

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

In the Matter of Transfer Application ) FINAL ORDER APPROVING A  
T-9790, Jackson County ) TRANSFER AND PARTIAL  
) CANCELLATION OF A WATER RIGHT

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**

J. Jones  
2220 Audrey Lane  
Eureka, CA 95503

**Findings of Fact**

1. J. Donald Hall (aka Donald Hall and Patsy J. Hall, trustees of the Hall Family Living Trust) filed an application to transfer the place of use and to add an additional point of diversion under Certificate 50146. The change in place of use is only for a portion of the lands identified under Certificate 50146. The Department assigned the application number T-9790. On December 10, 2004, J. Donald Hall and Patsy J. Hall assigned the application to J. Jones.

2. The portion of the right to be affected by this order is as follows:

**Certificate:** 50146 in the name of A.S. Kleinhammer  
**Use:** Irrigation, domestic and stock use  
**Priority Date:** 1857  
**Quantity:** 0.06 (0.055 cfs to be transferred and 0.005 cfs to be cancelled)  
**Rate/Duty:** Subject to provisions of the Rogue River Decree  
**Acres:** 2.5 (2.3 to be transferred and 0.2 to be cancelled)  
**Source:** Little Applegate River, tributary to Applegate River  
**Authorized Point of Diversion:**

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
39	S	2	W	W.M.	29	NE NW	None specified on certificate; currently two points of diversion are being used within this tract.

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 137-004-080 and OAR 690-01-005 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 is filed, the petition shall be deemed denied.

**Authorized Place of Use for the portion to be transferred:**

Township		Range		Meridian	Sec	¼ ¼	Acres
39	S	2	W	W.M.	19	SW NW	2.5

3. The authorized points of diversion are more specifically located as follows:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
39	S	2	W	W.M.	29	NE NW	S 680' & W 9' from the N1/4 corner of Sec 29
39	S	2	W	W.M.	29	NE NW	S 215' & W 790' from the N1/4 corner of Sec 29

4. Application T-9790 proposes to add an authorized point of diversion for 2.3 acres. The additional point of diversion is approximately 1.5 miles downstream in the source at:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
39	S	2	W	W.M.	19	SW NW	N 129' & E 771' from the W1/4 corner of Sec 19

The place of use for the additional point of diversion is:

Township		Range		Meridian	Sec	¼ ¼	Acres
39	S	2	W	W.M.	19	SW NW	2.3

5. Application T-9790 proposes to cancel 0.2 acre of the right. The 0.2 acre to be cancelled is located:

Township		Range		Meridian	Sec	¼ ¼	Acres
39	S	2	W	W.M.	19	SW NW	0.2

An affidavit of partial cancellation was submitted October 27, 2004 by agent Herbert A. Farber, authorizing cancellation of these acres.

6. Application T-9790 proposes to change the place of use for 0.5 acre of the right to a different location within the following tract:

Township		Range		Meridian	Sec	¼ ¼	Acres
39	S	2	W	W.M.	19	SW NW	0.5

7. 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. However, the Oregon Department of Fish and Wildlife did request inclusion of a condition requiring installation of proper fish screens for the additional point of diversion.
8. Water has been used within the last five years 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.

9. A ditch along with a shared pump, pipeline and sprinkler system are present to use the full amount of water allowed under the existing right.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.

### **Conclusions of Law**

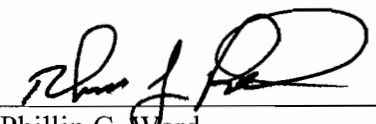
The proposed change in place of use and additional point of diversion in application T-9790 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

### **Now, therefore, it is ORDERED:**

1. The changes in point of diversion and place of use proposed in application T-9790 are approved.
2. Water right certificate 50146 is cancelled. A new certificate will be issued describing that portion of the right not involved in this transfer.
3. The use of 0.005 cfs of water to irrigate 0.2 acre of land in SW NW Section 19, T39S, R2W, W.M. is cancelled as per ORS 540.621 (cancellation of abandoned water right upon request of owner).
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 Certificate 50146 and any related decree.
5. The proposed change shall be completed on or before October 1, 2006.
6. 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.
7. The quantity of water diverted at the additional point of diversion, together with that diverted at the old points of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.
8. The former place of use shall no longer be irrigated as part of this water right.
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 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.

10. The water user shall install and maintain a fish screen or fish by-pass device, as appropriate, at the new point of diversion. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning of construction, and shall be installed under the supervision of the Department of Fish and Wildlife. The water user may participate in the Department of Fish and Wildlife's cost-sharing program for installation of screening and by-pass devices in accordance with ORS 540.525.
11. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued

Dated at Salem, Oregon this 25<sup>th</sup> day of April, 2005.

  
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Phillip C. Ward  
Director

Mailing date: MAY 02 2005