# BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application	)	FINAL ORDER
T-9811, Clackamas County	)	APPROVING A CHANGE IN
	)	POINT OF APPROPRIATION

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**

LEO GENTRY WHOLESALE NURSERY, INC. PO BOX 645 GRESHAM, OR 97030

# **Findings of Fact**

- 1. Leo Gentry Wholesale Nursery, Inc. filed a transfer application on November 1, 2004, to add three points of appropriation under Certificates 44142, 44143 and 51883. The Department assigned the application number T-9811.
- 2. On July 27, 2006, the applicant's agent (Greg Kupillas) submitted a revised transfer application and map removing 1.1 acres of land located in the NW ¼ NE ¼ of Section 19 in Township 5 south, Range 1 east, W.M. to which primary irrigation rights under Certificate 44142 and supplemental irrigation rights under Certificate 51883 are appurtenant. The applicant did not intend to include these lands in his transfer request as they are not under his ownership.
- 3. The portion of the FIRST right to be transferred is as follows:

Certificate: 44142 in the name of HESSEL BIERMA (perfected under Permit G-5164)

Use: IRRIGATION of 150.9 ACRES

Priority Date: MAY 25, 1973

Rate: 0.5 CUBIC FOOT PER SECOND (cfs)

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

per year

#### 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.

Source:

A WELL, a tributary of BUTTE CREEK

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
5 S	1 E	WM	19	NW NE	570 feet South and 2420 feet West from the NE
					corner of Section 19

#### Authorized Place of Use:

	IRRIGATION									
Twp	Rng	Mer	Sec	Q-Q	Acres					
5 S	1 E	WM	18	SE SW	0.3					
5 S	1 E	WM	18	SW SE	19.7					
5 S	1 E	WM	18	SE SE	19.0					
5 S	1 E	WM	19	NE NE	39.0					
5 S	1 E	WM	19	NW NE	32.9					
5 S	1 E	WM	20	SW NW	40.0					

4. Application T-9811 proposes to add the following three points of appropriation, located between approximately 0.21 mile and 0.27 mile from the existing point of appropriation:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
5 S	1 E	WM	18	SW SE	Well 3 - 630 feet North and 2460 feet West from the SE corner of Section 18
5 S	1 E	WM	18	SE SE	Well 4 - 630 feet North and 1180 feet West from the SE corner of Section 18
5 S	1 E	WM	19	NE NW	Well 5 - 490 feet South and 3950 feet West from the NE corner of Section 19

5. The SECOND right to be transferred is as follows:

Certificate:

44143 in the name of HESSEL BIERMA (perfected under Permit G-6083)

Use:

**IRRIGATION of 19.2 ACRES** 

Rate:

Priority Date: JANUARY 24, 1975

0.24 CUBIC FOOT PER SECOND (cfs)

Limit/Duty:

ONE-EIGHTIETH of one cfs per acre, not to exceed 2.5 acre feet per acre

per year

Source:

A WELL, a tributary of BUTTE CREEK

Authorized Point of Appropriation:

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ĺ	Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
Ì	5 S	1 E	WM	19	NW NE	570 feet South and 2420 feet West from the NE
						corner of Section 19

#### Authorized Place of Use:

IRRIGATION								
Twp Rng Mer Sec Q-Q Acres								
5 S	1 E	WM	19	NE NW	19.2			

6. Application T-9811 proposes to add the following three points of appropriation, located between approximately 0.21 mile and 0.27 mile from the existing point of appropriation:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
5 S	1 E	WM	18	SW SE	Well 3 - 630 feet North and 2460 feet West from the SE corner of Section 18
5 S	1 E	WM	18	SE SE	Well 4 - 630 feet North and 1180 feet West from the SE corner of Section 18
5 S	1 E	WM	19	NE NW	Well 5 - 490 feet South and 3950 feet West from the NE corner of Section 19

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

Certificate: 51883 in the name of HESSEL BIERMA (perfected under Permit G-6711)

Use: SUPPLEMENTAL IRRIGATION of 170.1 ACRES

Priority Date: MARCH 1, 1976

Rate: 0.54 CUBIC FOOT PER SECOND (cfs)

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

per year

Source: WELL 2, a tributary of ROCK CREEK

**Authorized Point of Appropriation:** 

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
5 S	1 E	WM	19	NE NE	530 feet South and 670 feet West from the NE corner
					of Section 19

#### **Authorized Place of Use:**

	SUPPLEMENTAL IRRIGATION										
Twp	Rng	Mer	Sec	Q-Q	Acres						
5 S	1 E	WM	18	SE SW	0.3						
5 S	1 E	WM	18	SW SE	19.7						
5 S	1 E	WM	18	SE SE	19.0						
5 S	1 E	WM	19	NE NE	39.0						
5 S	1 E	WM	19	NW NE	32.9						
5 S	1 E	WM	19	NE NW	19.2						
5 S	1 E	WM	20	SW NW	40.0						

8. Application T-9811 proposes to add the following three points of appropriation, located between approximately 0.22 mile and 0.6 mile from the existing point of appropriation:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
5 S	1 E	WM	18	SW SE	Well 3 - 630 feet North and 2460 feet West from the
ļ					SE corner of Section 18
5 S	1 E	WM	18	SE SE	Well 4 - 630 feet North and 1180 feet West from the
					SE corner of Section 18
5 S	1 E	WM	19	NE NW	Well 5 - 490 feet South and 3950 feet West from the
					NE corner of Section 19

9. Notice of the application for transfer was published on November 23, 2004, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.

- 10. On August 21, 2006, the Department issued a preliminary determination proposing to approve Transfer Application T-9811 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 August 29, 2006, and in a local newspaper on November 1, 8 and 15, 2006, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the Department's weekly notice or to the newspaper notice.
- 11. Water has been used within the last five years according to the terms and conditions of the rights, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
- 12. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights is present.
- 13. The proposed change would not result in enlargement of the rights.
- 14. The proposed change would not result in injury to other water rights.

## Conclusions of Law

The proposed change in Transfer Application T-9811 to add three points of appropriation is consistent with the requirements of ORS 537.705, 540.505 to 540.580, and OAR 690-380-5000.

# Now, therefore, it is ORDERED:

- 1. The proposed change in Transfer Application T-9811 to add three points of appropriation is approved.
- 2. The right to 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 44142, 44143 and 51883 and any related decree.
- 3. Water Right Certificates 44142, 44143 and 51883 are cancelled. New certificates will be issued for the portions of the rights evidenced by Certificates 44142 and 51883 NOT affected by this transfer.
- 4. Water shall be acquired from the same aquifer (water source) as the original points of appropriation.
- 5. The quantity of water diverted at the additional points of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.

- 6. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2008.** 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.
- 7. When required by the Department, the water user shall install and maintain an in-line flow meter or other suitable device for measuring and recording the quantity of water appropriated. 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.
- 8. When satisfactory proof of the completed change is received, new certificates confirming the portions of the rights transferred will be issued.

Dated at Salem, Oregon this 20th day of Weemles 2006.

Phillip C. Ward, Director

Mailing date: DEC 2 6 2006