

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-11428, Jefferson 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

SCABBY HOLLOW RANCH, LLC
PO BOX 845
MADRAS, OR 97741

Findings of Fact

Background

1. On May 31, 2012, SCABBY HOLLOW RANCH, LLC filed an application to change the place of use under Certificate 13645. The Department assigned the application number T-11428.

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

- Certificate:** 13645 in the name of CHARLES W. PALMEHN (confirmed by Deschutes River Decree)
- Use:** IRRIGATION of 43.7 ACRES
- Priority Date:** 1892
- Rate:** 1/60 OF ONE CUBIC FOOT PER SECOND (CFS) PER ACRE (0.725 CFS)
- Limit/Duty:** 2.0 ACRE-FEET PER ACRE, MEASURED AT THE POINT OF DIVERSION FROM THE STREAM
- Period of Use:** APRIL 1 TO NOVEMBER 1
- Source:** WILLOW CREEK, tributary to the DESCHUTES RIVER

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.

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
12 S	15 E	WM	21	SW SE	19.2
12 S	15 E	WM	21	SE SE	5.9
12 S	15 E	WM	28	NE NE	11.9
12 S	15 E	WM	28	NW NE	6.7
TOTAL					43.7

3. Certificate 13645 does not describe the location of the point of diversion. However, information is available from the Certified Water Right Examiner that indicates the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
12 S	15 E	WM	28	NE NE	552 FEET SOUTH AND 23 FEET WEST FROM THE NE CORNER OF SECTION 28

4. Transfer Application T-11428 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
12 S	15 E	WM	21	SW SE	0.9
12 S	15 E	WM	28	NE NE	10.1
12 S	15 E	WM	28	NW NE	4.9
12 S	15 E	WM	28	SW NE	9.2
12 S	15 E	WM	28	SE NE	18.6
TOTAL					43.7

5. Notice of the application for transfer was published on June 5, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. On July 5, 2012, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11428 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 6, 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.
7. On July 20, 2012, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11428 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 July 24, 2012, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

8. Water has been used within the last five years 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.

9. 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-11428.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.

Conclusions of Law

The change in place of use proposed in Transfer Application T-11428 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-11428 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 Certificate 13645 and any related decree.
3. Water right certificate 13645 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. The Director may require the water user to install a totalizing flow meter or other suitable measuring device at the 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.
5. The former place of use of the transferred right shall no longer receive water under the right.
6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2013**. 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.
7. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 27 day of August, 2012.


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

Mailing date: AUG 31 2012

