

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

In the Matter of Transfer Application)
T-10887, Yamhill 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

DARREN SHELBURNE
17340 SE WALLACE ROAD
DAYTON, OR 97132

Findings of Fact

Background

1. On June 1, 2009, DARREN SHELBURNE filed an application to change the point of appropriation under Certificate 53095. The Department assigned the application number T-10887.
2. Certificate 53095 was cancelled on October 26, 2009, by Special Order Volume 79, pages 126 through 129 approving Transfer Application T-10888, and was superseded by Certificate 85767.
3. The right to be transferred is as follows:

Certificate: 85767 in the name of DONALD H. KUHN (perfected under Permit G-8464)

Use: IRRIGATION of 26.5 ACRES

Priority Date: FEBRUARY 20, 1979

Rate: 0.33 CUBIC FOOT PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year

Source: A WELL in the WILLAMETTE RIVER BASIN

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 Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	3 W	WM	16	SE NW	56	1890 FEET SOUTH AND 2230 FEET EAST FROM THE NW CORNER OF HEWITT DLC 56

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	3 W	WM	16	NE SW	56	12.1
5 S	3 W	WM	16	NW SW	56	10.0
5 S	3 W	WM	16	NW SE	56	4.4

4. Transfer Application T-10887 proposes to move the authorized point of appropriation approximately 1280 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	3 W	WM	16	NE SW	56	2910 FEET SOUTH AND 1460 FEET EAST FROM THE NW CORNER OF HEWITT DLC 56

5. Notice of the application for transfer was published on June 16, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. On November 2, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10887 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 3, 2009, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination, and on February 12, 2010 provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
7. On February 17, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10887 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 23, 2010, 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)

8. Water has been used within the last five years prior to the submittal of Transfer Application T-10887 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.
9. 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-10887.
10. The proposed change would not result in enlargement of the right.
11. 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-10887 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 application T-10887 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 Certificate 85767 and any related decree.
3. Water right certificate 85767 is cancelled. Certificate 86088 will be issued describing that portion of the right not affected by this transfer.
4. The quantity of water diverted at the additional point of appropriation together with that diverted at the original point of appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation.
5. Water use measurement:
 - 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 each point of diversion.
 - b. The water user shall maintain the meters or measuring devices in good working order.
 - c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.
6. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
7. 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 change and full beneficial use of the water.
8. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 26th day of March 2010.

for William E. Feiler
Phillip C. Ward, Director

Mailing date: MAR 31 2010