

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

In the Matter of Transfer Application)
T-7275, to Change the Point of Diversion) FINAL ORDER APPROVING A
Lane County, Oregon) TRANSFER

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

David M. Wagner
33910 Row River Road
Cottage Grove, OR 97424

Findings of Fact

1. E. Glenn Wagner filed an application December 12, 1994 to transfer the place of use to clarify the location of the 3.0 acres of irrigation rights under Certificate 21282. The Department assigned the application number T-7275. The application was assigned to David M. Wagner on March 16, 2004.
2. The Department determined that the transfer was not needed to change the place of use, because the place of use for the 3.0 acres identified on the transfer map was already included within the 11.6 acres hatchured on the Final Proof map for Permit 19500/Certificate 21282. The Final Proof Survey had found and mapped 11.6 acres being irrigated, though the right authorized only 3.0 acres. The Department had not previously taken steps to identify which 3.0 acres were authorized under the right. The transfer map has now been accepted into the record to clarify the position of the 3.0 acres of irrigation authorized under Certificate 21282.
3. Mr. Wagner submitted a letter April 30, 1998, amending the transfer application to change the POD for 0.5 acre of irrigated area. T-7275 is being processed as a proposal to change the point of diversion for 0.5 acre of irrigation under Certificate 21282.

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.

4. The portion of the right to be transferred is as follows:
Certificate: 21282 in the name of Henry F. Russum
Use: Irrigation
Priority Date: May 18, 1950
Quantity: 0.01 cfs
Acres: 0.5
Rate & Duty: 1/80 cfs per acre irrigated and a maximum of 2.5 acre-feet per
Source: Row River, tributary to Willamette River
Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Location
20	S	3	W	W.M.	36	SW NW		72	

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Acres
20	S	3	W	W.M.	36	SW NW		72	0.5

5. Application T-7275 proposes to move the authorized point of diversion approximately 150 feet upstream in Row River to:

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Location
20	S	3	W	W.M.	36	SW NW		72	

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 years prior to filing of the transfer 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. The proposed change would not result in enlargement of the right, provided that the quantity diverted at the new point of diversion, together with the quantity diverted at the original point of diversion does not exceed the quantity authorized by the right.
9. The proposed change would not result in injury to other water rights.
10. 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 proposed change in point of diversion, in application T-7275 appears to be consistent with the requirements of ORS Chapter 540 and OAR 690-380-5000.

Order

It is hereby ORDERED:

1. 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 21282 and any related decree.
2. The proposed change shall be completed on or before October 1, 2005.
3. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department by October 1, 2006.
4. The quantity of water diverted at the additional point of diversion, together with that diverted at the old point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
5. When required by the Department, 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.
6. If requested by the Oregon Department of Fish and Wildlife, the water user shall install and maintain a fish screen or fish by-pass device 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.
7. Certificate 21282 is canceled. Certificate 80686 is issued to confirm that portion of the right NOT involved in the transfer.
8. When satisfactory proof of the completed change is received, a new certificate will be issued confirming the portion of the water right affected by the transfer.

Dated at Salem, Oregon this 27th day of May, 2004.



Paul R. Cleary
Director