

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING AN
T-11246, Klamath County)	ADDITIONAL 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

RAY PROCK
20790 KENO WORDEN ROAD
KLAMATH FALLS, OR 97603

Agent

ADKINS CONSULTING ENGINEERS, INC.
2950 SHASTA WAY
KLAMATH FALLS, OR 97603

Findings of Fact

Background

1. On May 13, 2011, Ray Prock filed an application for an additional point of appropriation under Certificates 44401 and 66767. The Department assigned the application number T-11246.
2. On June 28, 2012, Andrew M. Hanson, of Adkins Consulting Engineers, Inc., submitted modifications to the transfer, reducing the acreage included in the transfer.
3. The portion of the first right to be transferred is as follows:

Certificate:	44401 in the name of Clyde & Irene Patterson and Winston H. & Louise Patterson (perfected under Permit G-4343)
Use:	Irrigation of 314.8 acres
Priority Date:	April 8, 1969
Rate:	3.63 cubic feet per second
Limit/Duty:	The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to one-eighthieth of one cubic foot per second per acre, or its equivalent for each

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.

acre irrigated and shall be further limited to a diversion of not to exceed 3 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A well within the Bear Creek Basin

Authorized Point of Appropriation:

	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
WELL 2	41 S	8 E	WM	5	NE SE	3270 FEET SOUTH AND 800 FEET WEST FROM THE NE CORNER OF SECTION 5

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
41 S	8 E	WM	4	SW NE	34.6
41 S	8 E	WM	4	NE NW	8.0
41 S	8 E	WM	4	NW NW	8.0
41 S	8 E	WM	4	SW NW	29.8
41 S	8 E	WM	4	SE NW	40.0
41 S	8 E	WM	4	NE SW	36.4
41 S	8 E	WM	4	NW SW	38.2
41 S	8 E	WM	4	SW SW	1.4
41 S	8 E	WM	4	NW SE	36.6
41 S	8 E	WM	5	NE NE	7.4
41 S	8 E	WM	5	SE NE	9.0
41 S	8 E	WM	5	NE SE	32.2
41 S	8 E	WM	5	NW SE	4.4
41 S	8 E	WM	5	SW SE	5.2
41 S	8 E	WM	5	SE SE	23.6

4. Transfer Application T-11246 proposes an additional point of appropriation approximately 1400 feet from the existing point of appropriation:

	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
WELL 3	41 S	8 E	WM	5	SE NE	2000 FEET SOUTH AND 200 FEET WEST FROM THE NE CORNER OF SECTION 5

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

Certificate: 66767 in the name of Winston H. and Louise Patterson, (perfected under Permit G-7256)

Use: Irrigation of 146.3 acres and supplemental irrigation of 42.8 acres

Priority Date: May 25, 1977

Rate: 2.35 cubic feet per second

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to one-eightieth of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A well within the Klamath River Basin

Authorized Point of Appropriation:

	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
WELL 1	41 S	8 E	WM	5	NW NE	1220 FEET SOUTH AND 1390 FEET WEST FROM NE CORNER OF SECTION 5

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
41 S	8 E	WM	4	NE NW	25.4
41 S	8 E	WM	4	NW NW	32.0
41 S	8 E	WM	5	NE NE	28.8
41 S	8 E	WM	5	NW NE	37.2
41 S	8 E	WM	5	NE NW	8.8
41 S	8 E	WM	5	NE SE	1.0
41 S	8 E	WM	5	NW SE	1.5
41 S	8 E	WM	5	SW SE	4.1
41 S	8 E	WM	5	SE SE	7.5

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
41 S	8 E	WM	4	NE NW	8.0
41 S	8 E	WM	4	NW NW	8.0
41 S	8 E	WM	4	SW NW	10.4
41 S	8 E	WM	5	NE NE	7.4
41 S	8 E	WM	5	SE NE	9.0

6. Transfer Application T-11246 proposes an additional point of appropriation approximately 1400 feet from the existing point of appropriation:

	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
WELL 3	41 S	8 E	WM	5	SE NE	2000 FEET SOUTH AND 200 FEET WEST FROM THE NE CORNER OF SECTION 5

7. Notice of the application for transfer was published on May 24, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. On February 10, 2012, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11246 to the applicant, based on the original application. The draft Preliminary Determination cover letter set forth a deadline of March 11, 2012, for the applicant to respond. The applicant requested that the Department allow 180 days additional time for response before proceeding with issuance of a Preliminary Determination. On June 28, 2012, the applicant amended the application, provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer, and agreed to install measuring devices at each point of appropriation.
9. On July 6, 2012, the Department mailed a copy of a revised draft Preliminary Determination proposing to approve Transfer Application T-11246 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of August 6, 2012, for the

applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination.

10. On July 19, 2012, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11246 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, 2012, and in the Herald and News newspaper on July 27th and August 3rd and 10th, 2012, 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 prior to the submittal of Transfer Application T-11246 according to the terms and conditions of the rights. There is insufficient 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 Transfer Application T-11246.
13. The Department finds the proposed change may result in enlargement of the rights, unless conditioned to prevent more water from being diverted from the combined existing and proposed points of appropriation than what is available at the authorized point of appropriation.
14. On June 28, 2012, the applicant submitted a letter agreeing to condition the transfer as below, which will be sufficient to ensure that the change would not result in enlargement of the rights:
 - 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 appropriation. The water user shall maintain the meters or measuring devices in good working order.
 - b. The water user shall keep a complete record of the amount of water appropriated.
 - 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.
15. The transfer, as conditioned, would not result in enlargement of the rights.
16. The proposed change would not result in injury to other water rights.

Conclusions of Law

The additional point of appropriation proposed in Transfer Application T-11246 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 additional point of appropriation proposed in application T-11246 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 44401 and 66767 and any related decree.
3. Water right certificates 44401 and 66767 are cancelled. New certificates will be issued describing those portions of the rights 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 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 each point of appropriation. The water user shall maintain the meters or measuring devices in good working order.
 - b. The water user shall keep a complete record of the amount of water appropriated.
 - 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, 2013**. A Claim of Beneficial Use prepared by a Certified Water Right 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 change is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 11 day of September, 2012.


Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing Date SEP 17 2012