

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

In the Matter of Transfer Application)
T-10045, Morrow County)
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FINAL ORDER APPROVING AN
ADDITIONAL POINT OF
APPROPRIATION, CHANGE IN
PLACE OF USE AND CHANGE IN
CHARACTER OF USE

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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

SAGE HOLLOW RANCH, LLC
3620 INDEPENDENCE ROAD
SUNNYSIDE, WA 98944

Findings of Fact

1. On December 16, 2005, Jeff Bosma, (J&J Bosma/Maple Grove Dairies) filed an application to change the use and place of use under Certificates 50166, 75767 and 81578, and to add a point of appropriation under Certificates 50166 and 75767. The Department assigned the application number T-10045.
2. On February 22, 2010, Transfer Application T-10045 was assigned to Sage Hollow Ranch, LLC.
3. On February 25, 2010, the applicants submitted documentation of the transfer of title of the affected lands from Chowning Land, LLC to NWA Development IV, Inc., then to Galactic Orchards, LLC and a quitclaim deed conveying the interest in the real property from Galactic Orchards, LLC to Sage Hollow Ranch, LLC.
4. The supplemental right described under Certificate 81578 is associated with these lands and is also being transferred under application number T-10045.
5. The portion of the first (primary) right to be transferred is as follows:

Certificate: 50166 in the name of WALDO H. CRAMER (perfected under Permit G-1070)
Use: IRRIGATION of 57.1 ACRES

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.

Priority Date: AUGUST 27, 1958

Rate: 0.72 CUBIC FOOT PER SECOND (CFS)

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre-feet per acre per year

Source: A WELL in the COLUMBIA RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
3 N	26 E	WM	10	SW NE	1350 FEET SOUTH AND 1430 FEET WEST FROM THE NE CORNER OF SECTION 10

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	26 E	WM	10	SW NE	29.3
3 N	26 E	WM	10	SE NE	27.8

- 6. The portion of the second (primary) right to be transferred is as follows:

Certificate: 75767 in the name of JERRY A. BREWER (perfected under Permit G-1070)

Use: IRRIGATION of 1.6 ACRES

Priority Date: AUGUST 27, 1958

Rate: 0.02 CUBIC FOOT PER SECOND (CFS)

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre-feet per acre per year

Source: A WELL in the COLUMBIA RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
3N	26E	WM	10	SW NE	1350 FEET SOUTH AND 1430 FEET WEST FROM THE NE CORNER OF SECTION 10

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	26 E	WM	10	NE SE	0.8
3 N	26 E	WM	10	NW SE	0.8

- 7. The portion of the third (supplemental) right to be transferred is as follows:

Certificate: 81578 in the name of GLENN S. CHOWNING and ERIN R. CHOWNING (perfected under Permit S-45563)

Use: SUPPLEMENTAL IRRIGATION of 58.7 ACRES

Priority Date: FEBRUARY 5, 1981

Rate: 0.51 CUBIC FOOT PER SECOND (CFS)

Duty: ONE-FORTIETH cfs per acre, not to exceed 4.5 acre-feet per acre per year

Source: COLUMBIA RIVER, tributary to the Pacific Ocean

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Survey Coordinates
4N	25E	WM	2	NE NW	7	150 FEET SOUTH AND 2990 FEET WEST FROM THE NE CORNER OF SECTION 2

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	26 E	WM	10	SW NE	29.3
3 N	26 E	WM	10	SE NE	27.8
3 N	26 E	WM	10	NE SE	0.8
3 N	26 E	WM	10	NW SE	0.8

8. Application T-10045 proposes to add a point of appropriation to the portions of Certificates 50166 and 75767 described in Findings #5 and #6 above. The proposed additional point of appropriation is situated approximately 0.7 mile from the existing point of appropriation authorized under the certificates and is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
3 N	26 E	WM	10	NW SW	1380 FEET NORTH AND 1320 FEET EAST FROM THE SW CORNER OF SECTION 10

9. Application T-10045 also proposes to change the character of use for the portions of Certificates 50166, 75767 and 81578 described in Findings #5, #6 and #7 above to AGRICULTURAL USE and to change the season of use to year round, however, water use is to be limited to a maximum total quantity of water equivalent to the acre-feet per acre duty of the portion of the rights proposed to be transferred.
10. Additionally, Application T-10045 proposes to change the place of use for the portions of Certificates 50166, 75767 and 81578 described in Findings #5, #6 and #7 above as follows:

AGRICULTURAL USE				
Twp	Rng	Mer	Sec	Q-Q
3 N	26 E	WM	10	SW NE
3 N	26 E	WM	10	SE NE
3 N	26 E	WM	10	NE SE
3 N	26 E	WM	10	NW SE

11. T-10045 is being processed concurrently with T-10044 and both transfer applications propose changes to Certificate 81578.
12. Notice of the application for transfer was published on December 27, 2005, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
13. On July 24, 2006, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10045 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 25, 2006, for the applicants to

respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.

