

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

In the Matter of Transfer Application)
T-10296, Deschutes County)
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RECONSIDERATION OF A FINAL
ORDER RECORDED IN SPECIAL
ORDER VOLUME 75 PAGES 397 – 401,
WITHDRAWING A FINAL ORDER
AND ISSUING A SUPERSEDING
FINAL ORDER APPROVING A
CHANGE IN POINT OF
APPROPRIATION, PLACE OF USE,
AND CHARACTER 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. OAR 137-003-0080 describes the process for reconsideration of an order in other than contested cases.

Applicant

STEPHEN M. SPARKS REVOCABLE TRUST
700 KING FARM BLVD
ROCKVILLE MD 20850

Findings of Fact

Background

1. On January 10, 2007, the Stephen M. Sparks Revocable Trust filed an application to change the use, place of use, and point of appropriation under Certificate 82985. The Department assigned the application number T-10296.
2. On April 29, 2008, Thom Day, agent for the applicant, submitted revisions to the application. On May 2, 2008 a revised map was received.
3. Pursuant to ORS 537.705 and 540.505 to 540.580, the Director issued an order approving Transfer Application T-10296. The order is recorded in Special Order Volume 75, Pages 397 – 401.

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 September 18, 2008, the Department received a request for reconsideration from Scott Satko, President, Junipine Home Owners Association on behalf of the applicant. The request indicated that the proposed place of use for the domestic expanded use, as listed in the final order approving the transfer application, needed further refinement. The request for reconsideration was filed within the 60-day period specified by ORS 183.484.
5. On October 24, 2008, the Department sent a letter notifying the applicant and others that the Department would reconsider the Final Order approving Transfer Application T-10296.
6. The portion of the right to be transferred is as follows:

Certificate: 82985 in the name of STEPHEN M. SPARKS (perfected under Permit G-12711)

Use: IRRIGATION of 13.0 ACRES

Priority Date: MARCH 10, 1994

Rate: 0.16 CUBIC FOOT PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3 acre-feet per acre per year during the irrigation season from March 1 through October 31 of each year

Source: A WELL (2A) in the DESCHUTES BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
14 S	11 E	WM	11	NE SE	610 FEET SOUTH AND 1000 FEET WEST FROM THE E1/4 CORNER OF SECTION 11

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	11 E	WM	11	NE NE	0.1
14 S	11 E	WM	11	SW NE	0.1
14 S	11 E	WM	11	SE NE	5.3
14 S	11 E	WM	11	NE SE	5.9
14 S	11 E	WM	12	NW NW	1.5
14 S	11 E	WM	12	SW SW	0.1

7. Application T-10296 proposes to change the character of use of 6.4 acres of irrigation (0.08 cfs and 19.2 acre-feet per year) to storage of water in Sparks Reservoir and maintenance of the reservoir, and to change 6.6 acres of irrigation use (0.08 cfs and 19.8 acre-feet per year) to domestic use expanded for 43 households within the Junipine Acres subdivision, and to change the season for the proposed uses to year round.
8. Application T-10296 also proposes to change the place of use of the right to:

RESERVOIR STORAGE AND MAINTENANCE				
Twp	Rng	Mer	Sec	Q-Q
14 S	11 E	WM	11	NE NE
14 S	11 E	WM	11	SW NE

RESERVOIR STORAGE AND MAINTENANCE				
Twp	Rng	Mer	Sec	Q-Q
14 S	11 E	WM	11	SE NE

DOMESTIC EXPANDED for 43 HOUSEHOLDS					
14 S	10 E	WM	26	S ½ NE ¼	within the Junipine Acres Home Association boundary *
14 S	10 E	WM	26	NW ¼	within the Junipine Acres Home Association boundary *

*denotes addition as a result of reconsideration

9. Application T-10296 proposes to change the point of appropriation for the domestic expanded use to a well approximately 6 miles southeast from the existing point of appropriation:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
14 S	10 E	WM	26	SE NE	50 FEET NORTH AND 860 FEET WEST FROM E1/4 CORNER, SECTION 26

