

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

In the Matter of Transfer Application) FINAL ORDER APPROVING AN
T-10567, Marion County) ADDITIONAL 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.

Applicant

MIKE THOMPSON
8095 DELPHINIUM PLACE NE
SALEM OR 97305

Findings of Fact

Background

1. On March 20, 2008, MIKE THOMPSON filed an application for an additional point of appropriation under Certificate 57090. The Department assigned the application number T-10567.
2. On June 1, 2009, the applicant submitted an updated Supplemental Form B (Affidavit Attesting to the Use of Water) with additional details describing the existing pumping system and a revised Land Use Information Form.
3. The right to be transferred is as follows:

Certificate: 57090 in the name of JAMES E. FRAZIER and ANNA G. FRAZIER
(perfected under Permit G-6415)

Use: IRRIGATION of 129.9 ACRES

Priority Date: APRIL 8, 1975

Rate: 1.3 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year

Source: A WELL in the PUDDING RIVER BASIN

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 | DLC | Measured Distances |
|-----|-----|-----|-----|-------|-----|--|
| 7 S | 2 W | WM | 23 | NW NE | 62 | 550 FEET NORTH AND 1810 FEET WEST FROM THE SE CORNER OF DLC 62 |

Authorized Place of Use:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 7 S | 2 W | WM | 23 | NE NE | 62 | 26.3 |
| 7 S | 2 W | WM | 23 | NW NE | 62 | 32.6 |
| 7 S | 2 W | WM | 23 | SW NE | 62 | 3.7 |
| 7 S | 2 W | WM | 23 | SE NE | 62 | 2.3 |
| 7 S | 2 W | WM | 23 | NE NW | 62 | 35.5 |
| 7 S | 2 W | WM | 23 | NW NW | 62 | 22.4 |
| 7 S | 2 W | WM | 23 | SW NW | 62 | 3.2 |
| 7 S | 2 W | WM | 23 | SE NW | 62 | 3.9 |

4. Transfer Application T-10567 proposes an additional point of appropriation approximately 2,350 feet northeast from the existing point of appropriation to:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|-----|-----|-----|-----|-------|-----|---|
| 7S | 2W | WM | 23 | NE NE | 62 | 1,340 FEET NORTH AND 370 FEET EAST FROM THE SE CORNER OF DLC 62 |

5. Notice of the application for transfer was published on April 1, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. On July 29, 2009, the Department mailed a copy of a draft Preliminary Determination proposing to deny Transfer Application T-10567 to the applicant unless the right was conditioned to avoid injury to other ground water rights. The draft Preliminary Determination cover letter set forth a deadline of September 30, 2009, for the applicant to respond.
7. The applicant responded on August 31, 2009, and agreed to limit the rate of diversion in the proposed well to 400 gpm.
8. The Department responded on October 22, 2009 to explain results of modeling the effects on other wells if the proposed well were to be pumped continuously at 400 gpm, and clarified their response on December 29, 2009. Modeling indicates that the proposed transfer would not result in injury to other ground water rights if pumping from the proposed well were to be limited to no more than 400 gpm, and pumping from both wells combined were to be limited to no more than 525 gpm (i.e. the current well will not pump more than 125 gpm when pumping simultaneously with the proposed well), and the annual duty were not exceeded. However, other scenarios that were modeled did show potential for injury to other water rights from wells in the Pratum area.

9. On January 8, 2010, the applicant agreed to the limiting conditions stated in Finding of Fact #8.
10. On February 2, 2010, the Department mailed a copy of a revised draft Preliminary Determination proposing to approve Transfer Application T-10567 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of March 2, 2010, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
11. On February 24, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Application T- 10567 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on March 2, 2010, and in the Silverton Appeal-Tribune newspaper on March 10, 17, and 24, 2010, 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. Evidence was submitted with the application indicating that water has been used within the last five years according to the terms and conditions of the right. The applicant has suggested that the authorized well does not have sufficient capacity to irrigate the entire acreage. However, the information in the record is not sufficient to initiate cancellation proceedings under ORS 540.631.
13. A 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-10567.
14. The proposed change would not result in enlargement of the right.
15. The proposed change, as conditioned in Finding of Fact #8, would not result in injury to other water rights.

Conclusions of Law

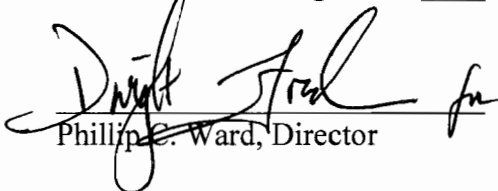
The additional point of appropriation proposed in Transfer Application T-10567, is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The additional point of appropriation proposed in application T-10567 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 57090 and any related decree.
3. Water right Certificate 57090 is cancelled.

4. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
5. The proposed well is limited to a rate of 400 gpm.
6. When the proposed well and the current well are pumping simultaneously, the combined rate of diversion is limited to no more than 525 gpm, (in other words the current well is limited to a rate of 125 gpm when the proposed well is pumping at 400 gpm).
7. Water use measurement conditions:
 - a. Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of appropriation.
 - b. The water user shall maintain the meters or measuring devices in good working order.
 - c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.
 - d. The water user may be required to report water use, if needed to help resolve conflicts if undue interference occurs.
8. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. 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.
9. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 21 day of April 2010.


Phillip E. Ward, Director

Mailing Date: APR 23 2010