

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING CHANGE
T-8175, Josephine County)	IN POINT OF DIVERSION AND
)	PLACE OF USE

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

Bob Kerivan / Bridgeview Vineyards Winery
4210 Holland Loop Road
Cave Junction, OR 97523

Findings of Fact

1. Bob Kerivan / Bridgeview Vineyards Winery filed an application to transfer the point of diversion and place of use under Certificate 7148. The Department assigned the application number T-8175.
2. Certificate 7148 was subsequently canceled as a result of transfers 9071 and 9072. A remaining right, Certificate 79836, was issued January 2, 2003 which supercedes Certificate 7148.
3. The portion of the right to be transferred is as follows:

Certificate:	79836 in the name of H. B. REED (SUCCESSOR IN INTEREST TO SAMUEL MILLER AND HATTIE MILLER)
Use:	IRRIGATION
Priority Date:	1872 FOR TRACT 1 AND 1908 FOR TRACT 2
Quantity:	1.11 CFS FOR TRACT 1 AND 0.15 CFS FOR TRACT 2
Rate/Duty:	1/50 cfs per acre TRACT 1 AND 1/80 cfs per acre TRACT 2
Acres:	55.5 ACRES TRACT 1 AND 12.3 ACRES TRACT 2
Source:	SUCKER CREEK tributary to EAST FORK ILLINOIS RIVER

<p>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.</p>

Authorized Point of Diversion:

Certificate 79836 does not specify the authorized point of diversion, however the Sucker Creek Decree mentions that water is diverted into the Trumble ditch.

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Tract	Acres
39	S	8	W	W.M.	36	SW SW	1	15.5
39	S	8	W	W.M.	36	SE SW	1	26.0
39	S	8	W	W.M.	36	SW SE	2	2.0
40	S	8	W	W.M.	1	NE NW	1	7.0
40	S	8	W	W.M.	1	NE NW	2	10.3
40	S	8	W	W.M.	1	NW NW	1	7.0

4. Application T-8175 proposes to move the authorized point of diversion approximately 1/2 mile downstream in the source to:

Township		Range		Meridian	Sec	¼ ¼	POD #	Survey Coordinates
39	S	8	W	W.M.	36	SE SW	POD 1	1211 ft. N. & 23 ft. W. from SE cor. of SE ¼ SW ¼ Sec. 36, T39S, 8W, W.M
39	S	8	W	W.M.	36	SE SW	POD 2	1201 ft. N. & 21 ft. W. from SE cor. of SE ¼ SW ¼ Sec 36, T39S, R8W, W.M.

5. Application T-8175 proposes to change the place of use of the right to:

Township		Range		Meridian	Sec	¼ ¼	Priority Date	Acres
39	S	8	W	W.M.	36	SW SW	1872	10.0
39	S	8	W	W.M.	36	SE SW	1872	19.2
39	S	8	W	W.M.	36	SW SE	1872	14.4
39	S	8	W	W.M.	36	SW SE	1908	4.9
40	S	8	W	W.M.	1	NE NW	1872	5.9
40	S	8	W	W.M.	1	NE NW	1908	7.4
40	S	8	W	W.M.	1	NW NW	1872	6.0

6. The applicant did not apply to transfer the supplemental portion of the right. The applicant was notified in the draft Preliminary Determination that the supplemental portion of the right would be cancelled pursuant to ORS 540.510(1) if not included in the transfer. The applicant chose not to include the supplemental portion of the right and it will be cancelled.
7. 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.

8. 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.
9. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present.
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 proposed changes in point of diversion and place of use in application T-8175 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

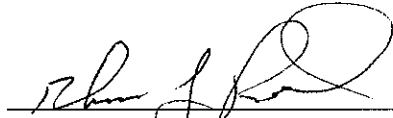
1. The changes in point of diversion and place of use proposed in application T-8175 are approved.
2. Water right certificate 79836 is cancelled. A new certificate will be issued describing that portion of the right not involved in this transfer.
3. The right to the use of the water is restricted to beneficial use at the place of use described and is subject to all other conditions and limitations contained in Certificate 79836 and any related decree.
4. The proposed change shall be completed on or before October 1, 2006.
5. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department by October 1, 2007.
6. The right under Certificate 79836, which is supplemental to that portion of Certificate 79836, described in the Findings of fact, item 3, is canceled.
7. The quantity of water diverted shall not exceed the quantity of water lawfully available at the original point of diversion.
8. The former place of use shall no longer be irrigated as part of this water right.
9. Prior to diverting water from the new point of diversion, 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.

10. 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.
11. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

If approved, the change and subsequent use of water shall be subject to the following conditions:

Dated at Salem, Oregon this 16th day of March, 2005.



Phillip C. Ward
Director

Mailing date: MAR 18 2005