

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

In the Matter of Transfer Application     )  
T-8116, Josephine County                 )  
  )  
  )     FINAL ORDER APPROVING A  
  )     CHANGE IN PLACE OF USE AND  
  )     PARTIAL CANCELLATION OF  
  )     CERTIFICATE 7149

**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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

**Applicant Residence**

STANLEY AND ROBERTA RICHARDS  
8245 CAVES HIGHWAY  
CAVE JUNCTION, OR 97523

**Applicant Mailing**

STANLEY AND ROBERTA RICHARDS  
55 OAKVUE ROAD  
PLEASANT HILL, CA 94523

**Findings of Fact**

1. On November 12, 1998, Stanley and Roberta Richards filed a transfer application to change the place of use and to change the point of diversion to reflect historical use under Certificate 7149. The Department assigned the application number T-8116.
2. On November 25, 1998, the Department received a request from the applicant to remove the change in point of diversion to reflect historical use proposed in the transfer application. Through investigation and with the best information available, it was determined that the historical point of diversion is virtually the same as the adjudicated point of diversion.

**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.

3. The portion of the right to be transferred is as follows:  
**Certificate:** 7149 in the name of T.H. ROBINSON (confirmed by Sucker Creek decree)  
**Use:** IRRIGATION of 8.3 ACRES  
**Priority Date:** 1898  
**Season:** APRIL 1 TO OCTOBER 31 OF EACH YEAR  
**Rate:** 0.17 CUBIC FOOT PER SECOND  
**Source:** SUCKER CREEK, tributary to EAST FORK ILLINOIS RIVER  
**Authorized Point of Diversion:** NOT SPECIFIED IN CERTIFICATE

**Authorized Place of Use:**

| Twp  | Rng | Mer | Sec | Q-Q   | Acres |
|------|-----|-----|-----|-------|-------|
| 39 S | 7 W | WM  | 22  | SE NE | 8.3   |

4. Certificate 7149 does not describe the location of the point of diversion, however, information is available from the Certified Water Rights Examiner indicating that the point of diversion is located as follows:

| Twp  | Rng | Mer | Sec | Q-Q   | Survey Coordinates  |
|------|-----|-----|-----|-------|---|
| 39 S | 7W  | WM  | 23  | SE NW | 840 FEET SOUTH AND 10 FEET EAST FROM THE NW CORNER OF THE SE ¼ NW ¼ OF SECTION 23 |

5. Application T-8116 proposes to change the place of use of the right to:

| Twp  | Rng | Mer | Sec | Q-Q   | Acres |
|------|-----|-----|-----|-------|-------|
| 39 S | 7 W | WM  | 22  | SE NE | 4.2   |
| 39 S | 7 W | WM  | 23  | SW NW | 4.1   |

6. Notice of the application for transfer was published on November 24, 1998, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice. However, the Oregon Department of Fish and Wildlife (ODWF) recommends the applicant install, maintain and operate fish screening and by-pass devices to prevent fish from entering the diversion.
7. On October 31, 2006, the applicant submitted an affidavit attesting to the use of water within the last five years and in accordance with the terms and conditions of the right. There is no available evidence that would demonstrate that the right is subject to forfeiture under ORS 540.610.
8. On December 21, 2006, the Department issued a preliminary determination proposing to approve Transfer Application T-8116 and partially cancel Certificate 7149, and mailed a copy to the applicant. Additionally, notice of the preliminary determination for the transfer application was published in 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. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.

10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.

**Partial Cancellation of a Water Right**

12. The Sucker Creek adjudicated map dated June 1, 1910 and certificate 7149 indicate thirty (30) acres of irrigation appurtenant to the Richard’s land. However, the map of lands that were inchoate at time of the decree mapping, departmental staff notes, aerial photographs, and the map submitted by the CWRE are not consistent with the acres as described on the certificate. The evidence suggests that 11.6 acres on certificate 7149 are subject to forfeiture for non-use.
13. On October 31, 2006, Mr. and Mrs. Richards submitted an affidavit meeting the requirements of ORS 540.621 for partial cancellation of a water right, as follows:

**Certificate:** 7149 in the name of T. H. ROBINSON  
**Use:** IRRIGATION of 11.6 ACRES  
**Priority Date:** 1898  
**Season:** APRIL 1 TO OCTOBER 31 OF EACH YEAR  
**Rate:** 0.23 CUBIC FOOT PER SECOND  
**Source:** SUCKER CREEK, tributary to EAST FORK ILLINOIS RIVER  
**Authorized Point of Diversion:** NOT SPECIFIED IN CERTIFICATE  
**Authorized Place of Use to be cancelled:**

| Twp  | Rng | Mer | Sec | Q-Q   | Acres |
|------|-----|-----|-----|-------|-------|
| 39 S | 7 W | WM  | 22  | SE NE | 11.6  |

**Conclusions of Law**

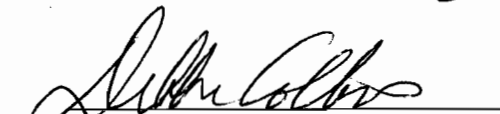
The change in the place of use proposed in Transfer Application T-8116 is consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000. The abandoned portion of Certificate 7149 (described in Finding of Fact #13) is cancelled.

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

1. The change in place of use proposed in Transfer Application T-8116 is approved.
2. The portion of Certificate 7149 that has been abandoned in accordance with ORS 540.621 is cancelled.
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 7149 and any related decree.
4. Certificate 7149 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer or abandoned.

5. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2008**. 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.
6. The former place of use of the transferred water shall no longer receive water as part of this right.
7. Prior to diverting water, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
8. The water user shall install and maintain a fish screen or fish by-pass device, as appropriate, at the point of diversion. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning of construction, and shall be installed under the supervision of the Department of Fish and Wildlife.
9. When satisfactory proof of the completed change is received, a new certificate will be issued confirming the right transferred and describing the location of the point of diversion as indicated in Finding of Fact #4.

Dated at Salem, Oregon this 30<sup>th</sup> day of January 2007.

  
Phillip C. Ward, Director

Mailing date: JAN 31 2007