14. On September 21, 2006, the Department issued a preliminary determination proposing to approve Transfer T-10045 and mailed a copy to the applicants. Additionally, notice of the preliminary determination for the transfer application was published on the Department's weekly notice on September 26, 2006, and in the East Oregonian newspaper on October 7, 14 and 21, 2006 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice, however, the applicants asked that issuance of a final order be delayed until the end of 2007, subsequently extended until March 1, 2010, unless requested earlier by the applicants.
15. 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.
16. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights is present.
17. The proposed changes would not result in enlargement of Certificates 50166, 75767 and 81578 as long as the rate for year round use under all three certificates is reduced so as to not exceed a total annual quantity of water equivalent to the acre-feet per acre duty limit multiplied by the number of acres of the transferred rights. A draft preliminary determination was sent to the applicants on July 24, 2006, proposing to limit the rate of diversion to the following rates:

Water Right Certificate	Maximum Instantaneous Rate (cfs)	Maximum Annual Volume (acre-feet)
50166	0.24	171.3
75767	0.01	4.8
81578	0.37	264.2

18. On August 23, 2006, the applicants' agent Ron McKinnis, responded to the draft preliminary determination by e-mail, indicating that reducing the maximum instantaneous rate for dairy use under Certificate 50166 to 0.24 cfs would not be practical due to the sporadic nature of water demand in the milking parlor operation, and explaining that the maximum instantaneous rate is not intended for use 24 hours a day, 7 days a week. For this reason, the Department will not reduce the maximum rate under Certificate 50166, however the annual volume may not be exceeded. Limiting diversion of water to the rates and annual volumes identified below would prevent enlargement of the rights:

Water Right Certificate	Maximum Instantaneous Rate (cfs)	Maximum Annual Volume (acre-feet)
50166	0.72	171.3
75767	0.01	4.8
81578	0.37	264.2

19. The proposed changes would not result in injury to other water rights.
20. Pursuant to OAR 690-380-5100, the proposed use is subject to review by the county planning department, and may require additional permits and land use approval. Approval of the transfer will not relieve the applicant of the responsibility to comply with all applicable land use planning requirements.

Conclusions of Law

The changes in character of use and place of use for Certificates 50166, 75767 and 81578, and the additional point of appropriation for Certificates 50166 and 75767 proposed in application T-10045, conditioned as follows, are consistent with the requirements of ORS 537.705, 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in character of use and place of use for Certificates 50166, 75767 and 81578, and the additional point of appropriation for Certificates 50166 and 75767 proposed in application T-10045 are approved.
2. The right to 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 50166, 75767, and 81578 any related decree, with the exception that the season of use will be extended to year round and the rate and total annual volume of water shall be limited as stated in Finding of Fact #18.
3. Certificate 50166 is cancelled. Certificate 82667 will be issued describing the portion of the right not affected by this transfer.
4. Certificate 75767 is cancelled. Certificate 82666 will be issued describing the portion of the right not affected by this transfer.
5. Certificate 81578 is cancelled, and Certificate 82665 will be issued describing the portion of the right not affected by T-10044 and T-10045.
6. The additional point of appropriation shall acquire water from the same aquifer (water source) as the original points of appropriation.
7. The quantity of water diverted at the additional point of appropriation together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation, subject to the limits in Finding of Fact #18.
8. The former place of use of the transferred water shall no longer receive irrigation water as part of these rights.
9. Prior to diverting water at the new point of appropriation, the water user shall install and maintain an in-line flow meter or other suitable device for measuring and recording the quantity of water appropriated. The type and plans of the measuring device must be

approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. Separate flow meters will be required for each point of appropriation for water use described as part of the transferred rights.

10. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2015**. 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 changes and full beneficial use of the water.
11. When satisfactory proof of the completed changes is received, new certificates confirming the portions of the rights transferred will be issued.

Dated at Salem, Oregon this 12th day of March 2010.



Ar Phillip C. Ward, Director

Mailing date: MAR 17 2010