BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application)	FINAL ORDER
T-10221, Baker County)	APPROVING A CHANGE
)	IN PLACE OF USE

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

WESLEY A. KERNS 15735 HUNT MTN LANE BAKER CITY, OR 97814

Agent

TOM MAC KERNS 45296 POCAHONTAS RD HAINES OR 97833

Findings of Fact

- 1. On August 11, 2006, Wesley Kerns filed an application to transfer the place of use under Certificates 39250 and 75775. The Department assigned the application number T-10221.
- 2. The FIRST right to be transferred is as follows:

Certificate:

39250 in the name of NORMAN BUTLER (perfected under Permit G-4650)

Use:

SUPPLEMENTAL IRRIGATION of 31.1 ACRES

Priority Date: JUNE 3, 1969

Rate:

0.39 CUBIC FOOT PER SECOND (cfs)

Limit/Duty:

ONE-EIGHTIETH cfs per acre, not to exceed 3 acre-feet per acre per year;

provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein, and shall be further limited to appropriation of water only to the extent that it does not impair or

substantially interfere with existing surface water rights of others.

Source:

A WELL (GRAVEL PIT) tributary to PINE CREEK (PINE CR BASIN)

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, you may either 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 Survey Coordinates	
8 S	39 E	WM	19	NE SE	680 FEET SOUTH & 770 FEET EAST FROM THE E1/4 CORNER OF SECTION 19

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres		
8 S	39 E	WM	20	NE SW	31.1		

3. There is an apparent scrivener's error in the description of the authorized point of appropriation under Certificate 39250. The point of appropriation location coordinates listed in the certificate (680 feet South and 770 feet East from the E1/4 corner of Section 19, NE ¼ SE ¼ Sec. 19, T8S, R39E, W.M.) are in error. Based on the accompanying transfer map and final proof survey for Certificate 39250, the location coordinates of the authorized point of appropriation should be as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
8 S	39 E	WM	19	NE SE	680 FEET SOUTH & 770 FEET WEST FROM THE E1/4 CORNER OF SECTION 19

4. Transfer Application T-10221 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres		
8 S	39 E	WM	20	SE NW	31.1		

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

Certificate:

75775 in the name of NORMAN BUTLER (perfected under Permit G-2877)

Use:

SUPPLEMENTAL IRRIGATION of 6.9 ACRES

Priority Date: APRIL 14, 1965

Rate:

0.09 CUBIC FEET PER SECOND (cfs)

Limit/Duty:

ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre-feet per acre per year

Source:

GRAVEL PIT NO. 1 in the PINE CREEK (POWDER RIVER) BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q Survey Coordinates	
8 S	39 E	WM	19	NE SE	680 FEET SOUTH & 770 FEET WEST FROM THE E1/4 CORNER OF SECTION 19

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres		
8 S	39 E	WM	20	NE SW	6.9		

6. Transfer Application T-10221 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres		
8 S	39 E	WM	20	SE NW	6.9		

- 7. Notice of the application for transfer was published on August 22, 2006, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
- 8. On December 19, 2006, the Department issued a preliminary determination proposing to approve Transfer Application T-10221 and mailed a copy to the applicant. Additionally, notice of the preliminary determination for the transfer application was published on the Department's weekly notice on December 26, 2006, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the Department's weekly notice.
- 9. Water was not used according to the terms and conditions of the rights within the five years prior to submittal of the transfer application on August 11, 2006. However, the nonuse occurred during a period of time when water was not available due to drought conditions. It has been demonstrated that the water right holder was ready, willing and able to use the water had it been available. The applicant, therefore, has sufficiently rebutted the presumption of forfeiture in accordance with ORS 540.610(2)(j).
- 10. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights is present.
- 11. The proposed change would not result in enlargement of the rights.
- 12. The proposed change would not result in injury to other water rights.
- 13. Consistent with OAR 690-380-2240(5), the priority dates and sources for the primary irrigation rights located at the place of use from which the supplemental irrigation rights are to be moved are similar in reliability to those of the primary irrigation rights currently located at the proposed place of use.
- 14. The applicant requested to extend the completion date to October 1, 2009.

Conclusions of Law

The change in place of use proposed in Transfer Application T-10221 is consistent with the requirements of ORS 537.705, 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore, it is ORDERED:

- 1. The change in place of use proposed in Transfer Application T-10221 is approved.
- 2. The right to 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 39250, 75775 and any related decree.
- 3. Certificates 39250 and 75775 are cancelled. A new certificate will be issued describing that portion of the right evidenced by Certificate 75775 not involved in this transfer.

- 4. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2009.** 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.
- 5. The former place of use of the transferred water shall no longer receive water as part of these rights.
- 6. Prior to diverting water at the new point of appropriation, the water user shall install and maintain an in-line flow meter or other suitable device for measuring and recording the quantity of water appropriated. 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.
- 7. When satisfactory proof of the completed change is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 30	day of ax	many 2007.
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Phillip C. Ward, Director