

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-10909, Jackson 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.

Applicant

FRED OWEN, JR.
BARBARA L. OWEN
5280 CRATER LAKE AVENUE #102
CENTRAL POINT, OR 97502

Agent

HOLLIE CANNON
PO BOX 4247
MEDFORD, OR 97501

Findings of Fact

Background

1. On June 26, 2009, FRED OWEN, JR. AND BARBARA OWEN filed an application to change the character of use under Certificate 85481. The Department assigned the application number T-10909.
2. The right to be transferred is as follows:

Certificate: 85481 in the name of MEDFORD READY MIX CONCETE INC.
(confirmed by Rogue River DECREE, 1940)
Use: IRRIGATION of 1.3 ACRES
Priority Date: SEPTEMBER 22, 1888
Rate: 0.016 CUBIC FOOT PER SECOND
Source: ROGUE RIVER, tributary to the PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
36 S	2 W	WM	18	NW SW	5	3020 FEET SOUTH AND 440 FEET EAST FROM NW CORNER OF SECTION 18

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.

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
36 S	2 W	WM	18	NW SW	5	1.3

- Transfer Application T-10909 proposes to change the character of use to DOMESTIC EXPANDED for year-round use, including one-half acre of lawn and non-commercial garden.

DOMESTIC EXPANDED						
Twp	Rng	Mer	Sec	Q-Q	GLot	
36 S	2 W	WM	18	NW SW	5	

- Transfer application T-10909 requests that the quantity of water allowed under Certificate 13864 for irrigation be pro-rated for year-round domestic expanded use. Irrigation use under Certificate 85481 is allowed from April 1 through October 31. Based on an irrigation season of 215 days out of 365 days per year, the pro-rated adjusted rate of diversion for year-round use would be 0.009 cfs ($214 / 365 \times 0.016 \text{ cfs} = 0.009 \text{ cfs}$).
- Certificate 13864 does not list a duty of water. Based on the crop consumptive use estimates that are published in *Oregon Crop water Use and Irrigation Requirements* (Cuenca, 1992), the most consumptive crop use for the area of this water right is 3.35 acre feet per year. Utilizing an evaporative loss quantification of 10%, the maximum duty of water to be transferred would be 3.7 acre feet per acre. Therefore, to prevent enlargement of this right, the maximum diverted annual volume of water for the new use under this right is limited to 4.8 acre feet (af) per year ($1.3 \text{ acres} \times 3.7 \text{ af} = 4.8 \text{ af}$).
- Notice of the application for transfer was published on June 30, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On February 26, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10909 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of March 30, 2010, 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 applicant is authorized to pursue the transfer.
- On April 9, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10909 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 April 13, 2010, and in the Medford Mail Tribute on April 28, and May 5 and 12, 2010. No protests were filed in response to the notice.

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. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
10. 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-10909.
11. The proposed change as conditioned in Findings of Fact Nos. 4 and 5 would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.

Conclusions of Law

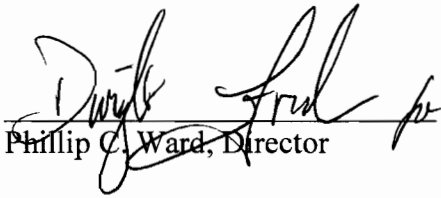
The change in character of use proposed in Transfer Application T-10909 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in character of use proposed in application T-10909 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 85481 and any related decree.
3. Water right certificate 85481 is cancelled.
4. 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 each point of diversion.
 - 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 are located within a private structure, the Watermaster shall request access upon reasonable notice.
5. The former irrigated place of use of the transferred right shall no longer receive water under the right.
6. The use of water under this right is limited to a diversion rate of 0.009 cfs and an annual volume of 4.8 acre-feet per year.

7. 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 change and full beneficial use of the water.
8. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 15 day of June 2010.


Phillip C. Ward, Director

Mailing date: JUN 16 2010