

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

In the Matter of Transfer Application)
T-10728, Marion County) SUPERSEDING FINAL ORDER
) APPROVING AN ADDITIONAL POINT
) OF APPROPRIATION AND
) CORRECTING A SCRIVENER'S
) ERROR IN A PREVIOUS ORDER

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

GREG L. HERR AND STAN A. HERR
9631 SELAH SPRINGS RD NE
SILVERTON OR 97381

Findings of Fact

Background

1. On November 24, 2008, Greg L. Herr filed an application to create an additional point of appropriation under Certificate 42229. The Department assigned the application number T-10728.

2. The portion of the right to be transferred is as follows:

Certificate: 42229 in the name of H. C. TOELLE (perfected under Permit G-4629)

Use: PRIMARY IRRIGATION of 20.2 ACRES

Priority Date: JUNE 20, 1969

Rate: 0.21 CUBIC FOOT PER SECOND

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

Source: A WELL in the PUDDING RIVER BASIN

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.

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	2 W	WM	9	SW SE	1240 FEET SOUTH AND 930 FEET EAST FROM THE NW CORNER OF LOT 3, (NE SW) OF SECTION 9

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
7 S	2 W	WM	16	NW NE	79	1.6
7 S	2 W	WM	16	NE NW	79	16.6
7 S	2 W	WM	16	SE NW	79	2.0

3. Application T-10728 proposes to add an authorized point of appropriation approximately 0.25 mile from the existing point of appropriation at:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
7 S	2 W	WM	16	NE NW	79	50 FEET SOUTH AND 2200 FEET EAST FROM THE NW CORNER OF SECTION 16

4. Notice of the application for transfer was published on December 2, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
5. On April 24, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10728 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of May 25, 2009, 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.
6. On May 18, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10728 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 26, 2009, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
7. On June 29, 2009, the Department issued a Final Order approving the transfer, recorded at Special Order Volume 78, Pages 243 to 245.
8. On July 15, 2009, Department review of the order discovered a scrivener's error in the description of the location of the proposed point of appropriation in Finding of Fact #3 on page 244 of Special Order Volume 78, Pages 243 to 245. This present order is issued to include the correct location of the new point of appropriation.

Transfer Review Criteria (OAR 690-380-4010)

9. 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.
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 Application T-10728.
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 additional point of appropriation proposed in application T-10728 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the Department may correct the scrivener's errors in Special Order Volume 78, Pages 243 to 245.

Now, therefore, it is ORDERED:

1. The order entered at Special Order Volume 78, Pages 243 to 245 is withdrawn and of no further force and effect and is superseded by this order.
2. The additional point of appropriation proposed in application T-10728 is approved.
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 Certificate 42229 and any related decree.
4. Water right certificate 42229 is cancelled. Certificate 85529 has been issued describing that portion of the right not affected by this transfer.
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 additional 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. Prior to diverting water, the water user shall install an in-line flow meter or other suitable device for measuring and recording the quantity of water diverted. 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. The water user shall maintain and operate the measuring device as required by the Department.

8. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2010**. 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.
9. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 4th day of September 2009.



Phillip C. Ward, Director *PCW*

Mailing date: SEP 1 1 2009