

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-10275, Marion County)	PROPOSING APPROVAL OF
)	ADDITIONAL POINTS 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.

Applicants

Mary B. Spada and Arthur Spada, Trustees of the Mary B. Spada Living Trust
Arthur Spada and Mary B. Spada, Trustees of the Arthur Spada Living Trust
7251 St. Paul Hwy. NE
St. Paul, OR 97137-9729

Findings of Fact

Background

1. On December 4, 2006, Baker West Inc. filed an application to add five points of appropriation under Certificate 42108. The Department assigned the application number T-10275.
2. Notice of the application for transfer was published on December 19, 2006, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 7, 2007, Baker West, Inc. assigned all of their interest in Transfer Application T-10275 to Mary S. Spada and Arthur Spada Living Trust.
4. On June 11, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10275 to the original applicant. The draft Preliminary Determination set forth a deadline of July 13, 2007, for the applicant to respond. The newly assigned applicants requested additional time to respond to the draft Preliminary Determination because of a property ownership boundary line issue.
5. On June 23, 2008, the current applicants submitted a revised application and map to reflect a minor acreage change in the SW ¼ NE ¼ of Section 18, T. 4S, R. 1W, W.M., and to correctly identify the proposed wells.

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.
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6. The portion of the right to be transferred, as revised, is as follows:

Certificate: 42108 in the name of ERSEL E. CHRISTOPHERSON (perfected under Permit G-3485)
Use: IRRIGATION of 189.0 ACRES
Priority Date: SEPTEMBER 21, 1966
Rate: 1.64 CUBIC FEET PER SECOND (cfs)
Limit/Duty: ONE-EIGHTIETH of one cfs per acre, not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year
Source: A WELL in the RYAN CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
4 S	1 W	WM	18	SE SE	DLC 62	2380 feet South and 950 feet East from the NW corner of Cone DLC 62

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	1 W	WM	17	SW NW	62	1.5
4 S	1 W	WM	17	NW SW	62	6.4
4 S	1 W	WM	17	SW SW	62	7.2
4 S	1 W	WM	18	SW NE	62	9.1
4 S	1 W	WM	18	SE NE	62	18.4
4 S	1 W	WM	18	SE SW	62	1.7
4 S	1 W	WM	18	NE SE	62	40.0
4 S	1 W	WM	18	NW SE	62	24.8
4 S	1 W	WM	18	SW SE	62	30.7
4 S	1 W	WM	18	SE SE	62	38.0
4 S	1 W	WM	19	NE NE	62	8.4
4 S	1 W	WM	19	NW NE	62	2.8

7. Transfer Application T-10275 proposes to add five authorized points of appropriation located less than ½ mile from the existing point of appropriation, as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates	Approximate Distance from Authorized POA
4 S	1 W	WM	18	SW SE	62	WELL 2: 0 feet South and 1580 feet East from the SW corner of Cone DLC 62	1050 feet Southwest
4 S	1 W	WM	18	SW SE	62	WELL 3: 760 feet North and 370 feet East from the SW corner of Cone DLC 62	1250 feet Northwest
4 S	1 W	WM	18	NW SE	62	WELL 4: 1500 feet North and 720 feet East from the SW corner of Cone DLC 62	2300 feet Northwest
4 S	1 W	WM	18	SW NE	62	WELL 5: 180 feet South and 360 feet East from the NW corner of Cone DLC 62	2050 feet Northeast
4 S	1 W	WM	17	SW NW	62	WELL 6: 850 feet South and 2260 feet East from the NW corner of Cone DLC 62	1500 feet West

8. On June 30, 2008, a *revised* draft Preliminary Determination was sent by email to the current applicants and their agent, noting the difference between the name of the trust that the T-10275 application had been assigned to and the two legally recognized trusts that are owners of the property. The current applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that they are authorized to pursue the transfer.
9. On July 3, 2008, the recorded Assignment was corrected to properly reflect that the transfer application is assigned to: Mary B. Spada and Arthur Spada, Trustees of the Mary B. Spada Living Trust, as to an undivided 62% interest; and Arthur Spada and Mary B. Spada, Trustees of the Arthur Spada Living Trust, as to an undivided 38% interest. The current applicants are the owners of the property included in Transfer Application T-10275.

Transfer Review Criteria (OAR 690-380-4010)

10. 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.
11. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right is present.
12. At least one-quarter of the irrigated lands on the subject certificate are now planted in nursery stock rather than traditional field crops, which raises the concern that water use may have increased over time and may continue to increase if additional lands are converted to nursery stock. If conditioned as follows, the proposed change would not result in enlargement of the right.
13. Development of the groundwater resource over time has led to summer water-level drawdowns that now approach 70 feet in the area, which has led to water use regulation in the area. The Department believes the local alluvial aquifer system may be near its capacity to provide year-round water to all users in the area. Further, the authorized well is near the center of the irrigated lands, but the proposed wells are located around the margins, adjacent to neighboring properties. If conditioned as follows, the proposed change is not expected to result in injury to other water rights.

Determination and Proposed Action

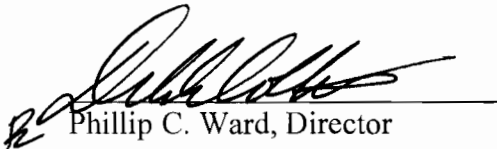
The additional five points of appropriation proposed in Transfer Application T-10275 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-10275 is approved, the final order will include the following:

1. *The additional five points of appropriation proposed in Transfer Application T-10275 are approved.*

2. *Water right certificate 42108 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
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 42108 and any related decree.*
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 additional points of appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.*
6. *Prior to diverting water at the new point of appropriation, the water user shall install and maintain, at each new well and at the existing well, 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 devices must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain and operate the measuring device as required by the Department.*
7. *The water user shall allow the watermaster access to the meters or measuring devices; provided however, where the meter(s) or measuring device(s) is located within a private structure, the watermaster shall request access upon reasonable notice.*
8. *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 change and full beneficial use of the water.*
9. *When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 21st day of July 2008.


Phillip C. Ward, Director

This Preliminary Determination was prepared by a Reimbursement Authority contractor. If you have questions about the information in this document, you may reach Dorothy Pedersen at 503-986-0890 or Dorothy.I.Pedersen@wrdd.state.or.us.

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