

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

In the Matter of Transfer Application)
T-7569, to Change the Character of Use of Water) FINAL ORDER APPROVING A
Washington 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

Tuefel Partners, Inc.
12345 NW Barnes Road
Portland, OR 97229

Findings of Fact

1. Tuefel Partners, Inc. filed an application to transfer the character of use under Certificate 26624 and the character of use and place of use under Certificate 26625. The Department assigned the application number T-7569.
2. The first right to be transferred is as follows:

Certificate: 26624 in the name of Alfred Teufel
Use: Irrigation
Priority Date: October 17, 1952
Quantity: 1.5 acre-feet
Rate/Duty: NA
Acres: NA
Source: Winter run-off and a spring, tributary to Johnson Creek

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Location
1	N	1	W	W.M.	34	SE SW		53	

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Acres
1	N	1	W	W.M.	34	SE SW		53	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. Application T-7569 proposes to change the character of use to nursery operations use.
4. The second right to be transferred is as follows:

Certificate: 26625 in the name of Alfred Teufel
Use: Irrigation
Priority Date: August 26, 1952
Quantity: 0.01 cfs
Rate/Duty: 1/80 cfs per acre, not to exceed 2½ acre-feet per acre
Acres: 1.8
Source: Winter run-off, spring and a reservoir constructed under Permit R-1461, tributary to Johnson Creek

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Location
1	N	1	W	W.M.	34	SE SW		53	

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Acres
1	N	1	W	W.M.	34	SE SW		53	1.8

5. Application T-7569 proposes to change the place of use of the right to:

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Acres
1	N	1	W	W.M.	34	SE SW		53	0.9

6. Application T-7569 proposes to change the character of use to nursery operations use, including irrigation of containerized nursery stock.
7. The applicant proposes to double the rate and duty per acre irrigated, while reducing the number of acres irrigated to one half; i.e. change from 1/80 cfs and 2½ acre-feet per acre for 1.8 acres irrigated, to 1/40 cfs and 5.0 acre-feet per acre for 0.9 acre.
8. 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.
9. Water has been used within the five years 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.
10. A diversion structure, pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
11. The proposed change would not result in enlargement of the right, provided that the duty is doubled on half the original acreage, and the total volume of water diverted remains unchanged, and the use of live flow is restricted to the irrigation season of each year. Stored water may be used year-round.
12. The Watermaster has requested that a measuring device be installed.

13. The proposed change would not result in injury to other water rights.
14. Permit S-53211 for primary irrigation is appurtenant to the 0.9 acre proposed place of use. The applicant has indicated that if T-7569 is approved, the use under Permit S-53211 on that land will be diminished to supplemental.
15. 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.

Conclusions Of Law


The proposed changes in place of use and character of use in application T-7569 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in place of use and character of use in application T-7569 are approved.
2. Water right certificates 26624 and 26625 are 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 Certificates 26624 and 26625 and any related decree except as modified herein.
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 quantity of water diverted from live flow shall not exceed 0.01 cfs and the volume of stored water shall not exceed 1.5 acre-feet.
7. For the irrigation of **containerized nursery plants**, the amount of water diverted is limited to ONE-FORTIETH of one cubic foot per second (or its equivalent) and 5.0 acre feet per acre per year from direct flow and storage. For the irrigation of **in-ground nursery plants** 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 per year from direct flow and storage. 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.
8. The use of stored water for NURSERY OPERATIONS may be made at any time of the year that the use is beneficial. The use of live flow is limited to the irrigation season of each year.

9. 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 measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
10. When satisfactory proof of the completed changes is received, new certificates confirming the transferred water rights will be issued.

Dated at Salem, Oregon this 9th day of NOVEMBER, 2004.



Phillip C. Ward
Acting Director

Mailing Date DEC 17 2004