

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-10691, Yamhill County) CHANGE IN PLACE OF USE, A RE-
) DESCRIPTION, AND PARTIAL
) CANCELLATION OF A WATER
) RIGHT

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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

SHERIDAN SCHOOL DISTRICT 48J
A.J. GRAUER, DISTRICT SUPERINTENDENT
435 S. BRIDGE STREET
SHERIDAN, OREGON 97378

Findings of Fact

Background

1. On August 6, 2008, Sheridan School District 48J, (A.J. Grauer, District Superintendent) filed an application to change the place of use under Certificate 61618. The Department assigned the application number T-10691.
2. On March 10, 2009 the applicant submitted a revised map to clarify the number and location of acres involved in the transfer. The map identified 13.8 acres of existing rights, 4.3 acres of which are proposed for transfer. Of the 4.3 acres identified for transfer, 1.0 acre is in the SW NE and 3.3 acres are in the SE NW of Section 35, T5S R6W, W.M. A current survey of the original footprint of the water right suggests that the Department's description of the right

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.

needs to be updated. In addition, small areas of the original place of use have been under buildings or pavement for more than five years, and are to be voluntarily cancelled.

Re-description of the right

3. Certificate 61618 describes the authorized place of use as 14.0 acres in the SW NE and 5.0 acres in the SE NW of Section 35, Township 5S, Range 6W, Willamette Meridian, Yamhill County, Oregon, both as projected within DLC 57. However, it has been determined during preparation of the transfer application maps that the land to which the right has always been appurtenant is less than the 19.0 acres listed on the original certificate and Final Proof map.
 - a. The transfer application map depicts the authorized place of use under Certificate 61618 as being 5.9 acres in the SW NE and 8.5 acres in the SE NW of Section 35, Township 5S, Range 6W, Willamette Meridian, Yamhill County, Oregon, based on current understanding of how the Public Land Survey section lines overlay the land.
 - b. The transfer application map concurs with the Public Land Survey and tax lot information as shown on the county assessor maps, and land uses were verified with recent satellite imagery. This leads the Department to conclude that the land to which the right has always been appurtenant should be re-described as listed below. The applicant acknowledges and concurs that the original place of use should be described as 14.4 acres, rather than 19.0 acres, which represents a change in the calculation of acreage, but no change in the actual size of the land area. The apparent reduction of 4.6 acres from the description of the right will be reflected in the remaining right certificate.
 - c. The following table lists the place of use as described in existing certificate 61618 and a proposed re-description based on the above findings:

Certificate	Original Description of Place of Use		Proposed Re-Description of Place of Use		
	¼-¼	Acres	¼-¼	Acres	Current Tax Lot (in year 2009)
61618	SW NE	14.0	SW NE	5.9	7100
61618	SE NW	5.0	SE NW	8.5	10100
Township 5S, Range 6W, Section 35					

4. The portion of the right (as re-described) to be transferred is as follows:

Certificate: 61618 in the name of SHERIDAN SCHOOL DISTRICT 48J (perfected under Permit S-44812)
Use: IRRIGATION of 4.3 ACRES
Priority Date: APRIL 15, 1980
Rate: 0.05 CUBIC FOOT PER SECOND
Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year
Source: SOUTH YAMHILL RIVER, tributary to YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	6 W	WM	35	NW NE	57	1440 FEET NORTH AND 1330 FEET WEST FROM THE E1/4 CORNER OF SECTION 35

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	6 W	WM	35	SW NE	57	1.0
5 S	6 W	WM	35	SE NW	57	3.3

- Application T-10691 proposes to change the place of use of that portion of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	6 W	WM	34	NE SE	0.1
5 S	6 W	WM	35	NW SW	4.2

- Notice of the application for transfer was published on August 12, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- The transfer application map did not initially include identification of DLCs, as required by OAR 690-380-3100, and a small area of the transfer map indicated irrigation in an area did not match the Final Proof map for the right. On February 10, 2009 the Department sent a letter to the applicant requesting revisions, and a revised map that remedied these deficiencies was submitted March 10, 2009.
- On March 27, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10691 to the applicant. The draft Preliminary Determination set forth a deadline of April 30, 2009, for the applicant to respond. The applicant requested the Department to correct the acreage in the re-described place of use in SE¼ NE¼ of Section 35 listed in Findings of Fact #3 and #13 of the draft, to conform with the revised map, and then to proceed with issuance of a Preliminary Determination. This document reflects the requested changes from the draft. The applicant provided sufficient information from research of property records to demonstrate that the applicant is authorized to pursue the transfer.
- On May 14, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10691 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 May 19, 2009, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

Transfer Review Criteria [OAR 690-380-4010(2)]

- Water has been used on the lands proposed for transfer within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.

11. 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 Application T-10691.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.

Partial Cancellation of a Water Right

14. On March 10, 2009, a letter indicating that a portion of a water right will be abandoned and requesting cancellation of that part of the right was received from Jeff S. Jones, CWRE. On April 20, 2009, an affidavit authorizing partial cancellation of the right was received from A.J. Grauer, Superintendent of the Sheridan School District.
15. The portion of the right to be cancelled is as follows:

Certificate: 61618 in the name of SHERIDAN SCHOOL DISTRICT; A.J. GRAUER
(perfected under Permit S-44812)

Use: IRRIGATION 0.6 ACRE

Priority Date: APRIL 15, 1980

Rate: 0.01 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: SOUTH YAMHILL RIVER in the YAMHILL RIVER BASIN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	6 W	WM	35	NW NE	57	1440 FEET NORTH AND 1330 FEET WEST FROM THE E1/4 CORNER OF SECTION 35

Authorized Place of Use to be Cancelled:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	6 W	WM	35	SE NW	57	0.6


Conclusions of Law

The change in place of use proposed in application T-10691 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned portion of the right should be cancelled.

Now, therefore, it is ORDERED:

1. The change in place of use proposed in application T-10691 is approved and the portion of the right that has been abandoned is cancelled.
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 61618 and any related decree.
3. Water right certificate number 61618 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation. The new certificate will be based on the re-description of the original place of use as stated in Finding of Fact #3, minus the portions of the right listed in Finding of Fact #4 and the partial cancellation.
4. The former place of use from which the right has been transferred shall no longer receive water under the right.
5. 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 meters or measuring devices in good working order.
 - c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.
6. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2010**. 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 changes and full beneficial use of the water.
7. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 18th day of June 2009.


Phillip C. Ward, Director *pc*

Mailing date: JUN 24 2009