

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

In the Matter of Transfer Application)
T-9681, Polk County, Oregon) RECONSIDERATION AND
) MODIFICATION OF FINAL ORDER
) APPROVING A TRANSFER

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. OAR 137-044-0080 describes the process for reconsideration of an order in other than contested case.

Applicant

The Olsen Farms Family Limited Partnership
c/o Jamie Olsen
8930 Suver Road
Monmouth, OR 97631

Findings of Fact

1. The Olsen Farms Family Limited Partnership filed an application to add a point of diversion under Certificate 80695. The Department assigned the application number T-9681.
2. The Department issued an order approving a change in point of diversion under application T-9681 on August 10, 2004. The order is entered at Special Order Volume 61, Pages 79 to 82.
3. The order included the following Finding #9:

“Departmental review revealed that Finding of Fact #2 in the Preliminary Determination contained inadvertent scrivener errors in the description of the portion of the water right being transferred, namely the use, quantity, source and authorized point of diversion. The portion of the right that authorizes supplemental irrigation from stored water is not involved in the transfer...”
4. August 23, 2004 Donald E. Knauer, CWRE submitted a letter on behalf of the Olsens, requesting reconsideration of the order. The letter questioned the change, from the

<p>This is a final order in other than 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.</p>

Preliminary Determination to the Final Order, which precluded diversion of supplemental stored water from the proposed diversion point on the Luckiamute River.

5. Don Knauer and the local Watermaster provided additional information about the diversion and delivery system for the right, indicating that at certain times of the year stored Willamette Basin water flows into the Luckiamute channel and could be withdrawn at the diversion point on the Luckiamute River.
6. The Department has determined that the order issued August 10, 2004 was in error in excluding diversion of the stored water from the point of diversion proposed by T-9681, and that the additional point of diversion on the Luckiamute River should apply to the stored supplemental portion of the right as well as to the primary irrigation portion.
7. The period in which the Department may, on its own initiative, reconsider a final order has not yet closed. Upon reconsideration, the Department has concluded that the order should be modified and reissued as follows:
8. The portion of the right to be transferred is:

Certificate: 80695 in the name of Hiram G. Olsen
Use: Primary and supplemental irrigation
Priority Date: August 19, 1993
Quantity: 5.39 cfs for primary irrigation, 332.64 ac-ft for supplemental irrigation
Acres: 548.7
Source: Luckiamute River, tributary to Willamette River, for primary irrigation, and Willamette Basin Project Reservoirs, constructed under Permit R-1625, for supplemental irrigation

Authorized Points of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Location
9	S	4	W	W.M.	27	SE SW	—		Luckiamute River diversion – 20 feet north and 700 feet west from the S ¼ corner Section 27
9	S	4	W	W.M.	23	SE SW	—		Willamette River diversion – 450 feet north and 1520 feet east from SW corner Section 23

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼		Lot	DLC	Acres
9	S	4	W	W.M.	15	SW	NW	—	—	19.2
9	S	4	W	W.M.	15	SE	NW	—	—	3.0
9	S	4	W	W.M.	15	NE	SW	—	—	18.0
9	S	4	W	W.M.	15	NW	SW	—	—	39.0
9	S	4	W	W.M.	15	SW	SW	—	—	38.4
9	S	4	W	W.M.	15	SE	SW	—	—	18.6
9	S	4	W	W.M.	16	SE	NE	—	—	15.1
9	S	4	W	W.M.	16	NE	SE	—	—	30.8
9	S	4	W	W.M.	16	SE	SE	—	—	36.7
9	S	4	W	W.M.	21	NE	NE	—	—	33.6
9	S	4	W	W.M.	21	SE	NE	—	—	27.5
9	S	4	W	W.M.	22	NE	NE	—	—	12.1
9	S	4	W	W.M.	22	NW	NE	—	—	13.2
9	S	4	W	W.M.	22	SW	NE	—	—	40.0
9	S	4	W	W.M.	22	SE	NE	—	—	21.0
9	S	4	W	W.M.	22	NE	NW	—	—	25.0
9	S	4	W	W.M.	22	NW	NW	—	—	38.4
9	S	4	W	W.M.	22	SW	NW	—	—	28.4
9	S	4	W	W.M.	22	SE	NW	—	—	33.5
9	S	4	W	W.M.	22	NE	SW	—	—	16.2
9	S	4	W	W.M.	22	NE	SE	—	—	10.6
9	S	4	W	W.M.	22	NW	SE	—	—	30.4

9. Application T-9681 proposes to add a point of diversion approximately 1.6 miles upstream from the current point of diversion on the Luckiamute River. The location of the additional point of diversion:

Township		Range		Meridian	Sec	¼ ¼		Lot	DLC	Location
9	S	4	W	W.M.	28	NW	SE	—		Luckiamute River additional point of diversion – 1600 feet north and 1925 west of the SE corner of Section 28

10. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice. However, the Oregon Department of Fish and Wildlife did request inclusion of a condition requiring installation of proper fish screens.
11. 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.

12. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.

Conclusions of Law

The proposed addition of a point of diversion proposed in application T-9681 and described in this order 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 order entered at Special Order Volume 61, Pages 79 to 82 is void and of no further force and effect.
2. The addition of a point of diversion proposed in application T-9681 is approved.
3. Water right certificate 80695 is cancelled.
4. Certificate 80897 issued August 10, 2004 describing that portion of the right not modified by Special Order Volume 61, Pages 79 to 82 is cancelled, and is superseded by Certificate 80963 describing that portion of the right not involved in this transfer.
5. 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 80695 and any related decree.
6. The proposed changes shall be completed on or before October 1, 2005.
7. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department by October 1, 2006.
8. The quantity of water diverted at the additional point of diversion, together with that diverted at the old point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion on the Luckiamute River.
9. Prior to diverting water, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.

10. The water user shall install and maintain a fish screen or fish by-pass device. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning of construction and shall be installed under the supervision of the Department of Fish and Wildlife. The water user may participate in the Oregon Department of Fish and Wildlife's cost sharing program for installation of screening and by-pass devices in accordance with ORS 540.525.
11. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 20th day of SEPTEMBER, 2004.


Phillip C. Ward
Acting Director

Mailing date: SEP 24 2004