

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING
T-11364, Jackson County)	CHANGES IN POINTS OF DIVERSION,
)	PLACES OF USE, AND CHARACTER
)	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 FLOWERSHIP &
GREENHOUSES, INC.
ATTN: GREG WILLIAMS
744 HELMAN ST
ASHLAND, OR 97520

Receiving Landowner

CITY OF ASHLAND
20 EAST MAIN STREET
ASHLAND, OR 97520

Findings of Fact

Background

1. On February 27, 2012, ASHLAND FLOWERSHIP & GREENHOUSES, INC. filed an application to change the points of diversion, places of use and character of use under Certificates 46398 and 86353. The Department assigned the application number T-11364.
2. The City of Ashland is the receiving landowner who will be responsible for completion of the changes.
3. The portion of the first right to be transferred is as follows:

Certificate: 46398 in the name of H.B. & L.B. SANDER (confirmed by Rogue River Decree)

Use: IRRIGATION OF 1.6 ACRES

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

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	1 E	WM	4	NE SW	850 FEET NORTH AND 300 FEET WEST FROM THE SW CORNER OF MILLION DLC 41 (VIA THE SMITH-MYER-ROPER DITCH)

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	1 E	WM	4	NW NW	1.6

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

Certificate: 86353 in the name of W.G. AND LEO SANDER (confirmed by Rogue River Decree)

Use: IRRIGATION OF 2.7 ACRES AND STOCK

Priority Date: 1864

Rate: 0.045 CUBIC FOOT PER SECOND

Source: ASHLAND CREEK, tributary to BEAR CREEK

Authorized Place of Use:

IRRIGATION AND STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	1 E	WM	4	NE NW	2.7

5. Certificate 86353 does not specify the location of the point of diversion. Based on the Department's records and information from the Certified Water Right Examiner, the location of the point of diversion is the same location as the point of diversion for Certificate 46398, 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 SW CORNER OF MILLION DLC 41 (VIA THE SMITH-MYER-ROPER DITCH)

6. Transfer Application T-11364 proposes to move the authorized point of diversion for Certificates 46398 and 86353 approximately 3.7 miles upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	1 E	WM	20	SE SE	100 FEET NORTH AND 10 FEET WEST FROM THE SE CORNER OF SECTION 20

7. Transfer Application T-11364 proposes to change the character of use to municipal uses.

8. Transfer Application T-11364 also proposes to change the place of use of the rights to:

MUNICIPAL USES

MUNICIPAL USES
WITHIN THE URBAN GROWTH BOUNDARIES OF THE CITY OF ASHLAND

9. Certificates 46398 and 83653 do not specify the period of use. However, the Rogue River Decree specifies the irrigation season as April 1 through October 31.
10. Certificates 46398, 83653, and the Rogue River Decree do not specify a duty limitation. Use of more water per year than could maximally have been beneficially used for the original irrigation use would constitute enlargement of the right, which is not allowable. Therefore, to avoid enlarging the right in the conversion to municipal use, an annual volume limit should be added to the right, based on the best available estimate of the maximum amount of water that could have been beneficially diverted and used for irrigation purpose during a year.
11. Based on the best available information, the duty of water for the area is 3.7 acre-feet per acre, including a 10% evaporative loss. *Oregon Crop Water Use and Irrigation Requirements* (Cuenca, 1992). Therefore, Certificate 46398 shall be limited to 5.9 acre feet per year (AFY) (1.6 acres x 3.7 AF = 5.9 AFY); and Certificate 86353 shall be limited to 10.0 AFY (2.7 acres x 3.7 AF = 10.0 AFY).
12. Notice of the application for transfer was published on March 13, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
13. On June 5, 2012, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11364 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 29, 2012, 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.
14. On June 21, 2012, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11364 and sent 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 26, 2012, and in the Ashland Daily Tidings newspaper on June 28 and July 5, 2012, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.
15. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

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

16. Water has been used within the last five years 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.
17. A diversion structure and ditch 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-11364.
18. The proposed changes, as conditioned in Findings of Fact Nos. 9 and 11, would not result in enlargement of the rights.
19. The proposed changes would not result in injury to other water rights.

Conclusions of Law

The changes in points of diversion, changes in place of use, and changes in character of use proposed in Transfer Application T-11364 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 points of diversion, changes in place of use, change in character of use proposed in Transfer Application T-11364 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 Certificates 46398 and 86353, and any related decree.
3. Water right certificates 46398 and 86343 are cancelled. New certificates will be issued describing those 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 point of diversion.
5. The use of water Certificate 46398 is limited to the period of use of April 1 through October 31, and a quantity of 5.9 acre feet per year.
6. The use of water Certificate 86353 is limited to the period of use of April 1 through October 31, and a quantity of 10.0 acre feet per year.
7. 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.

8. Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

9. The former place of use of the transferred rights shall no longer receive water under the rights.
10. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2017**. 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.
11. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 16 day of August, 2012.


Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing date: **AUG 23 2012**