

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-9806, Washington County) CHANGE IN PLACE OF USE AND A
) CHANGE IN CHARACTER OF USE

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

Hochstein Properties, LLC
Attn: Ron Hochstein
38100 SW Gnos Road
Cornelius, OR 97113

Findings of Fact

1. On October 20, 2004, Stephen M. Unger, President of Unger Enterprises, Inc., filed a transfer application to change the place of use under Certificate 47119. The Department assigned the application number T-9806.
2. On December 1, 2004, transfer application number T-9806 was amended to include a change in character of use under Certificates 43704 and 47119 and was assigned from Unger Enterprises, Inc. to Hochstein Properties, LLC.
3. The first right to be transferred is as follows:
Certificate: 43704 in the name of William F. Unger (perfected under Permit R-4962)
Use: Storage for Irrigation
Priority Date: September 8, 1967
Quantity: 80.0 acre feet each year
Source: An unnamed stream, tributary to Tualatin River

Authorized Place of Use:

STORAGE						
Township	Range	Meridian	Sec	¼ ¼		
1	S	3	W	W.M.	21	NE SE
1	S	3	W	W.M.	21	NW SE

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.

4. Application T-9806 proposes to change the character of use under Certificate 43704 to storage for Irrigation and Agriculture (Nursery Use).
5. The portion of the second right to be transferred is as follows:
Certificate: 47119 in the name of William F. Unger (perfected under Permit S-32364)
Use: Irrigation of 12.0 Acres
Priority Date: September 8, 1967
Quantity: 16.8 acre feet
Limit/Duty: Not to exceed 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year, and shall be further limited to a total diversion of not to exceed 16.8 acre feet per year
Source: A reservoir constructed under Permit R-4962, tributary to Tualatin River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
1	S	3	W	W.M.	21	NW SE	160 FEET SOUTH AND 1330 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION							
Township		Range		Meridian	Sec	¼ ¼	Acres
1	S	3	W	WM	21	NE SE	3.5
1	S	3	W	WM	21	SE SE	8.5

6. Application T-9806 proposes to change the character of use and the place of use of the right to:

AGRICULTURE USES							
Township		Range		Meridian	Sec	¼ ¼	Acres
1	S	3	W	W.M.	21	NE SE	5.3

IRRIGATION							
Township		Range		Meridian	Sec	¼ ¼	Acres
1	S	3	W	W.M.	21	SW SE	6.7

7. Notice of the application for transfer was published on December 21, 2004, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
8. On June 26, 2006, the Department issued a preliminary determination proposing to approve Transfer Application T-9806 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 July 4, 2006, and in a local newspaper on July 11, 18 and 25, 2006, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the Department's weekly notice or to the newspaper notice.
9. Water has been used within the last five years according to the terms and conditions of the rights, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
10. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.

11. The proposed change to Certificate 43704 would not result in enlargement of the right.
12. Provided that the quantity of stored water allowed for irrigation purposes under Certificate 47119 (described in Finding #5 above) is not used for agricultural purposes outside of the irrigation season (being May 1 to September 30 of each year), the proposed change to Certificate 47119 would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.
14. In accordance with OAR 690-380-5140(3), the applicant submitted additional information to the Department on March 16, 2006, which justified the need for a period longer than the standard time frame in which to complete the requested changes under Transfer Application T-9806.

Conclusions of Law

The changes in place of use and character of use proposed in Transfer Application T-9806 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 proposed in Transfer Application T-9806 are approved.
2. Water Right Certificates 43704 and 47119 are cancelled. A new certificate will be issued describing that portion of Certificate 47119 not involved in this transfer.
3. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.
4. 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 43704 and 47119 and any related decree.
5. Based upon the information described in Finding #14 above, the approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2009**. 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.
6. Based upon the determination described in Finding #12 above, the use of water for agricultural (nursery) use from stored water only, under the right described by Certificate 47119, shall not exceed a total quantity of 16.8 acre feet (further limited to 2.5 acre feet per acre in conjunction with any other right on the same lands) during the time period May 1 to September 30 of each year.
7. The former place of use of the transferred water shall no longer receive water as part of these rights.

8. 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.

Dated at Salem, Oregon this 7th day of September, 2006.

Phillip C. Ward
Phillip C. Ward, Director *PCW*

Mailing date: SEP 14 2006

Resent: SEP 18 2006