# BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application	)	
T-7241, to Change the Character of Use	)	FINAL ORDER APPROVING A
and Place of Use of Water	)	TRANSFER
Marion County, Oregon		

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**

Ernest Kuntze 9539 Crosby Rd. NE Woodburn, Oregon 97071

## **Findings of Fact**

- 1. Merlin Thom filed an application to transfer the place of use and character of use under Certificate 27867. The Department assigned the application number T-7241. March 18, 2004 the application was assigned to Ernest Kuntze.
- 2. The portion of the right to be transferred is as follows:

Certificate: 27867 in

27867 in the name of Albert J. Fajen

Use:

Maintenance of goldfish ponds

Priority Date: September 18, 1958

Quantity:

0.16 cubic foot per second (cfs)

Source:

A well in the Senecal Creek Basin

#### **Authorized Point of Appropriation:**

Tow	nship	Range		Meridian			/4 /4   201   2		Location
5	S	1	W	W.M.	6	SW NW		55	75 chains E and 1.5 chains N from the SE corner of DLC 55

#### **Authorized Place of Use:**

Town	nship	Rai	nge	Meridian	Sec	1/4 1/4	Lot	DLC	Acres
5	S	1	W	W.M.	6	SW NW		55	N/A

## NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order 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 137-004-080 and OAR 690-01-005, you may either petition for judicial review or petition the Director for reconsideration of this order

- 3. The point of appropriation and place of use in Certificate 27867 were incorrectly listed as being in DLC 102. Both locations are in DLC 55.
- 4. Application T-7241 proposes to change the place of use of a portion of the right to:

Town	nship	Range		Meridian	Sec	1/4 1/4		Lot	DLC	Acres
5	S	1	W	W.M.	6	NW	NW		55	8.3
5	S	1	W	W.M.	6	SW	NW		55	2.7 and
			-							Greenhouse

- 5. Application T-7241 proposes to change the character of use of 0.16 cfs; being 0.14 cfs to irrigation of 11.0 acres, and 0.02 cfs to nursery use.
- 6. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
- 7. Water has been used within the five-year period prior to filing of the application 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.
- 8. A pump, and pipeline system sufficient to use the full amount of water allowed under the existing right is present.
- 9. The proposed change would not result in enlargement of the right.
- 10. The proposed change would not result in injury to other water rights.
- 11. Notice of the Preliminary Determination was published as per ORS 540.520 and OAR 690-380-4020. No protests were filed pursuant to OAR 690-380-4030.

#### **Conclusion Of Law**

The changes in place of use and character of use proposed in application T-7241 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580, and OAR 690-380-5000.

#### It is hereby ORDERED:

- 1. The changes in place of use and character of use proposed in application T-7241 are approved.
- 2. Water right certificate 27867 is cancelled. A new certificate will be issued describing that portion of the right not involved in this transfer.

- 3. 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 27867 and any related decree.
- 4. Irrigation use shall be limited to a rate of not to exceed 1/80 of one cubic foot per acre and further limited to 2½ acre-feet per acre for each acre irrigated during the irrigation season of each year.
- 5. The amount of water used for NURSERY OPERATIONS shall be limited to a diversion of 0.15 cubic foot per second per acre. For the irrigation of containerized nursery plants, the amount of water diverted shall be limited to ONE-FORTIETH of one cubic foot per second (or its equivalent) and 5.0 acre feet per acre per year. For the irrigation of in ground nursery plants the amount of water diverted shall be limited to ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre feet per acre per year. The use of water for NURSERY OPERATIONS may be made at anytime that the use is beneficial. For the irrigation of any other crop, the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre feet per acre during the irrigation season of each year.
- 6. The proposed change shall be completed on or before October 1, 2006.
- 7. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department by October 1, 2007.
- 8. 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.
- 9. When satisfactory proof of the completed change is received, a new certificate confirming the transferred portion of the water right shall be issued.

Dated at Salem, ( Phillip C. Ward Acting Director	Oregon this 25th day of October	, 2004.
Mailing date:	NOV 0 5 2004	