

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

In the Matter of Transfer Application)
T-10464, Umatilla County)
)
)
)
)
)
)

FINAL ORDER APPROVING A
CHANGE FROM A SURFACE WATER
POINT OF DIVERSION TO A
GROUNDWATER POINT OF
APPROPRIATION AND CORRECTING
AN ERROR IN CHARACTER 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
KENT R. MADISON
29299 MADISON RD
ECHO OR 97826

Applicant’s Agent
JASON MELADY, RG, CWRE
GSI WATER SOLUTIONS, INC.
55 SW YAMHILL ST., SUITE 400
PORTLAND, OR 97204

Findings of Fact

Background

1. On September 28, 2007, KENT MADISON filed an application to change from a surface point of diversion to a ground water point of appropriation under Certificate 28737. The applicant proposed to change from a surface water spring point of diversion in the NW SE of Section 30, T3N, R28E, W.M., to a proposed point of appropriation (the “Windmill Well”) within the SE NW of Section 31. The Department assigned the application number T-10464.
2. On March 14, 2008, Certificate 28737 was cancelled by Special Order Volume 74, pages 394-406, which approved T-10320, and was superseded by Certificate 83696.
3. A preliminary review by a Department hydrogeologist indicated that the well originally proposed (the Windmill Well) did not meet the distance and hydraulic connection criteria in ORS 540.531(2).

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.

4. On November 18, 2008, the applicant's agent submitted an amended application and map, changing the location of the proposed point of appropriation to a different collector well, located within the NW SE of Section 30.

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

Certificate: 83696 in the name of GAYLORD M. MADISON (perfected under Permit S-25159)

Use: SUPPLEMENTAL IRRIGATION of 13.8 ACRES

Priority Date: SEPTEMBER 30, 1957

Rate: 0.28 CUBIC FOOT PER SECOND

Limit/Duty: ONE-FIFTIETH cfs per acre, not to exceed 4 acre-feet per acre per year

Source: SOUTH SPRING, tributary to BUTTER CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
3 N	28 E	WM	30	NW SE

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	28 E	WM	30	NW SE	13.8

6. Certificate 83696 does not describe the location coordinates of the point of diversion, however information is available from Transfer Application T-10464 and map indicating that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
3 N	28 E	WM	30	NW SE	350 FEET SOUTH AND 2100 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 30

7. The right currently evidenced by Certificate 83696 was originally applied for by Gaylord M. Madison under Application S-31906 on September 30, 1957. The applicant requested to use water from the North and South Springs for "irrigation and supplemental irrigation" of 88.0 acres. The Department issued Permit S-25159 on November 29, 1957 approving the application, but only allowed "supplemental irrigation" because of the existence of irrigation Permits E-106 and S-1546 located on the same lands. The proposed project under Permits E-106 and S-1546 was never developed, however, so Permits E-106 and S-1546 were voluntarily cancelled on June 22, 1959, under Special Order Volume 10, Page 111.

8. When Certificate 28737 was issued on July 13, 1959, it described the right for the use of 1.69 cfs from the North and South Springs as being "supplemental irrigation" of 84.3 acres. Since the underlying permits had been cancelled just three weeks prior to the issuance of the certificate, however, Certificate 28737 should have been issued as primary irrigation, pursuant to ORS 540.670. Therefore, on February 26, 1985, Department staff determined that the designation of all irrigated lands under Certificate 28737 as being supplemental was arbitrary, and the Department would consider Certificate 28737 as being the primary source

of supply for any of the involved lands that did not already have a valid primary irrigation right. This is documented by an Interoffice Memo in the original S-31906 water right file. However, when Certificate 83696 was issued to supersede Certificate 28737, it inadvertently perpetuated the inaccurate designation of Supplemental Irrigation.

9. Based upon Finding of Fact #8 and the existence of no primary irrigation rights on the land, the Department has determined that the portion of the authorized place of use under Certificate 83696 (formerly evidenced by Certificate 28737) to be transferred under Application T-10464 should be described as follows:

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	28 E	WM	30	NW SE	13.8

10. Transfer Application T-10464 proposes to change the authorized point of diversion to a ground water point of appropriation (collector well) at the site of the existing point of diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 N	28 E	WM	30	NW SE	350 FEET SOUTH AND 2100 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 30

