

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

In the Matter of Transfer Application	)	FINAL ORDER APPROVING A
T-10737, Polk County	)	CHANGE 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.

**Applicants**

CFRI-HWKD Middle Zena Vineyard LLC	2008 VD Holding, LLC
PO Box 3989	A Delaware limited liability company
Napa, CA 94558	

2008 Vineyard Development, LLC	Hill Wollack Kahn & Daniels, LLC
A Delaware limited liability company	A California limited liability company

**Agent**

Joe Richards  
3937 NE 13<sup>th</sup> Avenue  
Portland, OR 97212

**Findings of Fact**

***Background***

1. On November 19, 2008, William Hill filed an application for CFRI-HWKD Middle Zena Vineyard LLC, 2008 VD Holding, LLC, Vineyard Development, LLC and Hill Wollack Kahn & Daniels, LLD to change the character of use under Certificate 58089. The Department assigned the application number T-10737. Joe Richards is authorized as an agent to act on behalf of the applicants.
2. On March 23, 2009, the applicant submitted amendments to the transfer application in response to a deficiency letter from the Department. These documents included an Affidavit Attesting to the Use of Water (Supplemental Form B) with aerial photograph dated June 20,

<p>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.</p>
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2007, and a letter which provided additional applicant contact information, explained signature authority, and described the relationships between the applicant, the signee, and other entities represented by the signee on the application.

3. The right to be transferred is as follows:

**Certificate:** 58089 in the name of NORMAN L RICE (perfected under Permit R-8132)

**Use:** STORAGE of 8.0 ACRE FEET for the purpose of SUPPLEMENTAL IRRIGATION AND STOCK

**Priority Date:** SEPTEMBER 4, 1979

**Limit/Duty:** 8.0 ACRE FEET per year

**Source:** UNNAMED STREAM/RICE RESERVOIR, tributary to SPRING VALLEY CREEK

**Authorized Place of Use:**

STORAGE				
Twp	Rng	Mer	Sec	Q-Q
6 S	4 W	WM	23	SW SE

4. Transfer Application T-10737 proposes to change the character of use to MULTIPLE PURPOSE.
5. Notice of the application for transfer was published on December 2, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice. The transfer application did not include an Affidavit Attesting to the Use of Water (Supplemental Form B), as required in OAR 690-380-3000(12), to demonstrate that water had been stored to full capacity in Rice Reservoir in the 5 years prior to submitting the application. In addition, the Applicant Information provided in the application was incomplete. Furthermore, the Department needed additional information to clarify the relationships between the applicant, the signee, and several entities represented by the signee on the application, and to verify that the signee was authorized to serve as an agent for the applicant.
7. On March 6, 2009, the Department contacted Middle Zena Vineyard LLC by written correspondence to notify the applicant of the deficiencies in the application. Specifically, the application did not include all the required contact information for the applicant, nor did it include an Affidavit Attesting to the Use of Water (Supplemental Form B). In addition, the Department required additional information concerning the relationship between the individual who signed the application, the applicant, and other entities listed in the application. The Department requested that the deficiencies be resolved by April 10, 2009. A response to the Department's request was received from the applicant's agent on March 23, 2009. The additional information and documents provided in the response, as described above in Finding of Fact #2, satisfactorily addressed the deficiencies in the application.
8. On May 15, 2009, the Department mailed a copy of the Preliminary Determination proposing to approve Transfer Application T-10307 to the applicants. The Preliminary Determination cover letter set forth a deadline of June 16, 2009, for the applicants to respond. The applicants requested that the Department proceed with issuance of a

Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.

9. On July 7, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10737 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on July 14, 2009, and in the Polk County Itemizer-Observer newspaper on August 5, 12 and 19, 2009, 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)]***

10. Water has been used within the last five years 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.
11. A dam and reservoir sufficient to store the full allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-10737.
12. The proposed change would not result in enlargement of the right.
13. The proposed change(s) would not result in injury to other water rights.

**Conclusions of Law**

The change in character of use proposed in Transfer Application T-10737 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

**Now, therefore, it is ORDERED:**

1. The change in character of use proposed in application T-10737 is 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 Certificate 58089 and any related decree.
3. Water right certificate 58089 is cancelled.
4. When required by the Department, the water user shall install, maintain and operate a suitable device for measuring and recording the quantity of water stored. 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.
5. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2010**. 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.

6. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 29<sup>th</sup> day of September 2009.

  
Phillip C. Ward, Director *for*

Mailing date: OCT 01 2009.