

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

In the Matter of Transfer Application)
T-10153, Polk County)
)
) FINAL ORDER APPROVING A
) TEMPORARY CHANGE PLACE OF
) USE

ORS 540.505 to 540.580 establish the process in which a water right holder may submit a request to temporarily transfer the place of use and, if necessary to convey the water to the temporary place of use, the point of diversion 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

WENDELL AND SHERRY SPERLING
8835 PARKER RD
INDEPENDENCE OR 97351

Findings of Fact

1. On April 26, 2006, Wendell And Sherry Sperling filed an application to temporarily change the place of use under Certificate 42535 for a period of two years. The Department assigned the application number T-10153.
2. On June 21, 2006, the application and map were amended to remove 2.3 acres in the SE NW of Section 17, T9S R4W from the authorized place of use listing and remove 2.3 acres in the SW SE of Section 8, T9S R4W from the proposed place of use listing.
3. The portion of the right to be transferred is as follows:

Certificate: 42535 in the name of PHILLIP D & DELIA M SPERLING (perfected under Permit S-33441)

Use: IRRIGATION of 99.9 ACRES

Priority Date: APRIL 5, 1968

Rate: 1.25 CUBIC FEET PER SECOND

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

Sources: UNNAMED STREAM AND LUCKIAMUTE RIVER, tributaries to the LUCKIAMUTE RIVER AND THE WILLAMETTE RIVER

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.

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Survey Coordinates
9 S	4 W	W M	17	NE SW			1000 FEET SOUTH AND 1420 FEET EAST FROM NE CORNER OF DLC 61
9 S	4 W	W M	17	SW SE	6		1980 FEET SOUTH AND 1670 FEET EAST FROM THE NE CORNER OF DLC 61
9 S	4 W	W M	20	SW NW		63	4500 FEET SOUTH FROM THE NE CORNER OF DLC 61

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
9 S	4 W	WM	17	SW NE		43	28.3
9 S	4 W	WM	17	SE NE		43	3.0
9 S	4 W	WM	17	SE NW	1		1.6
9 S	4 W	WM	17	NE SW			4.8
9 S	4 W	WM	17	SE SW	5		0.7
9 S	4 W	WM	17	NE SE			14.1
9 S	4 W	WM	17	NW SE			34.2
9 S	4 W	WM	17	SW SE	6		9.4
9 S	4 W	WM	17	SE SE	7		3.8

4. Application T-10153 proposes to change the place of use of the right to:

IRRIGATION

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
9 S	4 W	WM	8	SW SW	43	1.8
9 S	4 W	WM	8	SE SW	43	22.5
9 S	4 W	WM	8	SW SE		17.5
9 S	4 W	WM	8	SE SE		1.7
9 S	4 W	WM	17	NE NE		5.2
9 S	4 W	WM	17	NW NE		23.3
9 S	4 W	WM	17	NE NW		26.3
9 S	4 W	WM	17	NW NW		1.6

5. Notice of the application for temporary transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
6. The Oregon Department of Fish and Wildlife has determined that a fish screening and/or bypass device is not necessary to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted.
7. Water has been used within the last five years according to the terms and conditions of the right, and no evidence is available that would demonstrate that the right is 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 are present.
9. The proposed change would not result in enlargement of the right.
10. The proposed change would not result in injury to other water rights. This finding is made through an abbreviated review recognizing that the transfer may be revoked under ORS 540.523(6) if the Department later finds that the transfer is causing injury to any existing water right.

Conclusions of Law

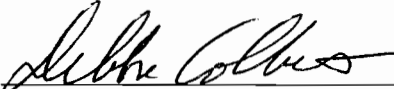
The temporary change in place of use proposed in application T-10153 is consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

Now, therefore, it is ORDERED:

1. The change in place of use proposed in application T-10153 is approved.
2. The former place of use **shall not** be irrigated as part of this water right during the 2006 and 2007 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2007 irrigation season.
4. The approval of this temporary transfer may be revoked or modified if the Department finds the change causes injury to any existing water right.
5. A subsequent application for permanent transfer of Certificate 42535 shall be subject to a full and complete review to determine consistency with the requirements of OAR Chapter 690, Division 380. Approval of this temporary transfer does not establish a precedent for approval of a subsequent application filed for a permanent transfer.
6. The use of water at the temporary place of use authorized by this transfer shall be in accordance with the terms and conditions of Certificate 42535.
7. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.
8. When required by the Department, the water user shall install an in-line flow meter or other suitable device for measuring and recording the quantity of water used. 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 use of the remaining water right described by Certificate 42535 shall continue to be in accordance with the terms and conditions of Certificate 42535.

Dated at Salem, Oregon this 27th day of June 2006.


Phillip C. Ward, Director
PCW

Mailing Date: JUL 1 1 2006