

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-10729, Washington County) CHANGE IN 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

TANASACRES NURSERY
C/O BOB IWASAKI
PO BOX 91520
PORTLAND, OR 97291

Agent

STUNTZNER ENGINEERING
AND FORESTRY LLC
C/O ERIC URSTADT
2137 19TH AVE
FOREST GROVE, OR 97116

Findings of Fact

Background

1. On November 21, 2008, TANASACRES NURSERY filed an application to change the place of use under the perfected portion of Permit S-35792. The Department assigned the application number T-10729.
2. On January 12, 2010, the applicant submitted a revised map showing the location of the point of diversion.
3. The portion of the right to be transferred is as follows:

Order: Special Order Volume 67, Pages 627-662 (Determination of Satisfactory Proof for Permit S-35792) in the name of The United States of America, Bureau of Reclamation

Use: IRRIGATION of 20.0 ACRES

Priority Date: FEBRUARY 20, 1963

Rate: 0.25 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

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.

of ONE-EIGHTIETH of one cubic foot per second or its equivalent for each acre irrigated from direct flow and shall be further limited to a diversion of not to exceed 2.5 acre-feet for each acre irrigated during the irrigation season of each year from direct flow and storage from the reservoir constructed under Permit R-5777; provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein and further limited to the use of stored water on the lands described as supplemental.

Sources: Scoggins Creek and reservoir (constructed under Permit R-5777), Gales Creek, and the Tualatin River.

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	3 W	WM	8	SW SW	SPRINGHILL PUMP PLANT: 600 FEET NORTH AND 400 FEET EAST FROM THE SW CORNER OF SECTION 8

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	3 W	WM	14	SE NE	WATER BOX RE-DIVERSION: 790 FEET NORTH AND 350 FEET WEST FROM THE E1/4 CORNER OF SECTION 14

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	3 W	WM	13	SW NW	1.2
1 N	3 W	WM	13	NW SW	6.8
1 N	3 W	WM	14	SE NE	2.6
1 N	3 W	WM	14	NE SE	9.4
Total					20.0

4. Transfer Application T-10729 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	3 W	WM	13	NW SW	5.0
1 N	3 W	WM	14	NE SE	15.0
Total					20.0

5. Notice of the application for transfer was published on December 2, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. On April 5, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10729 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of May 3, 2010, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

7. On May 26, 2010, the Department issued a preliminary determination proposing to approve Transfer T-10729 and mailed a copy to the applicant. Additionally, notice of the preliminary determination for the transfer application was published on the Department's weekly notice on June 1, 2010, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
8. Transfer Application T-10729 proposes to transfer a water right served by a Bureau of Reclamation storage project. On April 5, 2010, the Bureau was notified of the proposed transfer and did not provide any comments.

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

9. 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.
10. A pump, pipeline, and sprinkler system 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-10729.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water right.

Conclusions of Law

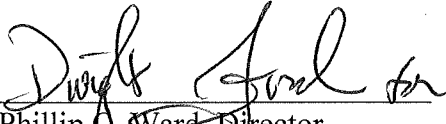
The change in place of use proposed in Transfer Application T-10729 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in place of use proposed in Transfer Application T-10729 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 the perfected portion of Permit S-35792 and any related decree.
3. Special Order Volume 67, Pages 627-662 (Satisfactory Proof of Permit S-35792) is modified.
4. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
5. The former place of use of the transferred right shall no longer receive water under the right.
6. 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

Rights 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.

Dated at Salem, Oregon this 7 day of July 2010.


Phillip J. Ward, Director

Mailing Date: JUL 07 2010