

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

In the Matter of Transfer Applications) FINAL ORDER APPROVING
T-6948 and T-8115, Marion County) CHANGES IN PLACES OF USE

Authority

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, 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

Kraemer Farms
13318 Dominic Road NE
Mt. Angel OR 97362

Findings of Fact

Background

1. On April 6, 1993, KRAEMER FARMS filed an application to change the place of use under Certificates 65143 and 65144. The Department assigned the application number T-6948.
2. On November 13, 1998, KRAEMER FARMS filed an application to change the place of use under Certificates 65143 and 65144. The Department assigned the application number T-8115.
3. On July 15, 1999, Certificate 65143 was cancelled by Special Order Volume 53, page 1072, approving Transfer Application T-8169, and was superseded by Certificate 83084.
4. On July 15, 1999, Certificate 65144 was cancelled by Special Order Volume 53, page 1072, approving Transfer Application T-8169, and was superseded by Certificate 83085.
5. On October 1, 2009, the applicant submitted a revised map to both Transfer Application T-6948 and Transfer Application T-8115 that amended the proposed places of use.

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.

6. On March 31, 2010, the applicant submitted the remaining fees required by Transfer Application T-6948.
7. The portion first right to be transferred under Transfer Application T-6948 is as follows:
- Certificate:** 83084 in the name of KRAEMER FARMS (perfected under Permit S-47801)
- Use:** IRRIGATION OF 35.0 ACRES
- Priority Date:** MAY 26, 1981
- Rate:** 0.224 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
- Source:** BUTTE CREEK, tributary to the PUDDING RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|-----|-----|-----|-----|-------|-----|---|
| 6 S | 1 E | WM | 8 | NE NW | 41 | 1130 FEET SOUTH AND 100 FEET WEST FROM THE N¼ CORNER OF SECTION 8 |

Authorized Place of Use:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-------|--|
| Twp | Rng | Mer | Sec | Q-Q | Acres | |
| 6 S | 1 E | WM | 6 | SW SW | 35.0 | |

8. Transfer Application T-6948 proposes to change the place of use of the right to:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 6 S | 1 E | WM | 17 | SW NE | 48 | 24.7 |
| 6 S | 1 E | WM | 17 | SE NE | 48 | 9.4 |
| 6 S | 1 E | WM | 17 | NE SE | 48 | 0.6 |
| 6 S | 1 E | WM | 17 | NW SE | 48 | 0.3 |
| TOTAL | | | | | | 35.0 |

9. The portion second right to be transferred under Transfer Application 6948 is as follows:

Certificate: 83085 in the name of KRAEMER FARMS (perfected under Permit G-10144)
Use: SUPPLEMENTAL IRRIGATION OF 35.0 ACRES
Priority Date: SEPTEMBER 20, 1983
Rate: 0.222 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year. This right is limited to any deficiency in the available supply of any prior right existing for the same lands.
Source: TWO WELLS within the BUTTE CREEK BASIN

Authorized Points of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|-----|-----|-----|-------|---|
| 6 S | 1 E | WM | 17 | NW NW | 1200 FEET SOUTH AND 80 FEET EAST FROM THE NW CORNER OF SECTION 17 |
| 6 S | 1 E | WM | 17 | SE NW | 1470 FEET SOUTH AND 1990 FEET EAST FROM THE NW CORNER OF SECTION 17 |

Authorized Place of Use:

| SUPPLEMENTAL IRRIGATION | | | | | |
|-------------------------|-----|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 6 S | 1 E | WM | 6 | SW SW | 35.0 |

10. Transfer Application T-6948 proposes to change the place of use of the right to:

| SUPPLEMENTAL IRRIGATION | | | | | | |
|-------------------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 6 S | 1 E | WM | 17 | SW NE | 48 | 24.7 |
| 6 S | 1 E | WM | 17 | SE NE | 48 | 9.4 |
| 6 S | 1 E | WM | 17 | NE SE | 48 | 0.6 |
| 6 S | 1 E | WM | 17 | NW SE | 48 | 0.3 |

11. The portion first right to be transferred under Transfer Application T-8115 is as follows:

Certificate: 83084 in the name of KRAEMER FARMS (perfected under Permit S-47801)
Use: IRRIGATION OF 39.2 ACRES
Priority Date: MAY 26, 1981
Rate: 0.252 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: BUTTE CREEK, tributary to the PUDDING RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|-----|-----|-----|-----|-------|-----|---|
| 6 S | 1 E | WM | 8 | NE NW | 41 | 1130 FEET SOUTH AND 100 FEET WEST FROM THE N¼ CORNER OF SECTION 8 |

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|-----|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 6 S | 1 E | WM | 7 | NE NW | 4.2 |
| 6 S | 1 E | WM | 7 | NW NW | 35.0 |

