

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-10947, Jackson County) CHANGE IN POINT OF DIVERSION
) AND PLACE OF USE

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

ASHLAND FLOWER SHOP
AND GREEN HOUSES, INC.
C/O GREG WILLIAMS
744 HELMAN STREET
ASHLAND OR 97520

Agent

JOSEPH STRAHL
171 SOUTH SECOND STREET
CENTRAL POINT OR 97502

Receiving Landowner

MERIDITH LOWRY
180 VAN NESS AVENUE
ASHLAND, OR 97520

Findings of Fact

Background

1. On August 26, 2009, ASHLAND FLOWER SHOP AND GREEN HOUSES, INC. filed an application to change the point of diversion and to change the place of use under Certificate 86144. The Department assigned the application number T-10947.
2. Certificate 16035 was superseded by Certificate 86144 on March 26, 2010.
3. The portion of the right to be transferred is as follows:

Certificate: 86144 in the name of W. G. AND LEO SANDER (confirmed by Rogue River Final Decree)

Use: IRRIGATION OF 0.5 ACRE AND STOCK USE

Priority Date: 1864

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.

Rate: 0.008 CUBIC FOOT PER SECOND
Source: ASHLAND CREEK, tributary to BEAR CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC
39 S	1 E	WM	4	NE SW	40

Authorized Place of Use:

IRRIGATION AND STOCK						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tract
39 S	1 E	WM	4	NE NW	0.5	3

4. Certificate 86144 does not list a point of diversion; however, information available from the Certified Water Right Examiner indicates that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
39 S	1 E	WM	4	NE SW	40	850 FEET NORTH AND 300 FEET WEST FROM THE SW¼ CORNER OF DLC 41

5. Transfer Application T-10947 proposes to move the authorized point of diversion approximately 1950 feet upstream to the Helman Ditch located at:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	1 E	WM	4	NE SW	850 FEET SOUTH AND 1200 FEET WEST FROM THE SW¼ CORNER OF DLC 41

6. Transfer Application T-10947 also proposes to change the place of use of the right to:

IRRIGATION AND STOCK						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
39 S	1 E	WM	4	SW SW	40	0.5

7. The receiving landowner is Meredith Lowry, 180 Van Ness Avenue, Ashland, OR 97520.
8. Notice of the application for transfer was published on September 8, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
9. On April 8, 2010, the Department mailed a copy of the Preliminary Determination proposing to approve Transfer Application T-10947 to the applicant and receiving landowner. The Preliminary Determination cover letter set forth a deadline of May 10, 2010, for the applicant to respond. The applicant requested that the Department proceed forward with the issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
10. On April 10, 2010, the applicant submitted an e-mail agreeing to the conditions and proposed action in the draft Preliminary Determination.

11. On April 23, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10947 and mailed a copy to the applicant and receiving landowner. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on April 27, 2010, and in the Ashland Daily Tidings on May 3, 10, and 17, 2010, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
12. On April 28, 2010, Meredith Lowery, the receiving landowner, requested the Department correct the location of the proposed place of use to the location listed in the transfer application. Ms. Lowry agreed to the conditions and proposed action in the Preliminary Determination.

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

13. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
14. 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-10947.
15. The proposed changes would not result in enlargement of the right.
16. The proposed changes would not result in injury to other water rights.

Conclusions of Law


The change in point of diversion and change in place of use proposed in Transfer Application T-10947 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 and change in place of use proposed in Transfer Application T-10947 are approved.
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 86144 and any related decree.
3. Water right certificate 86144 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
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 the existing measurement device and shall make such improvements as may be required by the Department.
6. The water user shall maintain the existing headgate and shall make such improvements as may be required by the Department.
7. The former place of use of the transferred right shall no longer receive water under the right.
8. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the receiving landowner to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.
9. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 17 day of June 2010.


Phillip C. Ward, Director

Mailing Date: JUN 22 2010