NE CORNER OF SECTION 34
40 S	9 E	WM	34	SE NE	2	Well 2 - 1760 FEET SOUTH AND 930 FEET WEST FROM THE NE CORNER OF SECTION 34

**Authorized Place of Use:**

Space Heating					
Twp	Rng	Mer	Sec	Q-Q	GLot
40 S	9 E	WM	34	SW NE	4
40 S	9 E	WM	34	SW NE	1
40 S	9 E	WM	34	SE NE	2

Fish Culture					
Twp	Rng	Mer	Sec	Q-Q	GLot
40 S	9 E	WM	34	SW NE	4

6. Application T-10327 proposes to add an authorized point of appropriation approximately 400 feet east from existing point of appropriation #1 (Well #1) and 400 feet west from existing point of appropriation #2 (Well #2) to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
40 S	9 E	WM	34	SW NE	1	1640 FEET SOUTH AND 1325 FEET WEST FROM THE NE CORNER OF SECTION 34

7. Application T-10327 proposes to change the character of use to Commercial, Industrial and Fish Culture.
8. Application T-10327 proposes to change the place of use of the right to an area that encompasses the original place of use, being:

Commercial, Industrial and Fish Culture					
Twp	Rng	Mer	Sec	Q-Q	GLot
40 S	9 E	WM	34	NE NE	
40 S	9 E	WM	34	NW NE	1
40 S	9 E	WM	34	SW NE	1
40 S	9 E	WM	34	SW NE	7
40 S	9 E	WM	34	SW NE	4
40 S	9 E	WM	34	SE NE	2
40 S	9 E	WM	34	SE NE	3
40 S	9 E	WM	34	NE NW	1
40 S	9 E	WM	34	NE NW	4
40 S	9 E	WM	34	SE NW	4

<b>Commercial, Industrial and Fish Culture</b>					
<b>Twp</b>	<b>Rng</b>	<b>Mer</b>	<b>Sec</b>	<b>Q-Q</b>	<b>GLot</b>
40 S	9 E	WM	34	SE NW	1
40 S	9 E	WM	34	NE SE	2
40 S	9 E	WM	34	NE SE	3
40 S	9 E	WM	35	SW NW	
40 S	9 E	WM	35	NW SW	1
40 S	9 E	WM	35	NW SW	4

9. Notice of the application for transfer was published on March 13, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
10. On May 22, 2007, the Department e-mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10327 to the applicant. The draft Preliminary Determination set forth a deadline in which the applicant could respond.
11. The applicant responded to the draft Preliminary Determination on May 23, 2007. The applicant provided a statement agreeing to the inclusion of a condition necessary to prevent enlargement of the right and requested that the Department proceed with issuance of the Preliminary Determination. Additionally, due to the complex nature of the project, the applicant requested additional time through October 1, 2012, to allow sufficient time to complete the proposed changes. The revised date for completion of the changes is as stated in this order.
12. On July 18, 2007, the Department issued a Preliminary Determination proposing to approve Transfer T-10327 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 July 24, 2007, and in the *Herald and News* newspaper on August 22 and 29 and September 5 and 12, 2007, 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)***

13. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
14. 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 Application T-10327.
15. Certificate 67664 does not have a duty limit. As defined by OAR 690-380-0100(2), the proposed character of use change could result in enlargement of the right if not conditioned so as to prevent use of more water than could have been beneficially used without waste for the existing authorized use. The best currently available information indicates that beneficial use of water for space heating and fish culture would not likely exceed 2,530 acre-feet per year.

16. The proposed changes, as conditioned to limit use to a total annual volume of 2,530 acre feet, would not result in enlargement of the right.
17. The proposed changes would not result in injury to other water rights.

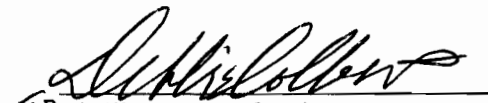
**Conclusions of Law**

The changes in character of use, place of use and an additional point of appropriation proposed in application T-10327 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 changes in character of use, place of use and an additional point of appropriation proposed in application T-10327 are approved.
2. Water right certificate 67664 is cancelled.
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 67664.
4. Water shall be acquired from the same aquifer (water source) as the original points of appropriation.
5. The quantity of water diverted at the additional point of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.
6. The use of water under the right evidenced by Certificate 67664 shall be limited to a total annual volume of 2,530 acre feet.
7. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2012**. 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 changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 17 day of October 2007.

  
For Phillip C. Ward, Director

Mailing date: OCT 22 2007