12. Transfer Application T-8115 proposes to change the place of use of the right to:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 6 S | 1 E | WM | 8 | SE SW | 43 | 0.9 |
| 6 S | 1 E | WM | 8 | SW SE | 43 | 0.6 |
| 6 S | 1 E | WM | 17 | NW NE | 43 | 14.4 |
| 6 S | 1 E | WM | 17 | SW NE | 48 | 16.2 |
| 6 S | 1 E | WM | 17 | NE NW | 43 | 3.6 |
| 6 S | 1 E | WM | 17 | SE NW | 48 | 2.6 |
| 6 S | 1 E | WM | 17 | NE SW | 48 | 0.1 |
| 6 S | 1 E | WM | 17 | NW SE | 48 | 0.8 |

13. The portion second right to be transferred under Transfer Application 8115 is as follows:

Certificate: 83085 in the name of KRAEMER FARMS (perfected under Permit G-10144)
Use: SUPPLEMENTAL IRRIGATION OF 39.2 ACRES
Priority Date: SEPTEMBER 20, 1983
Rate: 0.249 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year. This right is limited to any deficiency in the available supply of any prior right existing for the same lands.
Source: TWO WELLS within the BUTTE CREEK BASIN

Authorized Points of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|-----|-----|-----|-------|---|
| 6 S | 1 E | WM | 17 | NW NW | 1200 FEET SOUTH AND 80 FEET EAST FROM THE NW CORNER OF SECTION 17 |
| 6 S | 1 E | WM | 17 | SE NW | 1470 FEET SOUTH AND 1990 FEET EAST FROM THE NW CORNER OF SECTION 17 |

Authorized Place of Use:

| SUPPLEMENTAL IRRIGATION | | | | | |
|-------------------------|-----|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 6 S | 1 E | WM | 7 | NE NW | 4.2 |
| 6 S | 1 E | WM | 7 | NW NW | 35.0 |

14. Transfer Application T-8115 proposes to change the place of use of the right to:

| SUPPLEMENTAL IRRIGATION | | | | | | |
|-------------------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 6 S | 1 E | WM | 8 | SE SW | 43 | 0.9 |
| 6 S | 1 E | WM | 8 | SW SE | 43 | 0.6 |
| 6 S | 1 E | WM | 17 | NW NE | 43 | 14.4 |
| 6 S | 1 E | WM | 17 | SW NE | 48 | 16.2 |
| 6 S | 1 E | WM | 17 | NE NW | 43 | 3.6 |
| 6 S | 1 E | WM | 17 | SE NW | 48 | 2.6 |
| 6 S | 1 E | WM | 17 | NE SW | 48 | 0.1 |
| 6 S | 1 E | WM | 17 | NW SE | 48 | 0.8 |

15. Notice of the application for transfers was published pursuant to ORS 540.520 and OAR 690-380-4000. In response to the notice for T-6948, WaterWatch of Oregon filed a comment requesting to receive a copy of the technical review (preliminary determination).

16. On March 31, 2010 , the Department a copy of the draft Preliminary Determination proposing to approve Transfer Applications T-6948 and T-8115 to the applicant's agent. The draft Preliminary Determination cover letter set forth a deadline of May 3, 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.
17. On May 21, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Applications T-6948 and T-8115 and mailed a copy to the applicant's agent. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on May 25, 2010.

Transfer Review Criteria [OAR 690-380-4010(2)]

18. Water has been used within the five-year period prior to submittal of the transfer applications 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.
19. Pumps, pipelines, and sprinkler systems 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 Applications T-6948 and T-8115.
20. There is another water right on the "from" land. Certificate 76326 confirms a primary irrigation right that was applied for on the land after T-6948 was filed. Certificate 76326 was not intended to be layered with any existing water right on the "from" land.
21. Ground Water Registration Application GR-243 is being removed simultaneously from the "from" land under Ground Water Registration Modification T-10959.
22. The proposed changes would not result in enlargement of the rights.
23. The proposed changes would not result in injury to other water rights.

Conclusions of Law

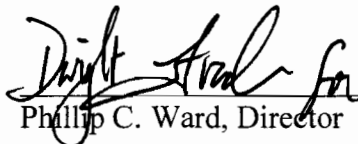
The changes in places of use proposed in Transfer Applications T-6948 and T-8115 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer applications will be approved.

Now, therefore, it is ORDERED:

1. The changes in places of use proposed in Transfer Applications T-6948 and T-8115 are 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 Certificates 83084 and 83085 and any related decree.
3. Water right certificates 83084 and 83085 are cancelled.
4. 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 diversion.
 - 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.
5. The former places of use of the transferred rights shall no longer receive water under the rights.
6. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. 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.
7. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 20 day of September 2010.


Phillip C. Ward, Director

Mailing Date: SEP 22 2010 .