

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

In the Matter of Transfer Application                    )     FINAL ORDER  
T-9900, Jackson County                                    )     APPROVING CHANGES IN POINT OF  
  )     DIVERSION, PLACE OF USE, AND  
  )     CHARACTER OF USE, AND PARTIAL  
  )     CANCELLATION OF WATER RIGHTS

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**

Wild River Orchards. Inc.  
P.O. Box 996  
Medford, OR 97501

**Findings of Fact**

1. On March 23, 2005, Wild River Orchards, Inc. filed a transfer application to change the point of diversion, place of use, and character of use under Certificates 32728, 32742, 32746, and 32748. The Department assigned the application number T-9900.
2. The portions of the rights to be transferred are described as follows:

**Certificate:** 32728 in the name of E. W. Carlton  
**Use:** irrigation of 71.0 acres  
**Priority Date:** September 22, 1888  
**Quantity:** 0.89 cubic feet per second (cfs); 319.5 acre-feet per year  
**Rate/Duty:** 1/80 cfs per acre, not to exceed 4.5 acre-feet per acre per year  
**Source:** Rogue River, tributary to Pacific Ocean

**Authorized Point of Diversion:**

Township		Range		Meridian	Sec	¼ ¼		Lot	DLC	Survey Coordinates
36	S	1	W	W.M.	6	NE	NW	7	--	Not specified in certificate (1,810 ft. E. and 420 ft. S. from NW corner of Sec. 6 in use)

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 137-004-0080 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.

**Authorized Place of Use:**

Township	Range	Meridian	Sec	¼ ¼	Lot	DLC	Acres
36	S	2	W	W.M.	11	E½ of DLC 42 (SW SE & SE SE)	-- 42 52.9
36	S	2	W	W.M.	14	North part of E¼½ of DLC 42 (NE NE & SE NE)	-- 42 18.1

**Certificate:** 32742 in the name of Frank R. Myers  
**Use:** irrigation of 4.8 acres  
**Priority Date:** September 22, 1888  
**Quantity:** 0.059 cfs; 21.6 acre-feet per year  
**Rate/Duty:** 1/80 cfs per acre, not to exceed 4.5 acre-feet per acre per year  
**Source:** Rogue River, tributary to Pacific Ocean

**Authorized Point of Diversion:**

Township	Range	Meridian	Sec	¼ ¼	Lot	DLC	Survey Coordinates
36	S	1	W	W.M.	6	NE NW	7 -- Not specified in certificate (1,810 ft. E. and 420 ft. S. from NW corner of Sec. 6 in use)

**Authorized Place of Use:**

Township	Range	Meridian	Sec	¼ ¼	Lot	DLC	Acres
36	S	2	W	W.M.	11	NW SE	10 -- 4.8

**Certificate:** 32746 in the name of Ruby Violet Schafer  
**Use:** irrigation of 31.3 acres  
**Priority Date:** September 22, 1888  
**Quantity:** 0.388 cfs; 140.85 acre-feet per year  
**Rate/Duty:** 1/80 cfs per acre, not to exceed 4.5 acre-feet per acre per year  
**Source:** Rogue River, tributary to Pacific Ocean

**Authorized Point of Diversion:**

Township	Range	Meridian	Sec	¼ ¼	Lot	DLC	Survey Coordinates
36	S	1	W	W.M.	6	NE NW	7 -- Not specified in certificate (1,810 ft. E. and 420 ft. S. from NW corner of Sec. 6 in use)

**Authorized Place of Use:**

Township	Range	Meridian	Sec	¼ ¼	Lot	DLC	Acres
36	S	2	W	W.M.	11	Part of Section 11, described on certificate	2, 11 & 12 -- 31.3

**Certificate:** 32748 in the name of S. M. and Emelia G. Tuttle  
**Use:** irrigation of 40.9 acres  
**Priority Date:** September 22, 1888  
**Quantity:** 0.509 cfs; 184.05 acre-feet per year  
**Rate/Duty:** 1/80 cfs per acre, not to exceed 4.5 acre-feet per acre per year

**Source:** Rogue River, tributary to Pacific Ocean

**Authorized Point of Diversion:**

Township		Range		Meridian	Sec	¼ ¼		Lot	DLC	Survey Coordinates
36	S	1	W	W.M.	6	NE	NW	7	--	Not specified in certificate (1,810 ft. E. and 420 ft. S. from NW corner of Sec. 6 in use)

**Authorized Place of Use:**

Township	Range	Meridian	Sec	¼ ¼	Lot	DLC	Acres
36	S	2	W	W.M.	11	SW NE	1.4
36	S	2	W	W.M.	11	SW NE	4.5
36	S	2	W	W.M.	11	SE NW	1.2
36	S	2	W	W.M.	11	NE SW	14.3
36	S	2	W	W.M.	11	NW SE	19.5

- Supplemental Finding #7 of the Rogue River Decree, page 140 provides that in cases where the irrigated area in one legal subdivision is greater than or less than the acreage described in the claim, the water right will be allowed the actual irrigated amount in each subdivision, as long as the total number of acres under the claim does not exceed the number allowed by the decree. Therefore, the location of the transferred portions of the rights under these certificates can be re-described as shown in Finding #4 below, based on current surveying techniques and understanding of how the Public Land Survey subdivisions overlie the lands being transferred.
- Notwithstanding the descriptions of the place of use on Certificates 32728 and 32746, the authorized place of use is:

