

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-11156, Klamath County) CHANGE IN POINT OF
) APPROPRIATION

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

JOHN MICHAEL AND
SHARON R. BAILEY
3681 E LITTLE COTTONWOOD LN
SANDY, UT 84097

Agent

ANDREW HANSON
ADKINS CONSULTING ENGINEERS, INC.
2950 SHASTA WAY
KLAMATH FALLS, OR 97603

Findings of Fact

Background

1. On November 17, 2010, JOHN MICHAEL AND SHARON R. BAILEY filed an application to change the point of appropriation under Certificate 65942. The Department assigned the application number T-11156.
2. On June 8, 2011, the applicants amended the application correcting scrivener's errors in the Township. On June 9, 2011, the applicants requested their address be changed.
3. The portion of the right to be transferred is as follows:

Certificate: 65942 in the names of EARL D. AND BEVERLY J. KURTZ (perfected under Permit G-9206)

Use: IRRIGATION OF 2.0 ACRES

Priority Date: JANUARY 5, 1981

Rate: 8.5 GALLONS PER MINUTE (0.019 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, shall be limited to

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.

ONE-EIGHTIETH of one cubic foot per second per acre, 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: ONE WELL within the LOST RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	10 E	WM	9	NW NE	960 FEET SOUTH AND 300 FEET EAST FROM THE N¼ CORNER OF SECTION 9

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot
39 S	10 E	WM	9	NW NE	2.0	901

- Transfer Application T-11156 proposes to move the authorized point of appropriation approximately 200 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	10 E	WM	9	NW NE	1135 FEET SOUTH AND 410 FEET EAST FROM THE N¼ CORNER OF SECTION 9

- Notice of the application for transfer was published on November 23, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On June 9, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11156 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of July 11, 2011, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
- On June 10, 2011, the applicants requested an extension of the completion deadline to October 1, 2014.
- On June 13, 2011, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11156 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 June 21, 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)

- 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.

10. 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 Transfer Application T-11156.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.

Conclusions of Law

The change in point of appropriation proposed in Transfer Application T-11156 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

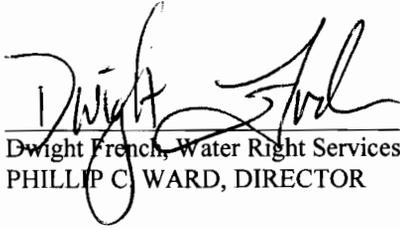
Now, therefore, it is ORDERED:

1. The change in point of appropriation proposed in Transfer Application T-11156 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 65942 and any related decree.
3. Water right certificate 65942 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. 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.
5. 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.
6. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
7. The former place of use of the transferred right shall no longer receive water under the right.
8. The approved change 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

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.

9. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 21 day of July 2011.



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

Mailing date: JUL 22 2011