

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-9798, Yamhill County) CHANGE IN POINT OF
) APPROPRIATION

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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

CARLTON PLANTS CO. LLC
P.O. BOX 398
DAYTON, OR 97114

Findings of Fact

1. Carlton Plants Co. LLC filed an application to transfer a portion of the water right under Certificate 31303 to two new points of appropriation. The Department assigned the application number T-9798.
2. Certificate 31303 was cancelled by an order entered April 1, 2003 at Special Order Volume 57, Page 310, approving transfer T-9295 for a change in point of appropriation.
3. On September 24, 2004, Alan Elliott of Carlton Plants LLC, as legal landowners of the property, notified the Department that the change authorized through approval of transfer T-9295 would not be completed, and requested that the authorized point of appropriation revert back to the original point of appropriation for the right. On October 24, 2005, Certificate 81499 was issued in accordance with OAR 690-380-6010, to describe the water right for a non-completed change in point of appropriation under Transfer T-9295, and supersedes Certificate 31303.
4. The portion of the right to be transferred is as follows:

Certificate: 81499 in the name of CARLTON PLANTS CO. LLC (perfected under Permit G-2003)

Use: IRRIGATION of 29.3 ACRES

Priority Date: NOVEMBER 29, 1961

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order in other than a 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.

Rate: 0.37 CUBIC FOOT PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.50 acre-feet per acre per year

Source: A WELL tributary to the YAMHILL River

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
4 S	3 W	WM	21	SW SE	50	8.5 CHAINS SOUTH & 12.8 CHAINS WEST FROM NE CORNER, DLC 50

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	3 W	WM	21	SE SW	50	9.4
4 S	3 W	WM	21	SW SE	50	19.9

5. Application T-9798 proposes to change the point of appropriation to two new points of appropriation approximately 0.30 and 0.19 miles, respectively from the authorized point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
4 S	3 W	WM	21	SE SW	50	52 FEET SOUTH AND 2,187 FEET WEST OF THE NE CORNER OF DLC 50
4 S	3 W	WM	21	SW SE	50	50 FEET NORTH AND 1,440 FEET WEST OF THE NE CORNER OF DLC 50

6. 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.
7. 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.
8. The proposed change would not result in enlargement of the right.
9. The proposed change would not result in injury to other water rights.

Conclusions of Law

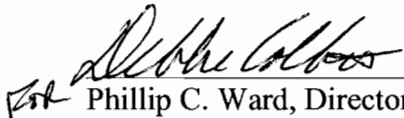
The change in point of appropriation proposed in application T-9798 is consistent with the requirements of ORS 537.705, 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in point of appropriation proposed in application T-9798 is approved.
2. Water right certificate 81499 is cancelled. A new certificate will be issued describing that portion of the right not involved in this transfer.
3. The right to 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 81499 and any related decree.

4. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
5. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2007**. 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. The quantity of water diverted at the new points of appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation.
7. When required by the Department, the water user shall install and maintain an in-line flow meter or other suitable device for measuring and recording the quantity of water appropriated. 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.
8. When satisfactory proof of the completed change is received, a new certificate confirming the transferred portion of the right will be issued.

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


Phillip C. Ward, Director

Mailing date: APR 11 2006