

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

In the Matter of Transfer Application ) FINAL ORDER APPROVING  
T-9807, Jefferson County ) CLARIFICATION OF POINT OF  
 ) DIVERSION AND CHANGE IN PLACE  
 ) OF USE

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**

Name David A. Richenstein and Mary M. Richenstein  
Address P.O. Box 69596  
City/State/Zip Portland, OR 97239

**Findings of Fact**

1. On October 12, 2004, David A. Richenstein and Mary M. Richenstein filed a transfer application to change the place of use. The applicant was notified by the Department that the proposed point of diversion is different from the one identified on the Certificate; therefore, the application also proposes to document the point of diversion for this portion of the right under Certificate 68373. The Department assigned the application number T-9807.

2. The portion of the right to be transferred is as follows:

**Certificate:** 68373 in the name of Marten Hansen (perfected under Decree)  
**Use:** Irrigation, domestic and stock  
**Priority Date:** 1888  
**Season of Use:** May 1 to September 15  
**Quantity:** 0.06 cfs  
**Rate/Duty:** 1/60 cfs per acre, not to exceed 3.0 acre-feet per acre per year  
**Acres:** 3.5  
**Source:** Lake Creek, tributary to the Metolius River

<p>This is a final order in other than 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.</p>
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**Authorized Point of Diversion:**

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
13	S	9	E	W.M.	16	SE NE	2320' South, 1220 feet West of NE Corner Section 16 (see below for discussion)

**Authorized Place of Use:**

Township		Range		Meridian	Sec	¼ ¼	Tax Lot	Acres
13	S	9	E	W.M.	15	NW NW	305	3.50

3. The POD listed as the “authorized” POD in transfer application T-9807 does not match the POD listed on Certificate 68373.
4. The Deschutes River Decree and decree map do not specifically identify a particular POD for this property. Claim #59 of Martin Hansen (Deschutes River Modified Findings and Decree, Vol 9, page 448) simply describes that the land is irrigated "by means of a small ditch from Lake Creek". The original certificate 13625 for this land did not specify a POD location.
5. Certificate 49695 that was issued as a remaining right certificate describing the lands not cancelled by Special Order Vol. 33, p. 607 or affected by the POD change in T-3821 (Special Order Vol. 33, pp. 608-609), however, did assign a POD in the SE SE, Section 16, T13S, R9E, W.M.; 2320 feet South and 1120 feet West from the NE Corner of Section 16. The same POD appears on the current Certificate 68373, issued for the portion of the right not cancelled by Special Orders Volume 45, page 55, and Volume 47, page 283.
6. The POD location on Certificate 68373 appears not to be physically suitable for irrigating the acreage involved in T-9807. Because the portion of the right on these lands was not considered during the cancellation and previous transfer proceedings, and the water right holder was not offered an opportunity for requesting reconsideration of remaining right certificates 49695 and 68373 when they were issued, the POD listed on Certificate 68373 is not binding upon the portion of the right affected by this transfer application.
7. The POD location proposed in T-9807 cannot be definitively documented through Department records as significantly different from the originally authorized POD for these lands. Therefore, T-9807 proposes to clarify the location of the authorized POD for this portion of the right.
8. Application T-9807 proposes to document the authorized point of diversion for the 3.5 acres listed in Finding 2 as:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
13	S	9	E	W.M.	15	NW NW	440' South, 350' East of NW Corner Section 15

9. Application T-9807 proposes to change the place of use of 1.25 of the above mentioned 3.5 acres of the right to an adjacent tax lot as follows:

Township		Range		Meridian	Sec	¼ ¼	Tax Lot	Acres
13	S	9	E	W.M.	15	NW NW	303	1.25

10. 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.
11. 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.
12. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing water right are present.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.
15. Departmental review revealed a scrivener's error in Certificate 68373. The total number of acres authorized for irrigation is stated to be 39.41 acres, however the place of use listed for irrigation under the certificate adds up to 69.41 acres. The statement of the number of acres authorized under the water right well be corrected when a new certificate is issued.

### Conclusions of Law

The documentation of point of diversion and change in place of use proposed in application T-9807 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580, and OAR 690-380-5000.

### Now, therefore, it is ORDERED:

1. The documentation of the point of diversion and change in place of use proposed in application T-9807 are approved.
2. Water right certificate 68373 is cancelled. A new certificate will be issued describing that portion of the right not involved in this transfer and correcting the number of acres authorized under the right consistent with the above findings.
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 68373 and any related decree.
4. The proposed change shall be completed on or before October 1, 2006.
5. 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.

6. The former place of use of the transferred water shall no longer be irrigated as part of this water right.
7. Prior to diverting water at the new point of appropriation, 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.
8. When satisfactory proof of the completed changes is received, a new certificate will be issued confirming the right transferred and clarifying the point of diversion consistent with the above findings.

Dated at Salem, Oregon this 19<sup>th</sup> day of August, 2005.

*Phillip C. Ward*  
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Phillip C. Ward, Director  
FOR

Mailing date: AUG 24 2005