

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

In the Matter of Transfer Applications	)	FINAL ORDER APPROVING A
T-11037 and T-10604, Lake County	)	CHANGE IN POINT OF
	)	APPROPRIATION AND CHANGE IN
	)	PLACE OF USE AND TERMINATION
	)	OF A TEMPORARY TRANSFER

**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**

TIM WARKENTIN  
PO BOX 12  
CHRISTMAS VALLEY, OR 97641

**Agent**

DENNIS R. GLENDER  
DBA GLENDER'S HYDROTECH SERVICES  
8664 S SAND RIDGE RD  
CROOKED RIVER RANCH, OR 97760

**Findings of Fact**

**Background**

1. On March 22, 2010, TIM WARKENTIN filed to change the point of appropriation and to change the place of use under Certificates 80220 and 80221. The Department assigned the application number T-11037.
2. On November 1, 2010, the applicant submitted a statement authorizing cancellation of Temporary Transfer T-10604 upon issuance of a Final Order approving T-11037, and also submitted a corrected land use information form and evidence of use affidavit.
3. The portion of the first right to be transferred is as follows:

**Certificate:** 80220 in the name of HAROLD A. BROWN (perfected under Permit G-10326)

**Use:** IRRIGATION of 53 ACRES

**Priority Date:** FEBRUARY 15, 1984

**Rate:** 0.67 CUBIC FOOT PER SECOND

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.

**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-EIGHTIETH 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** A WELL within the CHRISTMAS VALLEY BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	18 E	WM	35	SE SW	WELL 1: 1250 FEET NORTH AND 1320 FEET EAST FROM THE SW CORNER OF SECTION 35

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
24 S	18 E	WM	35	NE SW	33.6
24 S	18 E	WM	35	SE SW	19.4

4. Certificate 80220 lists the well as being within Christmas Valley Basin. It is actually within Peters Creek Basin.

5. Transfer Application T-11037 proposes to move the authorized point of appropriation approximately 2.69 miles southwest from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
25 S	18 E	WM	9	NW SW	WELL #L47493: 20 FEET SOUTH AND 1310 FEET EAST FROM THE W¼ CORNER OF SECTION 9

6. Transfer Application T-11037 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
25 S	18 E	WM	9	NE SW	31.2
25 S	18 E	WM	9	NW SW	21.8

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

**Certificate:** 80221 in the name of HAROLD A. BROWN (perfected under Permit G-9974)

**Use:** IRRIGATION of 71.8 ACRES

**Priority Date:** JUNE 9, 1981

**Rate:** 0.9 CUBIC FOOT PER SECOND

**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-EIGHTIETH 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** A WELL within the CHRISTMAS VALLEY BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	18 E	WM	35	NW NW	WELL 2: 1200 FEET SOUTH AND 1250 FEET EAST FROM THE NW CORNER OF SECTION 35

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
24 S	18 E	WM	35	NE NW	33.6
24 S	18 E	WM	35	NW NW	2.4
24 S	18 E	WM	35	SW NW	2.4
24 S	18 E	WM	35	SE NW	33.4

8. Certificate 80221 lists the well as being within Christmas Valley Basin. It is actually within Peters Creek Basin.
9. Transfer Application T-11037 proposes to move the authorized point of appropriation approximately 3.06 miles from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
25 S	18 E	WM	9	NW SW	WELL #L47493: 20 FEET SOUTH AND 1310 FEET EAST FROM THE W¼ CORNER OF SECTION 9

10. Transfer Application T-11037 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
25 S	18 E	WM	9	SW NW	31.2
25 S	18 E	WM	9	SE NW	31.2
25 S	18 E	WM	9	NW SW	9.4

11. The above rights are currently modified under the provisions of a Final Order approving Temporary Transfer T-10604, recorded in Special Order Volume 75, pages 111-114, which is set to expire at the end of the 2012 irrigation season. As noted in Finding of Fact #2, the applicant has requested that this order be cancelled upon issuance of a Final Order approving T-11037, effectively terminating T-10604 prior to its expiration date.
12. The Department has determined that additional measurement conditions are required to ensure the proposed change in point of appropriation will not result in injury to surrounding water rights.
13. Notice of the application for transfer was published on March 30, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
14. On November 30, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11037 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 30, 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.

15. On January 12, 2011, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11037 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 January 18, 2011, and in the Lake County Examiner newspaper on January 26 and February 2 and 9, 2011, 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)***

16. Water has been used within the last five according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
17. 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-11037.
18. The proposed change would not result in enlargement of the rights.
19. The proposed change, as conditioned below, would not result in injury to other water rights.

**Conclusions of Law**

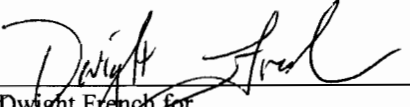
The change in point of appropriation and change in place of use proposed in Transfer Application T-11037 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

**Now, therefore, it is ORDERED:**

1. The change in point of appropriation and change in place of use proposed in Transfer Application T-11037 are approved.
2. Temporary Transfer T-10604 is terminated and the Final Order recorded in Special Order Volume 75, pages 111-114 is of no further force and effect.
3. 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 80220 and 80221 and any related decree.
4. Water right certificates 80220 and 80221 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.
5. The quantity of water diverted at the new point of appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation.

6. 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.
7. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
8. The former place of use of the transferred portions of the rights described in Certificates 80220 and 80221 shall no longer receive water under the rights.
9. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2012**. 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 changes and full beneficial use of the water.
10. When satisfactory proof of the completed changes is received, new certificates confirming the portions of the rights transferred will be issued.

Dated at Salem, Oregon this 16 day of March, 2011.

  
Dwight French for  
PHILLIP C. WARD, DIRECTOR

Mailing date:           MAR 21 2011