10. Notice of the application for transfer was published on January 16, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
11. On November 6, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10296 to the applicant and the applicant's agent. The draft Preliminary Determination set forth a deadline of December 10, 2007, for the applicant to respond. On November 14, 2007, November 20 and November 27 the Department and the applicant's agent communicated by phone and email to clarify understanding of the draft Preliminary Determination.
12. On December 14, 2007, Thom Day, agent for the applicant, responded to the draft Preliminary Determination by memo, requesting to modify the season of use for the proposed domestic use expanded to cover January 1 through December of each year, without modifying the pumping rate or total gallons transferred. The memo confirmed that if that request were to be denied, the applicant desired that the Department proceed with issuance of a Preliminary Determination. On November 20, 2007, the agent provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
13. On January 14, 2008, Steven Sparks, the applicant, requested via email that the season of use for the portion proposed to be changed to storage and pond maintenance also be changed to year round.
14. The proposed season of use request was reviewed by Department staff, and on March 31, 2008 Thom Day and other representatives of the Junipine Homeowners Association Board of Directors met with Department staff to discuss options for pursuing the transfer application or a groundwater permit application. This resulted in the submission of amendments to the transfer application described in Finding of Fact #2.
15. On May 9, 2008, the Department mailed a copy of a revised draft Preliminary Determination proposing to approve Transfer Application T-10296 to the applicant and agent. The revised

draft Preliminary Determination incorporated the modifications to the application and map. On May 12, 2008, the applicant and agent requested that the Department proceed with issuance of a Preliminary Determination. The applicant requested that the time for completion be extended to allow five years beyond the October 1, 2009 date in the revised draft Preliminary Determination, since the subdivision is not fully built out and historical water use has been relatively low, but is expected to increase over the next several years. This document reflects the Department's assessment that the request is reasonable, therefore the request to extend the completion date to October 1, 2014 is granted.

16. On May 16, 2008, the Department issued a Preliminary Determination proposing to approve Transfer T-10296 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 May 20, 2008, and in The Nugget newspaper on May 28, June 4 and June 11, 2008, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.

Transfer Review Criteria (OAR 690-380-4010)

17. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
18. A pump, 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 Application T-10296.
19. The proposed changes to the place of use, point of appropriation and character of use would not result in enlargement of the right. The proposed change in season of use to year round at the rate and duty proposed in Finding of Fact #6 would not result in enlargement of the right.
20. The proposed changes would not result in injury to other water rights. The proposed change in point of appropriation may result in increased interference with springs that are tributary to Whychus Creek, however, use of the proposed well for this right, if conditioned as follows, would not result in injury to other water rights.

Conclusions of Law

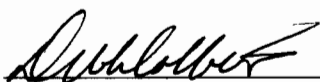
The changes in character of use, season of use, place of use, and point of appropriation proposed in application T-10296 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The order approving Transfer Application T-10296 and recorded in Special Order Volume 75, Pages 397 – 401 is withdrawn and of no further force or effect.

2. The changes in character of use, season of use, place of use (as further defined as a result of reconsideration) and point of appropriation proposed in application T-10296 are approved.
3. Water right certificate 82985 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
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 Certificate 82985 and any related decree.
5. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
6. The quantity of water diverted at the new point of appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.
7. Water for domestic use expanded shall be limited to a pumping rate of 0.08 cfs year round for 43 households within the Junipine Acres Home Association boundary, further limited to an annual volume of 19.8 acre feet per year. Water for year round storage in Sparks Reservoir and maintenance of the reservoir shall be limited to a pumping rate of 0.08 cfs and an annual volume of 19.2 acre feet per year.
8. The former place of use of the transferred portion of the right shall no longer receive water under the right.
9. If analysis of data available after the order is issued discloses that the use of water measurably reduces the flow of the springs tributary to Whychus Creek, use of water under this transfer order may be regulated so as to avoid injury to water rights from that source.
10. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
11. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2014**. 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.
12. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred to domestic expanded use and a certificate confirming the portion of the right transferred to reservoir storage and maintenance will be issued.

Dated at Salem, Oregon this 11th day of December, 2008.


Phillip C. Ward, Director

Mailing date: DEC 1 5 2008