

STATE OF OREGON

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-9149, Josephine County) CHANGE IN POINT OF DIVERSION

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.

Applicant

DONALD V. AND ROSEMARIE SAUER
3782 HELMS ROAD
GRANTS PASS, OR 97527

Findings of Fact

Background

1. On June 17, 2002, Donald V. And Rosemarie Sauer filed an application to change the point of diversion under Certificate 55920. The Department assigned the application number T-9149.
2. On November 8, 2007, the applicant's Certified Water Right Examiner submitted a revised map, better describing the remaining acreage area under Certificate 55290 not involved in the transfer.
3. The portion of the right to be transferred is as follows:

Certificate: 55920 in the name of John H. Robinson (confirmed by Rogue River Decree)

Use: IRRIGATION of 1.2 ACRES

Priority Date: 1897

Rate: 0.03 CUBIC FOOT PER SECOND (cfs)

Source: APPLGATE RIVER, tributary to ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
37 S	6 W	WM	5	SW SW	JESS DITCH - 780 FEET NORTH AND 800 FEET EAST FROM THE SW CORNER OF SECTION 5

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.

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	6 W	WM	6	NW NE	1.20

4. Transfer Application T-9149 proposes to move the authorized point of diversion approximately 3/4 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
37 S	6 W	WM	6	SW NE	SOUTH 87 DEGREES 40 MINUTES 0 SECONDS WEST, 1010 FEET FROM THE NE1/16 CORNER OF SECTION 6

5. Transfer application number T-9144 also affects certificate of water right number 55920 and is being processed concurrently.
6. Notice of the application for transfer was published on July 2, 2002, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted.
8. On October 18, 2007, the Department mailed to the applicant a copy of the draft Preliminary Determination proposing to approve a change in point of diversion as requested by Transfer Application T-9149. The draft Preliminary Determination set forth a deadline of November 23, 2007, for the applicant to respond. On October 29, 2007, the applicant requested that the Department proceed with issuance of a Preliminary Determination and provided an amended map and information necessary to correctly describe the portion of the right not involved in the transfer.
9. On December 13, 2007, the Department issued a Preliminary Determination proposing to approve Transfer Application T-9149 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on December 18, 2007, and in the Grants Pass Daily Courier newspaper on December 31, 2007, and January 7 and 14, 2008, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.

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

10. Water has been used 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 diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-9149.

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.

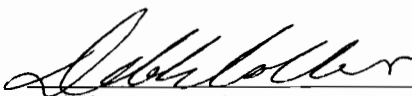
Conclusions of Law

The change in point of diversion proposed in application T-9149 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in point of diversion proposed in application T-9149 is approved.
2. Water right certificate 55920 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and Transfer application T-9144.
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 Certificate 55920 and any related decree.
4. The quantity of water diverted at the new point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
5. The water user shall maintain and operate a fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.
6. Prior to diverting water, the water user shall install 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. The water user shall maintain and operate the measuring device as required by the Department.
7. 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.
8. When satisfactory proof of the completed change is received, new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 14th day of February, 2008.


Phillip C. Ward, Director

Mailing date: FEB 19 2008

