

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-10471, Klamath County) 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

GARY D. OREM
19980 HWY 50 (PO BOX 784)
MERRILL, OR 97633

Agent

DENNIS R. GLENDER
GLENDER'S HYDRO TECH SERVICES
8664 SW SAND RIDGE RD.
CROOKED RIVER RANCH, OR 97760

Findings of Fact

Background

1. On October 15, 2007, Gary D. Orem filed an application to change the point of appropriation under Certificates 48601 and 67947. The Department assigned the application number T-10471.
2. The first right to be transferred is as follows:
Certificate: 48601 in the name of CHARLES G. KERR (perfected under Permit G-7139)
Use: IRRIGATION of 36.8 ACRES
Priority Date: NOVEMBER 17, 1976
Rate: 0.46 CUBIC FOOT PER SECOND (CFS)
Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre-feet per acre per year
Source: WATER HOLE WELL No.1, in the LOST RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
41 S	10 E	WM	8	SW SE	920 FEET NORTH AND 10 FEET EAST FROM THE S1/4 CORNER OF SECTION 8

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.

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
41 S	10 E	WM	8	NE SE	15.5
41 S	10 E	WM	8	NW SE	9.9
41 S	10 E	WM	8	SW SE	0.6
41 S	10 E	WM	8	SE SE	10.8

3. Application T-10471 proposes to move the authorized point of appropriation approximately 0.26 mile southeast from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Survey Coordinates
41 S	10 E	WM	8	SE SE	702	621 FEET NORTH AND 1137 FEET WEST FROM THE SE CORNER OF SECTION 8

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

Certificate: 67947 in the name of CHARLES G. KERR (perfected under Permit G-9623)

Use: IRRIGATION of 7.6 ACRES

Priority Date: MARCH 8, 1982

Rate: 0.1 CUBIC FOOT PER SECOND (CFS)

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre-feet per acre per year

Source: A WELL, in the LOWER KLAMATH LAKE BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
41 S	10 E	WM	8	SW SE	900 FEET NORTH AND 20 FEET EAST FROM THE SOUTH 1/4 CORNER OF SECTION 8

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
41 S	10 E	WM	8	SW SE	2.6
41 S	10 E	WM	8	SE SE	5.0

5. Application T-10471 proposes to move the authorized point of appropriation approximately 0.26 mile southeast from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Survey Coordinates
41 S	10 E	WM	8	SE SE	702	621 FEET NORTH AND 1137 FEET WEST FROM THE SE CORNER OF SECTION 8

6. While the authorized point of appropriation for Certificate 48601 (described in Finding of Fact #2) and the authorized point of appropriation for Certificate 67947 (described in Finding of Fact #4) appear to describe two different points of appropriation, the Department has determined, based upon information contained in the record, that both certificates utilize the same, single well (KLAM 14939) which is actually located as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
41 S	10 E	WM	8	SW SE	930 FEET NORTH AND 2614 FEET WEST FROM THE SE CORNER OF SECTION 8

7. Notice of the application for transfer was published on October 23, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. On January 14, 2008, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10471 to the applicant and his agent. The draft Preliminary Determination set forth a deadline of February 18, 2008, 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.
9. On January 24, 2008, the applicant's Certified Water Rights Examiner revised the application map to accurately reflect the location of the authorized point of appropriation, referenced to recognized survey corners.
10. On January 29, 2008, the Department issued a Preliminary Determination proposing to approve Transfer T-10471 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 February 5, 2008, and in the Klamath Falls Herald and News newspaper on February 9, 16 and 23, 2008, 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 rights, and there is no information in the record that would demonstrate that the rights are 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 rights were present within the five-year period prior to submittal of Application T-10471.
13. The proposed change would not result in enlargement of the rights.
14. The proposed change would not result in injury to other water rights.
15. The authorized well (KLAM 14939) is completed in sediments that overlay basalt that occurs at a greater depth. The geology at the site of the proposed well is similar. Therefore, the source of water at the proposed point of appropriation is likely to be the same as that at the original well.

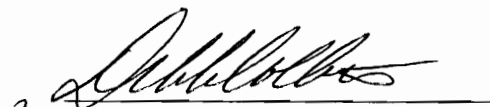
Conclusions of Law

The change in point of appropriation proposed in application T-10471 appears to be 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 application T-10471 is approved.
2. Water right certificates 48601 and 67947 are cancelled. A new certificate will be issued describing that portion of Certificate 67947 not affected by this transfer.
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 Certificates 48601 and 67947 and any related decree.
4. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
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. Prior to diverting water, the water user shall install an in-line flow meter or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain and operate the measuring device as required by the Department.
7. The approved change shall be completed and full beneficial use of the water shall be made on or before October 1, 2009. 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 20th day of March 2008.


Phillip C. Ward, Director

Mailing date: APR 11 2008