Certificate	Township	Range	Meridian	Section	¼ ¼	DLC	Lot	Surveyed Acres
32728	36	S	2	W	W.M.	11	SE SW	7.9
	36	S	2	W	W.M.	11	SW SE	38.5
	36	S	2	W	W.M.	11	SE SE	6.5
	36	S	2	W	W.M.	14	NE NE	3.0
	36	S	2	W	W.M.	14	NW NE	12.4
	36	S	2	W	W.M.	14	NE NW	2.7
32746	36	S	2	W	W.M.	11	SW NE	0.9
	36	S	2	W	W.M.	11	SW NE	5.6
	36	S	2	W	W.M.	11	SE NE	2.0
	36	S	2	W	W.M.	11	NE SE	9.3
	36	S	2	W	W.M.	11	NW SE	13.5

5. The quantity of water that may be used under the transferred portions of the rights is described in Finding #2, being:

Certificate Number	Instantaneous Flow Rate	Annual Volume
32728	0.89 cfs	319.5 acre-feet
32742	0.059 cfs	21.6 acre-feet
32746	0.388 cfs	140.85 acre-feet
32748	0.509 cfs	184.05 acre-feet

6. Application T-9900 proposes to move the authorized point of diversion for each of the rights approximately 2.7 miles downstream in the source to:

Township	Range	Meridian	Sec	¼ ¼	Lot	DLC	Survey Coordinates
36	S	2	W	W.M.	13	SW NW	-- 41 S25°25'28" E. 4385.6 ft. from NE corner DLC 42, Sec. 11

7. Application T-9900 proposes to change the place of use for each of the rights to the area within the Urban Growth Boundary of the City of Central Point, being:

Township	Range	Meridian	Sec	¼ ¼
36	S	2	W	W.M. 34 NE SW
36	S	2	W	W.M. 34 SE SW
36	S	2	W	W.M. 34 All SE
36	S	2	W	W.M. 35 SW SW
36	S	2	W	W.M. 35 SE SE
36	S	2	W	W.M. 36 SE NW
36	S	2	W	W.M. 36 NE SW
36	S	2	W	W.M. 36 SW SW
36	S	2	W	W.M. 36 SE SW
37	S	2	W	W.M. 1 W ½
37	S	2	W	W.M. 2 NE NE
37	S	2	W	W.M. 2 SE NE
37	S	2	W	W.M. 2 NW NW
37	S	2	W	W.M. 2 SW NW
37	S	2	W	W.M. 2 SE NW
37	S	2	W	W.M. 2 S ½
37	S	2	W	W.M. 3 All
37	S	2	W	W.M. 10 All
37	S	2	W	W.M. 11 All
37	S	2	W	W.M. 12 W ½

8. Application T-9900 proposes to change the character of use for each of the rights to municipal.

9. 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.
10. Water has been used within the last five years according to the terms and conditions of the rights and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
11. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
12. The proposed change would not result in enlargement of the rights.
13. The proposed change would not result in injury to other water rights.
14. The City of Central Point is the receiving land owner and will be responsible for completing the changes.

**Partial Cancellation of Certificates 32728, 32742, 32746 and 32748**

15. The applicant has submitted affidavits authorizing cancellation of the domestic and stock uses on the transferred portions of the rights described in Finding #2, as well as the additional portions of the rights under Certificates 32728, 32742, 32746 and 32748 described below:

Certificate	Township		Range		Meridian	Sec	¼ ¼	DLC	Lot	Rate (cfs)	Acres
32728	36	S	2	W	W.M.	11	E½ of DLC 42 (SW SE & SE SE)	--	42	0.07	2.7 and Domestic & Stock
	36	S	2	W	W.M.	14	North part of E¼½ of DLC 42 (NE NE & SE NE)	--	42		3.1 and Domestic & Stock*
32742	36	S	2	W	W.M.	11	NW SE	--	10	0.001	0.1 and all Domestic & Stock
32746	36	S	2	W	W.M.	11	Part of Section 11, described on certificate	--	11	0.002	0.2 and Domestic & Stock
32748	36	S	2	W	W.M.	11	NE SW		9	0.004	0.4 and Domestic & Stock

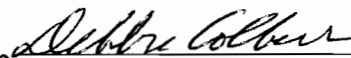
## Conclusions of Law

The changes in point of diversion, place of use, and character of use in proposed in application T-9900 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

1. The changes in point of diversion, place of use, and character of use in proposed in application T-9900 are approved.
2. Water right certificates 32728, 32742, 32746, and 32748 are cancelled. New certificates will be issued for 32728 and 32748 describing the portions of the rights not involved in this transfer.
3. 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 32728, 32742, 32746, and 32748 and any related decree.
4. The portions of certificates listed in Finding #15 will be cancelled upon approval of T-9900.
5. The City of Central Point is responsible for completing the allowed changes to the water rights.
6. The proposed changes shall be completed on or before October 1, 2011.
7. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department by October 1, 2012.
8. 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, being the diversion rate in cubic feet per second authorized for each right, further limited to the annual total volume in acre-feet listed in Finding #2 and summarized in Finding #5.
9. The former place of use of the transferred water shall no longer be irrigated as part of these water rights.
10. 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.
11. 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.

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

Dated at Salem, Oregon this 15<sup>th</sup> day of November, 2005.

  
For Phillip C. Ward, Director

Mailing date: ~~NOV 03 2005~~