

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-11302, Marion County)	CHANGE IN PLACE OF USE AND
)	CHARACTER 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.

Applicants

JERRY AND JEAN INGLE
20951 BOONES FERRY RD NE
AURORA, OR 97002

Findings of Fact

Background

1. On September 27, 2011, JERRY AND JEAN INGLE filed an application to change the place of use and to change the character of use under Certificate 9726. The Department assigned the application number T-11302.
2. On May 3, 2012, the applicants submitted an amended application modifying the place of use, character of use, season of use, and the rate of water originally proposed to be transferred.
3. The portion of the right to be transferred is as follows:
Certificate: 9726 in the name of FRED SCHNEIDER (perfected under Permit S-9286)
Use: DOMESTIC, INCLUDING OPERATION OF HYDRAULIC RAM
Priority Date: SEPTEMBER 21, 1929
Rate: 0.006 CUBIC FOOT PER SECOND

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.

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent in case of rotation.

Source: UNNAMED STREAM, tributary to DEER CREEK, tributary of PUDDING RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	1 W	WM	15	NE SE	Not Specified

Authorized Place of Use:

DOMESTIC, INCLUDING OPERATION OF HYDRAULIC RAM					
Twp	Rng	Mer	Sec	Q-Q	
4 S	1 W	WM	15	NE SE	

4. Certificate 9726 does not describe the location of the point of diversion, however information is available from the Certified Water Right Examiner indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	1 W	WM	15	NE SE	650 FEET SOUTH AND 500 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 15

5. Transfer Application T-11302 proposes to change the character of use to irrigation.
6. Transfer Application T-11302 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	1 W	WM	15	NE SE	0.5

7. Notice of the application for transfer was published on October 4, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. On March 29, 2012, the Department issued a draft Preliminary Determination proposing to deny Transfer Application T-11302, unless the applicants modified the application to address enlargement issues. The draft Preliminary Determination cover letter set forth a deadline of April 30, 2012, for the applicants to respond.
9. The applicants submitted an amended application on May 3, 2012 addressing the enlargement issues identified in the draft Preliminary Determination.
10. On May 4, 2011, the Department sent a copy of the 2nd draft Preliminary Determination proposing to approve Transfer Application T-11302 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of June 4, 2012, 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.

11. On June 1, 2012, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11302 and sent a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on July 31, 2012, and in the Woodburn Independent newspaper on June 20, 27, and July 4, 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)]

12. The first historical description of domestic use is found in 1956, in the State Engineer's Rules and Regulation adopted under Special Order Volume 9, p. 27. Those rules indicate: "Domestic use has never been completely defined. However, it has been generally accepted to mean household use and for such animals as are essential to the proper sustenance of the family and irrigation of a domestic lawn and garden not exceeding ½ acre in area. . . . For Domestic Purposes - 0.01 (1/100) of a cubic foot per second is considered sufficient for the use of one family." (Technical Operations Manual, Sec. 01.07, Aug. 15, 2008).
13. The applicant proposes to change the character of use for the irrigation portion of the right. Certificate 9726 states the purpose of use is for domestic, including operation of a hydraulic ram under Permit S-9286. There is no separate irrigation component of the right. If irrigation was included in this water right, the Certificate would specify the number of acres by quarter-quarter sections.
14. A thorough review of the file for Permit S-9286 indicates that the original applicants watered a garden. In the notarized Proof of Appropriation, Fred and Lillie Schneider indicated the responses to the following questions:
 - a) Kind of crops raised – "garden"
 - b) Does the accompanying map, filed with your application, show correctly the point of diversion, area of land irrigated, or place of use? – "Yes."
15. The map accompanying Permit S-9286 depicts a pinpointed location for the house and a pinpointed location for the garden south of the house. No areas of irrigation or number of acres are depicted on the map.
16. As noted above, the in-house domestic use and irrigation of a lawn and non-commercial garden not exceeding ½ acre in area were considered to constitute domestic use. The rate for the in-house domestic use was not listed separately from the irrigation of a lawn and non-commercial garden.
17. Evidence was submitted with the application indicating that water has been used within the last five years for watering the lawn around the home, an orchard area to the west of the

home, and nursery stock. The domestic use right under Certificate 9726 allows for watering of the lawn and landscaping around the home and a non-commercial garden not to exceed ½ acre in size. The additional irrigation claimed by the applicant for an orchard area and nursery stock does not meet the definition of domestic use under this right.

18. Transfer Application T-11302 states that the in-house component of the domestic right has been abandoned in favor of use from an exempt well. There is no information in the record to identify when this occurred. Based on the abandonment of the “in-house” domestic use, no quantity of water is available for year ‘round use.
19. The use of more water per year than could maximally have been beneficially used for the original domestic use for watering ½ acre non-commercial lawn and garden would constitute enlargement of the right, which is not allowable. Therefore, to avoid enlarging the right in the conversion to irrigation use, an annual volume limit should be added to the right, based on the best available estimate of the maximum amount of water that could have been beneficially diverted and used during a year.
20. The use of water for irrigation of the domestic lawn and garden is limited to 1.25 acre-feet per year (afy) ($0.5 \text{ acres} \times 2.5 \text{ afy} = 1.25 \text{ afy}$) during the irrigation season of March 1 through October 31. The use of water for irrigation of the domestic lawn and garden would not have occurred outside of the irrigation season.
21. The rate of water for the 1/2 acre non-commercial lawn and garden is 0.006 cubic foot per second (cfs) ($0.5 \times 1/80 (0.0125) = 0.006$).
22. Transfer Application T-11302 indicates that the hydraulic ram was replaced by an electric pump 15 years ago. Operation of a hydraulic ram is a component of the delivery system and is a non-consumptive use, and as such, is not transferrable.
23. 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-11302.
24. The proposed changes, as conditioned in Findings of Fact 20 and 21, and as listed below, would not result in enlargement of the right.

Period of Use	Rate (cfs)	Acre-Feet per Year
3/1 through 10/31	0.006	1.25

25. The proposed changes, as conditioned, would not result in injury to other water rights.

Conclusions of Law

The change in place of use and change in character of use proposed in Transfer Application T-11302 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

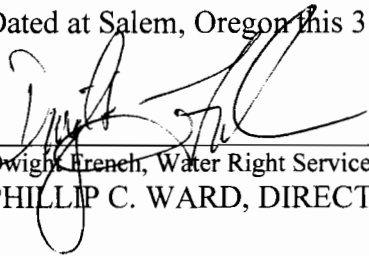
Now, therefore, it is ORDERED:

1. The changes in place of use and character of use proposed in application T-11302 are 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 9726 and any related decree.
3. Water right certificate 9726 is cancelled.
4. Water use measurement conditions:
 - a. Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at the point of diversion.
 - b. The water user shall maintain the meter or measuring device in good working order.
 - c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.
5. The former place of use of the transferred right shall no longer receive water under the right.
6. The use of water under this right shall be limited as follows:

Period of Use	Rate	Acre-Feet per Year
3/1 through 10/31	0.006	1.25

7. 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.
8. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 31st day of August, 2012.


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

Mailing date: SEP 04 2012