

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

In the Matter of Transfer Application)	FINAL ORDER
T-9401, Josephine County)	APPROVING A 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

GERALD E. AND JANICE A. SOMMERS
PO BOX 615
CAVE JUNCTION, OR 97523

Findings of Fact

Background

1. On April 11, 2003, Gerald E. and Janice A. Sommers filed an application to change the place of use under Certificates 7768 and 52322 as modified by Transfer T-8619. The Department assigned the application number T-9401.
2. On May 21, 2004, a Claim of Beneficial Use report was submitted for Transfer T-8619 showing the completed changes. The Department placed Transfer Application T-9401 under administrative hold until new certificates were issued.
3. On July 27, 2007, Certificates 83454 and 83455 were issued to confirm the changes made under Transfer T-8619 and the administrative hold on Transfer Application T-9401 was lifted.
4. The first right to be transferred is as follows:
Certificate: 83454 in the name of GERALD E. AND JANICE A. SOMMERS (confirmed by Sucker Creek decree)
Use: IRRIGATION of 12.3 ACRES
Priority Dates: 1893 for TRACT 1 and 1908 for TRACT 2

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: 0.156 CUBIC FOOT PER SECOND (CFS) for TRACT 1 and 0.058 CFS for TRACT 2, if available at the original point of diversion (NE ¼ NW ¼ of Sec. 32, T. 39S, R. 7W, WM) and the use of water for irrigation purposes shall be confined to the season April 1 to October 31 of each year

Source: SUCKER CREEK, tributary to ILLINOIS RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
39 S	7 W	WM	31	SE NW	249 FEET NORTH AND 263 FEET WEST FROM THE CENTER 1/4 CORNER OF SECTION 31

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tract	Acres
39 S	7 W	WM	31	NE NW	1	7.8
39 S	7 W	WM	31	NE NW	2	4.5

5. Transfer Application T-9401 proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Tract	Acres
39 S	7 W	WM	31	NE NW	200	1	1.8
39 S	7 W	WM	31	SE NW	204	1	4.9
39 S	7 W	WM	31	SE NW	210	1	1.1
39 S	7 W	WM	31	NE NW	200	2	4.5

6. The second right to be transferred is as follows:

Certificate: 83455 in the name of GERALD E. AND JANICE A. SOMMERS (perfected under Permit S-4048)

Use: IRRIGATION of 5.0 ACRES

Priority Date: APRIL 11, 1919

Rate: 0.06 CUBIC FOOT PER SECOND (CFS), if available at the original point of diversion (SE ¼ SW ¼ of Sec. 29, T. 39S, R. 7W, WM) or its equivalent in case of rotation, measured at the point of diversion from the source

Limit/Duty: ONE-EIGHTIETH of one cfs per acre

Source: SUCKER CREEK, tributary to ILLINOIS RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
39 S	7 W	WM	31	SE NW	249 FEET NORTH AND 263 FEET WEST FROM THE CENTER 1/4 CORNER OF SECTION 31

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	7 W	WM	31	NE NW	5.0

7. Transfer Application T-9401 proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Tax Lot	Acres
39 S	7 W	WM	31	NE NW	2	200	5.0

8. Notice of the application for transfer was published on April 22, 2003, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
9. On April 14, 2008, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-9401 to the applicants. The draft Preliminary Determination set forth a deadline of May 17, 2008, 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.
10. On June 4, 2008, the Department issued a Preliminary Determination proposing to approve Transfer T-9401 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 June 10, 2008, 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)]

11. Water has been used within the last five years according to the terms and conditions of the rights, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
12. A pump, pipeline, and sprinkler system 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-9401.
13. The proposed change would not result in enlargement of the rights.
14. The proposed change would not result in injury to other water rights.

Conclusions of Law

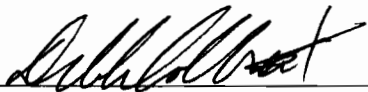
The change in place of use proposed in Transfer Application T-9401 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in place of use proposed in Transfer Application T-9401 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 Certificates 83454 and 83455 and any related decree.

3. Water right certificates 83454 and 83455 are cancelled.
4. The former place of use of the transferred rights shall no longer receive water under the rights.
5. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
6. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2010**. 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 change and full beneficial use of the water.
7. When satisfactory proof of the completed change is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 28th day of July 2008.


Phillip C. Ward, Director

Mailing date: AUG 01 2008