

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-9964, Clackamas County) PROPOSING APPROVAL OF A CHANGE
) IN POINT OF APPROPRIATION

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

VALLEY ESTATES WATER DISTRICT
ATTN: NANCY COOK
28434 S. NEEDY ROAD
CANBY, OR 97013

Agent

MALIA KUPILLAS
PACIFIC HYDRO-GEOLOGY
18477 S. VALLEY VISTA ROAD
MULINO, OR 97042

Findings of Fact

Background

1. On June 30, 2005, Nancy Cook, President of Valley Estates Water District filed an application to change the point of appropriation under Certificate 46756. The Department assigned the application number T-9964.
2. The applicant's agent submitted a revised map on December 19, 2006, to correctly identify that the location coordinates of the proposed point of appropriation are measured from the SE corner of DLC 40 in Section 28, T 4 S, R 1 E, W.M., rather than the NW corner of DLC 40.
3. The portion of the right to be transferred is as follows:
Certificate: 46756 in the name of CLYDE C. BACKSEN (perfected under Permit G-2153)
Use: IRRIGATION of 9.8 ACRES
Priority Date: MAY 21, 1962
Rate: 0.08 CUBIC FOOT PER SECOND (cfs)
Limit/Duty: ONE-EIGHTIETH of one cubic foot per second per acre, not to exceed 2.5 acre feet per acre per year
Source: A WELL in the GRIBBLE CREEK DRAINAGE

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
4 S	1 E	WM	28	SE NW	45	10.75 CHAINS SOUTH AND 0.5 CHAIN WEST FROM THE NW CORNER OF WHEALDON DLC 43

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	1 E	WM	28	SW NW	45	5.2
4 S	1 E	WM	28	NW SW	45	4.6

4. Application T-9964 proposes to move the authorized point of appropriation approximately 1250 feet northwest from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
4 S	1 E	WM	28	SW NW	45	150 FEET SOUTH AND 210 FEET WEST FROM THE SE CORNER OF DLC 40

5. Notice of the application for transfer was published July 19, 2005, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
6. On December 27, 2006, the Department mailed to the applicant a copy of the draft Preliminary Determination proposing to approve changes in point of appropriation and place of use requested by Transfer Application T-9964. The draft Preliminary Determination set forth a deadline of January 31, 2007, 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.
7. Further review of Transfer Application T-9964 revealed that the draft Preliminary Determination (described in Finding No. 6) inadvertently proposed to approve a change in place of use, while the transfer application did **not** propose to move the location of irrigated land under Certificate 46756. The Department, therefore, issued a REVISED draft Preliminary Determination on October 16, 2007, to correctly reflect the change proposed in Transfer Application T-9964 (described in Finding No. 4).
8. On October 21, 2007, the applicant's agent responded on behalf of the applicant and indicated that the REVISED draft Preliminary Determination was acceptable and requested the Department to proceed with issuance of the Preliminary Determination.

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

9. Water has been used within the last five years according to the terms and conditions of the right, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
10. A pump and distribution system sufficient to use the full amount of water allowed under the existing right is present.
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.


Determination and Proposed Action

The change in point of appropriation proposed in application T-9964 appears to be consistent with the requirements of ORS 537.705, 540.505 to 540.580, and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If application T-9964 is approved, the final order will include the following:

- 1. The change in point of appropriation proposed in application T-9964 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 Certificate 46756 and any related decree.*
- 3. Certificate 46756 is cancelled. A new certificate will be issued to describe the portion of the right not involved in the transfer.*
- 4. Water shall be acquired from the same aquifer (ground water source) as the original point of appropriation.*
- 5. 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.*
- 6. When required by the Department, 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. The approved change 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.*
- 8. When satisfactory proof of the completed change is received, a new certificate confirming the portion of the right transferred will be issued.*

Dated at Salem, Oregon this 31 day of October 2007.


Phillip C. Ward, Director

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer Street NE, Suite A, Salem, OR 97301-1266.

This Preliminary Determination was prepared by Lisa Jaramillo. If you have any questions about the information in this preliminary determination, you may reach me at (503) 986-0880 or Lisa.J.Jaramillo@ wrd.state.or.us