

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-10481, Deschutes County)	CHANGE IN POINT OF
)	APPROPRIATION AND PLACE 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.

Applicant

STAN AND LINDA STENSTADVOLD
70955 HOLMES RD.
SISTERS, OR 97759

Receiving Landowner

CARL BERG
PO BOX 1030
SISTERS, OR 97759

Findings of Fact

Background

1. On October 24, 2007, STAN AND LINDA STENSTADVOLD filed an application to change the point of appropriation and place of use under Certificate 82985. The Department assigned the application number T-10481.
2. On November 1, 2007, the Department received an amended map identifying 4.72 involved in this transfer.
3. On July 21, 2008, Certificate 82985 was superseded by Certificate 84174.
4. On May 8, 2009, the applicant gave permission by phone for staff to adjust the “FROM” table to agree with the “TO” table in the application.
5. The portion of the right to be transferred is as follows:

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.

Certificate: 84174 in the name of STAN M. STENSTADVOLD, LINDA J. STENSTADVOLD AND STEPHEN M. SPARKS (perfected under Permit G-12711)

Use: IRRIGATION of 4.72 ACRES

Priority Date: MARCH 10, 1994

Rate: 0.058 CUBIC FOOT PER SECOND (cfs)

Season of Use: March 1 through October 31 of each year

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

Sources: WELLS within the Deschutes Basin

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	11 E	WM	11	SW NW	1350 FEET SOUTH AND 440 FEET EAST FROM THE NW CORNER OF SECTION 11
14 S	11 E	WM	11	SW NW	2570 FEET SOUTH AND 45 FEET EAST FROM THE NW CORNER OF SECTION 11

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	11 E	WM	11	SW NW	4.72

6. Transfer Application T-10481 proposes to move the authorized point of appropriation approximately 4 miles south from the existing points of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	11 E	WM	33	NW NE	793 FEET SOUTH AND 652 FEET EAST FROM THE N¼ CORNER OF SECTION 33

7. Transfer Application T-10481 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	11 E	WM	33	NW NE	4.72

8. Notice of the application for transfer was published on November 6, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
9. On May 8, 2009, the Department mailed a copy of the *draft* Preliminary Determination proposing to approve Transfer Application T-10481 to the applicants. The *draft* Preliminary Determination set forth a deadline of June 10, 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 applicant is authorized to pursue the transfer.

10. On July 16, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10481 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 July 21, 2009, and in the Nugget newspaper on July 29, August 5 and August 12, 2009, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
11. This application is being processed concurrently with T-10480, which also propose changes to Certificate 84174.

Transfer Review Criteria (OAR 690-380-4010)

12. Water has been used within the last five years. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
13. 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-10481.
14. The proposed change would not result in enlargement of the right.
15. The proposed change 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-10481 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 and change in place of use proposed in application T-10481 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 84174 and any related decree.
3. Water right certificate 84174 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer nor involved in T-10480.
4. 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.
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(s) 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 change(s) 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 15th day of September, 2009.


Phillip C. Ward, Director *FW*

Mailing date: SEP 21 2009