

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-9626, Crook County) CHANGE IN POINT OF
) APPROPRIATION AND PLACE OF
) USE

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

Mt. Jefferson Farms, Inc.
Walter R. Miller
PO Box 12708
Salem, OR 97309

Findings of Fact

Background

1. On January 8, 2004, Ty Fehrenbacher filed an application to change the place of use and point of appropriation under Certificate 72197 and water use Permit G-11774. The Department assigned the application number T-9626.
2. The application was amended on September 19, 2004 identifying 27.3 acres proposed to be transferred under Certificate 72197 and 26.5 acres of primary irrigation and 74.8 acres of supplemental irrigation to be transferred under water use Permit G-11774.
3. On May 10, 2007, Certificate 83332 was issued confirming water use Permit G-11774.
4. The application was assigned to Mt. Jefferson Farms, Inc. from Ty Fehrenbacher on June 29, 2007.
5. The portion of the first right to be transferred is as follows:

Certificate: 72197 in the name of Crook County Improvement District #1 (confirmed by Deschutes River Decree)

Use: IRRIGATION of 27.3 ACRES

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.

Priority Date: OCTOBER 31, 1900

Rate: 0.34 CUBIC FOOT PER SECOND (cfs)

Limit/Duty: not to exceed the quantity determined by the duty of water as set by decree of the Circuit Court for Deschutes County, dated March 24, 1933, being:

April 1 to May 1 & Oct. 1 to Nov. 1	1 cfs to 137.0 acres
May 1 to May 15 & Sept. 15 to Oct. 1	1 cfs to 109.0 acres
May 15 to Sept. 15	1 cfs to 86.6 acres

as measured at the Lone Pine Weir, not to exceed 4.2 acre feet for each acre irrigated during the irrigation season.

Source: DESCHUTES RIVER, tributary to the COLUMBIA RIVER

Weir location:

Twp	Rng	Mer	Sec	Q-Q
14 S	13 E	WM	13	SW SE

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	NORTH 36 DEGREES 45 MINUTES WEST, 1056.8 FEET FROM THE EAST 1/4 CORNER OF SECTION 29

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
14 S	14 E	WM	17	SE NE	100	9.0
14 S	14 E	WM	17	NW NW	100	0.8
14 S	14 E	WM	17	NE SE	100	17.5
Total						27.3

6. Transfer Application T-9626 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	14 E	WM	17	NE SW	0.8
14 S	14 E	WM	17	NE SE	5.1
14 S	14 E	WM	17	NW SE	0.2
14 S	14 E	WM	17	SW SE	6.5
14 S	14 E	WM	17	SE SE	14.7
Total					27.3

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

Certificate: 83332 in the name of Ty Fehrenbacher (perfected under Permit G-11774)

Use: IRRIGATION of 26.5 acres and SUPPLEMENTAL IRRIGATION of 82.5 acres

Priority Date: DECEMBER 30, 1991

Rate: 477 gallons per minute (gpm)

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

Sources: WELLS #1, #4 and #5 in the LONE PINE CREEK BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
14 S	14 E	WM	17	NE NE	Well 5 - 60 FEET SOUTH AND 190 FEET WEST FROM THE NE CORNER OF SECTION 17
14 S	14 E	WM	17	SE NE	Well 4 - 2170 FEET SOUTH AND 290 FEET WEST FROM THE NE CORNER OF SECTION 17
14 S	14 E	WM	17	NE NW	Well 1 - 860 FEET SOUTH AND 3580 FEET WEST FROM THE NE CORNER OF SECTION 17

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	14 E	WM	17	NE SE	5.1
14 S	14 E	WM	17	NW SE	0.2
14 S	14 E	WM	17	SW SE	6.5
14 S	14 E	WM	17	SE SE	14.7
Total					26.5

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	14 E	WM	17	SW NE	22.4
14 S	14 E	WM	17	SE NW	4.7
14 S	14 E	WM	17	NE SW	35.6
14 S	14 E	WM	17	NW SW	0.2
14 S	14 E	WM	17	NW SE	11.9
Total					74.8

8. Transfer Application T-9626 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	14 E	WM	17	SE NE	9.0
14 S	14 E	WM	17	NE SE	17.5
Total					26.5

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	14 E	WM	17	NE NE	20.0
14 S	14 E	WM	17	NW NE	1.1
14 S	14 E	WM	17	SE NE	28.7
14 S	14 E	WM	17	NE NW	16.3
14 S	14 E	WM	17	NE SE	2.3
14 S	14 E	WM	17	NW SE	6.4
Total					74.8

9. Transfer Application T-9626 also proposes to move the authorized point of appropriation approximately 1325 feet west from the existing point of appropriation identified as Well #1 and approximately 5000 feet west from the existing points of appropriation identified as Wells #4 and #5 to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
14 S	14 E	WM	17	SE NE	2170 FEET SOUTH AND 290 FEET WEST FROM THE NE CORNER OF SECTION 17

10. Transfer Application T-9626 proposes to change the point of appropriation to that well listed in Finding of Fact #9 for only the following acreage:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	14 E	WM	17	SW NW	6.9
14 S	14 E	WM	17	NW SW	0.8
Total					7.7

11. Notice of the application for transfer was published on February 10, 2004, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
12. On August 28, 2007, the Department mailed a copy of the *draft* Preliminary Determination proposing to approve Transfer Application T-9626 to the applicant. The cover letter that accompanied the *draft* Preliminary Determination set forth a deadline of October 29, 2007, for the applicant to respond. On December 1, 2007, the agent for the applicant commented on the preliminary determination, requesting that the "TO" table for Certificate 83332 on the Preliminary Determination be corrected to agree with the amended application. Upon correction, 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.
13. On May 27, 2008, the Department issued a Preliminary Determination proposing to approve Transfer Application T-9626 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 3, 2008, and in the Redmond Spokesman newspaper on July 16, July 23 and July 30, 2008, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
14. Crook County Improvement District was mailed a copy of the Preliminary Determination on August 28, 2008.

Transfer Review Criteria (OAR 690-380-4010)

15. Water has been used within the last five years according to the terms and conditions of the rights, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.

16. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-9626.
17. The proposed change would not result in enlargement of the rights.
18. The proposed change would not result in injury to other water rights.

Conclusions of Law

The changes in point of appropriation and place of use proposed in Transfer Application T-9626 are 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 changes in place of use and point of appropriation proposed in Transfer Application T-9626 are approved.
2. Water right certificate 83332 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
3. Certificate 72197 is modified. The Department will issue a superseding certificate describing the right when it determines that is necessary for recordkeeping.
4. 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 Certificates 83332 and 72197 and any related decree.
5. Water shall be acquired from the same aquifer (water source) as the original points of appropriation.
6. The quantity of water diverted at the new point of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.
7. The former place of use of the transferred rights shall no longer receive water under the rights.
8. When required by the Department, the water user shall install, maintain and operate an in-line flow meter or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
9. The approved changes shall be completed and full beneficial use of the water shall be made on or before October 1, 2009. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.

10. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 12th day of September, 2008.



Phillip C. Ward, Director

Per

Mailing Date: SEP 17 2008