

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A CHANGE
T-11414, Umatilla County) IN POINT OF APPROPRIATION

Authority

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, 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

MADISON RANCHES LAND III LLC
29299 MADISON RD
ECHO, OR 97826

Agent

JASON MALADY, GSI SOLUTIONS
55 SW YAMHILL STREET, SUITE 400
PORTLAND, OR 97204

Findings of Fact

Background

1. On May 3, 2012, Kent R. Madison filed an application to change the point of appropriation under Certificate 87265. The Department assigned the application number T-11414.
2. Notice of the application for transfer was published on May 8, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 14, 2013, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11414 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 15, 2013, for the applicant to respond. On March 7, 2013, Jason Melady, agent for the applicant, requested via e-mail, for the Department to proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that she is authorized to pursue the transfer.

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.

4. On February 18, 2013, the agent for the applicant clarified that the applicant proposes to have the option of using the proposed Windmill well in the months of January and February to meet his irrigation needs as further described in the table in Finding of Fact #8.
5. On March 20, 2013, the T-11414 transfer application was assigned from Ken Madison to Madison Ranches Land III LLC.
6. On April 11, 2013, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11414 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on April 16, 2013, and in the Hermiston Herald newspaper on April 13 and 20, 2013, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

7. The right to be transferred is as follows:

Certificate: 87265 in the name of Kent R. Madison (perfected under Permit S-25159)

Use: IRRIGATION of 13.8 ACRES

Priority Date: SEPTEMBER 30, 1957

Rate: 0.28 CUBIC FOOT PER SECOND (cfs)

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FIFTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Period of Use: Irrigation season is JANUARY 1 through SEPTEMBER 1

Source: THE SOUTH SPRING WELL, tributary to BUTTER CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
3 N	28 E	WM	30	NW SE	350 FEET SOUTH AND 2100 FEET WEST FROM THE E $\frac{1}{4}$ CORNER OF SECTION 30

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
3 N	28 E	WM	30	NW SE	13.8

8. Transfer Application T-11414 proposes to change the point of appropriation (collector well) southwest approximately 4250 feet to the Windmill Well located:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
3 N	28 E	WM	31	SE NW	1620 FEET SOUTH AND 1060 FEET WEST FROM THE N $\frac{1}{4}$ CORNER OF SECTION 31

9. On December 28, 2012, the applicant indicated in a phone conference, concurring with the Department that the production of the current source of water from the South Spring Well

does indeed fall off in the later months of the growing season. The applicant has agreed to set the pump intake no lower than 23 feet below ground surface to ensure that water is appropriated only from the alluvial aquifer, and also to a limitation of flows, based on actual use and as conditioned in the table below, reflecting beneficial use thus far under Certificate 87265.

Certificate 87265 (Irr. Season: Jan 1 to Sept 1) = 243 days		
Month	Max Q = 0.28 cfs	Max Volume = 55.2 ac/ft
January	@100% = 0.28	@100% = 17.19 (31 days)
February	@100% = 0.28	@100% = 15.53 (28 days)
March	@100% = 0.28	@100% = 17.19 (31 days)
April	@100% = 0.28	@100% = 16.63 (30 days)
May	@100% = 0.28	@100% = 17.19 (31 days)
June	@ 95% = 0.27	@ 95% = 15.80 (30 days)
July	@ 50% = 0.14	@ 50% = 8.59 (31 days)
August	@ 5% = 0.014	@ 5% = 0.86 (31 days)
September	Outside irrigation season	
October	Outside irrigation season	
November	Outside irrigation season	
December	Outside irrigation season	

* Water right may be exercised at full rate and volume, if available at the original POD, except for the reductions in June, July, and August as noted above. Furthermore, the total overall maximum volume used cannot exceed 55.2 acre-feet for the season January 1 to September 1.

Transfer Review Criteria [OAR 690-380-4010(2)]

10. Water has been used within the last five years 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.
11. A well, 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-11414.
12. The Department has determined that the proposed well, a collector well, appropriates the same source of water as the original well, and will affect the surface water source similarly to the use of the original authorized point of diversion.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.

Conclusions of Law

The change in point of diversion proposed in Transfer Application T-11414 is consistent with the requirements of ORS 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-11414 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 87265 and any related decree.
3. Water right certificate 87265 is cancelled.
4. The new point of diversion (collector well) shall be constructed so that the pump intake shall be set no deeper than 23 feet below ground surface to ensure that the quantity of water diverted shall not exceed the quantity of water lawfully available at the original point of diversion. In addition, the total quantity of water annually used under the right shall be limited to no more than the total duty described in the table above in Findings of Fact #6.
5. The water user shall maintain and operate the existing measurement device at the new point of appropriation and shall make such improvements as may be required by the Department.
6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2014**. 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 May, 2013.



Dwight Kreneth, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing date: JUNE 6 2013