

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A CHANGE
T-10786, Umatilla County) 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.

Applicants

HEATH R. AND ALYSSA D. WELLS
85621 BORK LANE
MILTON-FREEWATER, OR 97862

Findings of Fact

Background

1. On February 13, 2009, Heath and Alyssa Wells filed an application to change the point of appropriation under a portion of Certificate 84238. The Department assigned the application number T-10786.

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

Certificate: 84238 in the name of Zane Harris (perfected under Permit G-1360/ T-7696)
Use: IRRIGATION OF 1.9 ACRES
Priority Date: May 28, 1959
Quantity: 0.024 CUBIC FOOT PER SECOND
Rate/Duty: 1/80 of one cubic foot per second (cfs) per acre, further limited to a diversion of not to exceed 3.0 acre-feet per acre per year
Source: Bork Well, within the Grandview Spring Basin (Walla Walla River)

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	Survey Coordinates
6 N	35 E	WM	13	NW SW	36.4 CHAINS NORTH AND 4.0 CHAINS EAST FROM THE SW CORNER OF SECTION 13.

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
6 N	35 E	WM	13	NW SW	504	1.90

- Transfer Application T-10786 proposes to change the point of appropriation (well) for the above described lands approximately 200 feet east to a well located as follows:

Twp	Rng	Mer	Sec	Q - Q	Well I.D.#	Measured Distances
6 N	35 E	WM	13	NW SW	UMAT 51744	305 FEET SOUTH AND 420 FEET EAST FROM THE W¼ CORNER OF SECTION 13

- Notice of the application for transfer was published on April 7, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On June 1, 2011, the Department discussed with the applicants that a Department staff hydrogeologist determined the proposed new point of appropriation (well) does not tap into the same aquifer (source) as the original point of appropriation. The Department identified a couple of options available to accomplish the same source issue, mainly to drill and case the well deeper, similar in depth to the original Bork Well (UMAT 4212).
- On December 15, 2011, the Department mailed the applicants a draft of the Preliminary Determination proposing to deny Transfer Application T-10786. The Department offered alternatives for the applicant to overcome and set forth a deadline of January 16, 2012, for the applicants to respond. The applicants did not respond to the Department by the deadline and did not provide the necessary information or evidence of a deepening to alter the same source scenario.
- On June 6, 2011, Heath Wells submitted a request that the Department place his transfer application on “administrative hold” for six months, until December 1, 2011, in order to examine his options in whether to proceed further with the transfer application. At the expiration of the “administrative hold” deadline, the applicants again did not supply any information or evidence in response to the Department’s letter.
- On June 3, 2009, the Department’s groundwater staff initially considered that the proposed point of appropriation (UMAT 51744) did not develop the same (source) aquifer as that of the original authorized well (UMAT 4212). In February of 2012, the Department, on its own initiative, initiated additional research into the local aquifers and geologic make-up of the Milton-Freewater area. Additional information such as a Top of Basalt Structure Contour Map (Plate7) from the Walla Walla Basin Watershed Council – Aquifer Stratigraphy, and the geologic data from Water Well Reports indicates that basalt is probably 500’ below land surface in this area. Therefore, UMAT 4212 probably develops water from the overlying

alluvial aquifer. Reports for many nearby deeper wells also describe water levels within the water bearing zones of the alluvial aquifer. This is consistent with the alluvial fan type deposit that occurs in this area.

9. Based on the additional research, the Department reversed the finding of the original 2009 review, concluding that the proposed well is likely producing water from the same source (aquifer) as the original Bork Well and complies with the requirements of OAR 690-380-2110 (2) for "same source."
10. On July 6, 2012, the Department mailed a copy of a REVISED draft of the Preliminary Determination to the applicants, proposing to approve Transfer Application T-10786. The revised draft Preliminary Determination cover letter set forth a deadline of August 6, 2012 for the applicants to respond. On July 30, 2012, the applicants hand delivered a written response requesting the Department to proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
11. On August 21, 2012, the Department issued a Preliminary Determination proposing to approve Transfer Application T- 11404 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 August 28, 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)

12. Water has been used within the five years prior to the submittal of Transfer Application T-10786 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.
13. A well, pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-10786.
14. The proposed change would not result in enlargement of the right.
15. The proposed change would not result in injury to other water rights.

Conclusions of Law

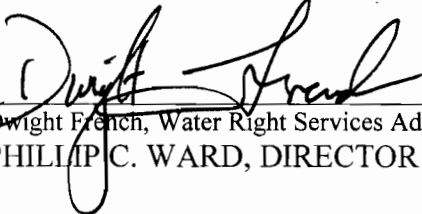
The change in point of appropriation proposed in Transfer Application T-10786 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in point of appropriation proposed in application T-10786 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 84238 and any related decree.
3. Water right Certificate 84238 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. 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.
5. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
6. Full beneficial use of the water shall be made, consistent with the terms of this order, 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 change and full beneficial use of the water.
7. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 28 day of September, 2012.


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

Mailing date: Oct 01 2012