

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

In the Matter of Transfer Application	)	FINAL ORDER APPROVING A
T-10453, Umatilla County	)	SUBSTITUTION OF A
	)	SUPPLEMENTAL GROUND WATER
	)	RIGHT FOR A PRIMARY SURFACE
	)	WATER RIGHT

**Authority**

ORS 540.524 establishes the process in which a water right holder may submit a request to substitute a supplemental water right from a ground water source for a primary water right from a surface water source. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating an application for a water right substitution.

**Applicant**

ANDERSON LAND AND LIVESTOCK, INC.  
Attn –Terry Anderson  
49603 MCKAY CREEK RD.  
PILOT ROCK, OR 97868

**Agent**

OREGON WATER TRUST  
Attn – David Pilz  
522 SW 5<sup>TH</sup> AVE., SUITE 825  
PORTLAND, OR 97204

**Findings of Fact**

**Background**

1. On August 20, 2007, Terry Anderson on behalf of ANDERSON LAND AND LIVESTOCK, INC. filed an application to substitute a portion of a supplemental ground water permit under Permit G-13106 for a portion of a primary right to use surface water under Certificate 63285. The Department assigned the application number T-10453.
2. On October 10, 2007, the Department received an amended map that identified the authorized point of diversion under Certificate 63285 and the points of appropriation under Permit G-13106.
3. The supplemental ground water permit to be substituted for the primary surface water right is as follows:

**Permit:** G-13106 in the name of ANDERSON LAND AND LIVESTOCK, INC. (submitted as application G-13610)

**Use:** SUPPLEMENTAL IRRIGATION of 25.4 ACRES

**Priority Date:** FEBRUARY 1, 1994

**NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW**

This is an order in 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 137-004-0080, 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.

**Rate:** 0.32 CUBIC FOOT PER SECOND (cfs)

**Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre-feet per acre during the irrigation season of each year

**Source:** THREE WELLS in the MCKAY CREEK BASIN WITHIN THE UMATILLA BASIN

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
1 S	33 E	WM	12	NE NE	WELL 1 - 860 FEET SOUTH AND 400 FEET WEST FROM THE NE CORNER OF SECTION 12
1 S	34 E	WM	7	SW NW	WELL 2 - 2640 FEET SOUTH AND 660 FEET EAST FROM THE NW CORNER OF SECTION 7
1 S	34 E	WM	7	SW SW	WELL 3 - 430 FEET NORTH AND 1120 FEET EAST FROM THE SW CORNER OF SECTION 7

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	33 E	WM	12	SE NE	1.1
1 S	33 E	WM	12	NE SE	0.2
1 S	34 E	WM	7	SW NW	1.2
1 S	34 E	WM	7	NW SW	14.9
1 S	34 E	WM	7	SW SW	8.0

4. The transfer application map submitted with T-10453 describes the location of the points of appropriation differently than authorized in the permit. This order may not be construed as a confirmation of a change in location of the point of appropriation.

5. The portion of the primary surface water right to be used as a supplemental right under the substitution with Permit G-13106 is as follows:

**Certificate:** 63285 in the name of ANDERSON LAND AND LIVESTOCK (perfected under Permit S-42032)

**Use:** IRRIGATION of 25.4 ACRES

**Priority Date:** AUGUST 5, 1977

**Rate:** 0.32 CUBIC FOOT PER SECOND (cfs)

**Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre-feet per acre during the irrigation season of each year

**Source:** SOUTH FORK MCKAY CREEK, tributary to UMATILLA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
1 S	34 E	WM	7	NW SW	1740 FEET NORTH AND 20 FEET EAST FROM THE SW CORNER OF SECTION 7

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	33 E	WM	12	SE NE	1.1
1 S	33 E	WM	12	NE SE	0.2
1 S	34 E	WM	7	SW NW	1.2
1 S	34 E	WM	7	NW SW	14.9
1 S	34 E	WM	7	SW SW	8.0

6. Notice of the application for transfer was published on September 18, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

***Transfer Review Criteria (OAR 690-380-4010)***

7. Water has been used within the last five years according to the terms and conditions of the right and permit, and there is no information in the record that would demonstrate that the right or permit are subject to forfeiture under ORS 540.610.
8. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right and permit were present within the five-year period prior to submittal of Transfer Application T-10453.
9. The proposed change would not result in enlargement of the right or permit.
10. The proposed change would not result in injury to other water right or permit.

**Conclusions of Law**


The substitution of ground water Permit G-13106 for a portion of the primary surface water right evidenced by Certificate 63285 as proposed in Transfer Application T-10453 is consistent with the requirements of ORS 540.524 and OAR 690-380-5000.

**Now, therefore, it is ORDERED:**

1. The substitution of ground water Permit G-13106 for a portion of primary surface water right (Certificate 63285) is approved.
2. The portion of the supplemental ground water (Permit G-13610) described in Finding of Fact #3 may be substituted for the portion of the primary right (Certificate 63285) described in Finding of Fact #4 which may in turn be exercised as supplemental irrigation on the lands therein described.
3. 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 63285 and Permit G-13106 and any related decree.
4. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.

5. The substitution of a supplemental ground water permit for a primary water right may be terminated upon a request by the water right holder. The substitution also may be terminated by an order of the Director if the Department determines the use of the ground water as the primary water right causes injury to other water rights. Upon termination, the substituted primary and supplemental water right or permit shall revert to their original status.

Dated at Salem, Oregon this 14<sup>th</sup> day of November, 2007.

  
Phillip C. Ward, Director

Mailing Date: NOV 20 2007