

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

In the Matter of Transfer Application T-9498, Umatilla County)))	FINAL ORDER REJECTING A CHANGE IN POINT OF APPROPRIATION
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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

Chris and Jane Smith
85627 Bork Lane
Milton-Freewater, Oregon 97862

Findings of Fact

1. On July 10, 2003, Chris and Jane Smith filed a transfer application to change the point of appropriation under Certificate 80824. The Department assigned the application number T-9498.

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

Certificate: 80824 in the names of Coral H. Bosch, Jason & Amy Strang, Tim & Janet Bland, Zane Harris, John Sicoacan, Lana Bland and Chris Smith (perfected under Permit G-1360 / T-7696)

Use: Irrigation of 1.70 acres

Priority Date: May 28, 1959

Quantity: 0.021 cubic foot per second

Rate/Duty: 1/80 cfs per acre, not to exceed 3.0 acre-feet per acre per year

Source: Bork Well, within the Grandview Spring Basin (Walla Walla River)

Authorized Point of Appropriation:

TWP	RNG	MER	SEC	¼ - ¼	Lot	LOCATION
6 N	35 E	W.M.	13	NW SW	---	36.4 Chains North and 4.0 Chains East from the SW corner, Section 13.

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 137-004-0080 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.

Authorized Place of Use:

TWP	RNG	MER	Sec	¼ - ¼	TL	Acres
6 N	35 E	W.M.	13	SW NW	500	1.70

3. Application T-9498 proposes to change the authorized point of appropriation for the above described land approximately 600 feet northeast to a well located:

TWP	RNG	MER	SEC	¼ - ¼	TL	LOCATION
6 N	35 E	W.M.	13	SW NW	500	554.6' S and 490.6' W from the NW corner of the SW¼ NW¼, Sec. 13

4. 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.
5. 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.
6. The proposed point of appropriation (new well) does not develop the same (source) aquifer as that of the original authorized well. Water levels in the authorized well are significantly lower than water levels in the proposed new well. In addition, the authorized well is drilled to a depth of 360 feet while the proposed new well is 174 feet deep. The new well develops an alluvial aquifer while the original well likely develops a basalt aquifer. Under OAR 690-380-2110, any request for a change in point of appropriation is restricted to the same aquifer.
7. A well, pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right is present.
8. The proposed change would not result in enlargement of the right.
9. The proposed change would result in use of a different aquifer than is currently authorized. This would potentially result in a reduction in the availability of ground water for the existing authorized users of that aquifer. Therefore, there is not a basis for making an affirmative finding of no injury.
10. On May 30, 2006, the Department issued a preliminary determination proposing to reject Transfer T-9498 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 June 6, 2006 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

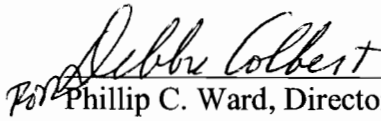
Conclusion of Law

The change in point of appropriation proposed in application T-9498 is not consistent with the requirements of ORS 537.705 and 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore, it is ORDERED:

The change in point of appropriation proposed in application T-9498 is rejected. The application is of no further force or effect.

Dated at Salem, Oregon this 11th day of July, 2006.


Phillip C. Ward, Director

Mailing date: JUL 13 2006