11. Notice of the application for transfer was published on October 16, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
12. On May 30, 2008, the Department contacted the applicant Kent Madison by written correspondence, with copy to the applicant's agent Jason Melady, to notify him of the deficiencies in the application and map. The Department requested that the deficiencies be resolved by July 15, 2008. Subsequently Jason Melady requested additional time to submit the requested information, so the deadline was extended until September 15, 2008, and again to November 15, 2008. The applicant's agent responded on November 18, 2008 as stated in Finding of Fact #4 above.
13. A December 16, 1985 memo in the Application S-31906 file confirms a telephone conversation on December 6, 1985 in which John Madison had proposed his intention to develop the springs on the Madison Ranch lands with additional excavation, and to replace the old tile lines above the "hard pan" layer approximately 20 feet in depth. Steven Applegate of the Department indicated that provided no new distinct water sources were developed besides those described under the right, the proposed further development of the springs would not be of concern to the Department.
14. Transfer Application T-10464 describes the current point of diversion at the South Spring as a collector well, consisting of 12" ADS vertical pipe 30 feet deep connected to 300 feet of 6" ADS horizontal drain tile. However, Kent Madison indicated in a phone conference on April 5, 2010 that he believed the current well is approximately 20 feet deep. Mr. Madison also submitted a diagram via email on April 5, 2010 to illustrate characteristics of the "spring"

before and after replacement of the collector tiles in the 1980s. The diagram did not include dimensions or a scale.

15. On May 26, 2010, Department hydrogeologist Marc Norton reported that an attempt to determine the depth of the well during a site visit was inconclusive, as something solid (probably not the well bottom) was encountered at a depth of about 17 feet.
16. Insufficient information exists to determine with certainty the water available at the original spring; however, based on the descriptions in Findings of Fact #13 and #14, it seems reasonable that limiting the pump intake to a depth of 20 feet below ground surface would prevent the drawdown to drop below the original spring level, thereby not exceeding the period of time that water would have been available at the original POD.
17. To ensure that the water right will not be enlarged in the future, baseline data should be gathered on the water available from this well through metering and recording of data.
18. On June 8, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10464 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 9, 2010, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and on August 9, 2010 provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
19. On August 16, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10464 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 August 24, 2010, 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(2)]

20. Water has been used within the last five years prior to the submittal of Transfer Application T-10464 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.
21. 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-10464.
22. The proposed well meets the hydraulic conductivity requirements of ORS 540.531. Pumping of the well will cause depletion of the surface water source at a rate of at least 50 percent of the rate of appropriation within 10 days of continuous pumping, in accordance with OAR 690-380-2130(2)(c) and (11)(b).
23. Unless the well is constructed in a manner which prevents entry of surface water from other sources such as ditches, or access to groundwater at depths not accessed by the original POD construction, enlargement of the right could result.

24. Without provisions to prevent entry to the well of unauthorized surface water, or intake of groundwater not accessed by the original POD and a measurement device on the well, the Department cannot find that the proposed change would not allow enlargement of the right. However, if conditioned as follows, the proposed change would not result in enlargement of the right.
25. Without assurance that enlargement would not occur, the Department cannot find that the proposed change would not result in injury to other water rights. If conditioned as follows, the proposed change would not result in injury to other water rights.

Conclusions of Law

The change from a surface water point of diversion to a ground water appropriation proposed in Transfer Application T-10464, as conditioned below, is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-2130 and 690-380-5000 and the character of use of the right should be corrected in the record from supplemental to primary irrigation.

Now, therefore, it is ORDERED:

1. The change in point of diversion to a ground water point of appropriation proposed in Transfer Application T-10464 is approved and the transferred portion of the right will be designated as primary irrigation.
2. Water right certificate 83696 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer, which will correct the character of use to Primary Irrigation.
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 83696 and any related decree.
4. The well shall be sealed to prevent surface water from entering the well.
5. The pump intake shall be set no deeper than 20 feet below ground surface to ensure that 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 diversion.
6. 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 the point of appropriation.
 - b. The water user shall maintain the meter or measuring device in good working order.
 - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.

7. The water user shall record the water used and submit monthly reports to the Watermaster.
8. The well from which water is taken under the right shall be constructed so that the use of the well will affect the surface water source similarly to the use of the original authorized point of diversion.
9. The use of water under this right shall be subject to regulation consistent with other water rights from the surface water source and to all other applicable conditions and restrictions that existed at the original point of diversion.
10. If, within five years after approval of the transfer, the Department finds that the transfer results in substantial or undue interference with an existing ground water right due to use of the well, that would not have occurred in the absence of the transfer, the new point of appropriation shall be subordinate to the existing right injured by the transfer.
11. The original point of diversion of surface water shall not be retained as an additional or supplemental point of diversion under the transferred portion of the right. However, if within five years after approval of the transfer, the Department receives a transfer application to return to the last authorized surface water point of diversion, the application shall be approved
12. The approved change 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 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.
13. When satisfactory proof of the completed change is received, a new certificate will be issued confirming the right transferred and acknowledging that it is Primary Irrigation.

Dated at Salem, Oregon this 24 day of September 2010.


Phillip C. Ward, Director

Mailing date: SEP 27 2010