

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-10866, Douglas 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.

Applicants

JEREMY AND TINA GARGUREVICH
262 WESTWOOD LANE
ROSEBURG, OR 97471

RONALD G. FRASHOUR, JR.
30116 SE CHASE ROAD
GRESHAM, OR 97080

Findings of Fact

Background

1. On April 30, 2009, SHAWN HOLM filed an application to change the point diversion under Certificates 39728 and 67753. The Department assigned the application number T-10866.
2. On January 13, 2010, the transfer application was assigned to TINA AND JEREMY GARGUREVICH, and RONALD G. FRASHOUR, JR.
3. The portion of the first right to be transferred is as follows:

Certificate: 39728 in the name of RON AND MARY A. FRASHOUR (perfected under Permit S-33302)

Use: IRRIGATION of 0.6 ACRE

Priority Date: FEBRUARY 19, 1968

Rate: 0.007 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 per acre, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to

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.

exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: NORTH UMPQUA RIVER, tributary to the UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
26 S	6 W	WM	33	NE NW	42	220 FEET SOUTH AND 85 FEET WEST FROM THE NE CORNER OF LOT 5, WESTWOOD ESTATES

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
26 S	6 W	WM	33	NE NW	42	0.6

4. Transfer Application T-10866 proposes to move the authorized point of diversion approximately 250 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	6 W	WM	33	NENW	710 FEET SOUTH AND 1770 FEET EAST FROM THE NW CORNER OF SECTION 33

5. The portion of the second right to be transferred is as follows:

Certificate: 67753 in the name of RONALD B.RASHOUR (perfected under Permit S-46834)

Use: IRRIGATION of 1.6 ACRES

Priority Date: MAY 17, 1982

Rate: 0.018 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 per acre, 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: NORTH UMPQUA RIVER, tributary to the UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	6 W	WM	33	NE NW	700 FEET SOUTH AND 1880 FEET EAST FROM THE NW CORNER OF SECTION 33

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	6 W	WM	28	SE SW	0.2
26 S	6 W	WM	33	NE NW	1.4

- Transfer Application T-10866 proposes to move the authorized point of diversion approximately 110 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	6 W	WM	33	NENW	710 FEET SOUTH AND 1770 FEET EAST FROM THE NW CORNER OF SECTION 33

- Notice of the application for transfer was published on May 5, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On March 25, 2010, the Department sent a letter to the applicant requesting additional documentation of a description of the pumping and delivery system, and evidence of use in the five years prior to submittal of the transfer application. On March 31, 2010 evidence in the form of dated aerial and realtor photos were submitted to the department by the applicant, along with a detailed description of the pumping and delivery system.
- On May 7, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10866 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of June 7, 2010 for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
- On May 21, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10866 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 May 25, 2010, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
- 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 and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

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

- Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
- A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-10866.
- The proposed change would not result in enlargement of the rights.

15. The proposed change would not result in injury to other water rights.

Conclusions of Law

The change in point of diversion proposed in Transfer Application T-10866 is 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-10866 is 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 Certificates 39728 and 67753 and any related decree.
3. Water right certificates 39728 and 67753 are cancelled. New certificates will be issued describing the portions of the rights 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 points of diversion.
5. The Director may require the water user to install a totalizing flow meter or other suitable measuring device at the new point of diversion. If the Director notifies the water user to install a totalizing flow meter or other measuring device, the water user shall install such device specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meter or measuring device in good working order and shall allow the Watermaster access to the meter or measuring device.
6. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards
7. The approved change 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 applicant to the Department within one year after the deadline for completion of the change and full beneficial use of the water.

8. When satisfactory proof of the completed change is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 25th day of June 2010.

William E. Feilbrun
R- Phillip C. Ward, Director



Mailing date: JUN 28 2010