

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A CHANGE
T-9800, Umatilla County)	IN POINT OF APPROPRIATION AND
)	REDESCRIBING A WATER RIGHT

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.

Applicants

Kevin and Colette Blakely
71081 Arabian Drive
Pendleton, OR 97801

Findings of Fact

Background

1. Randy Hunter filed an application to transfer the point of appropriation for lands described in Water Right Certificate 65770. The Department received the application on October 4, 2004, and assigned the application number T-9800.
2. Amendments to the application and map for Transfer T-9800 were received from on July 20, 2005, and October 31, 2005, to identify the authorized place of use involved in the transfer.
3. On December 6, 2005, the Department authorized the assignment of Transfer T-9800 from Randy Hunter to Kevin and Colette Blakely.

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order 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 137-004-080 and OAR 690-01-005, 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.

4. The original map accompanying the ground water application filed with the Water Resources Department in 1980 under file number G-9766 (Permit G-9429/Certificate 65770), shows the well location coordinates measured from the SW corner of section 34 , which appears to be on the south side of the highway when overlain with the current county assessor's map.
5. On September 22, 1987, the Department conducted a final proof survey of the ground water right authorized under Permit G-9429 and prepared a map of the water right using aerial photography. The 1987 survey appears to have been performed using an iron pipe on the north side of the highway as the point of beginning. The iron pipe was the "Initial Point" monument established to begin the survey for the original layout of the Fieldcrest Subdivision within which the water use is located.
6. A new survey was performed by a certified water rights examiner in September of 2004. The associated map accompanying Application T-9800 superimposes the Township, Range, Section and Quarter-Quarter lines on the place of use and locates the authorized point of appropriation differently from the Department's 1987 final proof survey. The 2004 survey was not a retracement of the original water right survey, but was based on references established by the government land survey and county assessor's office maps and records.
7. The difference between the two surveys is the location of the point of beginning on which the surveys were based. There is a 95-foot offset between originating points of beginning which results in a different breakdown of the acreage per each quarter-quarter. The only material difference between the two is the manner in which they were referenced based on two different and distinct survey monuments located a short distance from each other.
8. The original survey of the area was done in 1864 by Daniel Chaplain and it appears by his subsequent map that the old road (highway) may have appeared on the south side of the corner monument at that time. Mr. Chaplain's notes do not speak to actually setting a corner post at that location. In 1973, Donald Staebler, surveyor contracted by Umatilla County, found remnants of corner post charcoal and set a 3-inch capped pipe, re-monumenting the SE corner of Section 34 in Township 1 North, Range 32 East, W.M., within Umatilla County, located on the southwest side of the old Highway 395.
9. The actual location of the place of use and the point of appropriation as they are found on the ground remains the same as the State Engineer found them in 1987, however the location of the water right should be re-described in relation to the current understanding of how the public land survey overlies the land based upon the current recognized corner with which the 2004 survey is consistent.

10. The following table compares the place of use description in Certificate 65770 and a proposed redescription based upon Findings #4 through #9 above:

Original Description of Place of Use under Certificate 65770	Proposed Redescription of Place of Use (2004 Survey)
NE ¼ SW ¼ 0.20 ACRE NW ¼ SW ¼ 2.70 ACRES SW ¼ SW ¼ 5.80 ACRES SE ¼ SW ¼ 0.20 ACRE Section 34 T. 2 N, R. 32 E, W.M.	Tax Lot 700 – Campbell NE ¼ SW ¼ 0.20 ACRE NW ¼ SW ¼ 1.47 ACRES SW ¼ SW ¼ 2.91 ACRES SE ¼ SW ¼ 0.13 ACRE Section 34 T. 2 N, R. 32 E, W.M. Tax Lot 701 – Blakely NW ¼ SW ¼ 2.38 ACRES SW ¼ SW ¼ 1.81 ACRES Section 34 T. 2 N, R. 32 E, W.M.
Total: 8.90 ACRES	Total: 8.90 ACRES

11. The following table compares the point of appropriation description in Certificate 65770 and a proposed redescription based upon Findings #4 through #9 above:

Original Description of Point of Appropriation under Certificate 65770	Proposed Redescription of Point of Appropriation (2004 Survey)
SW ¼ SW ¼ of Section 34, T 2 N, R 32 E, W.M., 820 feet North and 870 feet East from the SW Corner of Section 34	SW ¼ SW ¼ of Section 34, T. 2 N, R. 32 E, W.M., 915 feet North and 870 feet East from the SW Corner of Section 34

12. The portion of the right to be transferred, as redescribed above, is as follows:

Certificate: 65770 in the name of GERALD L. AND LINDA G. AYLOR (perfected under Permit G-9429)

Use: IRRIGATION of 4.19 ACRES

Priority Date: JUNE 4, 1980

Quantity: 0.05 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 within the MCKAY CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
2 N	32 E	WM	34	SW SW	WELL – 915 FEET NORTH AND 870 FEET EAST FROM THE SW CORNER OF SECTION 34

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
2 N	32 E	WM	34	NW SW	701	2.38
2 N	32 E	WM	34	SW SW	701	1.81

13. Application T-9800 proposes to change the point of appropriation to a point approximately 220 feet northwest at the following location:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
2 N	32 E	WM	34	SW SW	882 FEET NORTH AND 692 FEET EAST FROM THE SW CORNER OF SECTION 34

14. Notice of the application for transfer was published on November 23, 2004, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
15. On October 18, 2005, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-9800 to the applicant. The cover letter with the draft suggested that the application be assigned to the new owners of the land. The applicant responded by assigning the application to Kevin and Colette Blakely (see Finding of Fact #3), requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
16. On September 12, 2007, the Department issued a Preliminary Determination proposing to approve Transfer T-9800 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on September 18, 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)

17. Water has been used within the last five years according to the terms and conditions of the right and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
18. A well, pump and sprinkler system sufficient to use the full amount of water allowed under the existing right is present.
19. The proposed change would not result in enlargement of the right.
20. The proposed change would not result in injury to other water rights.

Conclusions of Law

The change in point of appropriation proposed in application T-9800 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. Additionally, the place of use and point of appropriation authorized under Certificate 65770 should be redescribed as identified in Findings #4 through #11 above.

Now, therefore, it is ORDERED:

1. The change in point of appropriation and redescription proposed in application T-9800 are approved.

2. Water right certificate 65770 is cancelled.
3. A new certificate will be issued redescribing the portion of the right evidenced by Certificate 65770 not affected by the change in point of appropriation.
4. 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 65770 and any related decree.
5. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
6. 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.
7. When required by the Department, the water user shall install and maintain an in-line flow meter or other suitable device for measuring and recording the quantity of water appropriated. 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.
8. 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 report 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 project and beneficial use of the water.
9. When satisfactory proof of the completed change is received, a new certificate confirming the portion of the right transferred will be issued.

Dated at Salem, Oregon this 22 day of October, 2007.


Phillip C. Ward, Director

Mailing date: OCT 24 2007