

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

In the Matter of Transfer Application) FINAL ORDER APPROVING CHANGE
T-8366, Josephine County) IN POINTS OF DIVERSION
)
)

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

Ken-Wal Farms, Inc.
5630 Upper River Road
Grants Pass, Oregon 97526

Findings of Fact

1. On November 30, 1999, Ken-Wal Farms, Inc. filed a transfer application to change the points of diversion under Certificates 2803, 3247, 8942, 8943 and 15340. The Department assigned the application number T-8366.

2. The first right to be transferred is as follows:

Certificate: 2803 in the name of Fort Vannoy Orchards
Use: Irrigation of 70.0 acres
Priority Date: March 10, 1919
Quantity: 0.88 cubic foot per second (cfs)
Rate/Duty: 1/80 cfs per acre
Source: Rogue River tributary to the Pacific Ocean
Authorized Point of Diversion:

Township	Range		Meridian	Sec	¼ ¼		Survey Coordinates
36	S	6	W	W.M.	21	NW NW	POD 1 – 10 Rods South & 60 Rods East from NW Corner, Section 21
36	S	6	W	W.M.	15	SW SE	POD 2 – North 71 Degrees East 3150 Feet from SW Corner, Section 15

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.

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼		POD	Acres
36	S	6	W	W.M.	16	SW	SW	1	27.0
36	S	6	W	W.M.	16	SE	SW	1	5.0
36	S	6	W	W.M.	16	NE	SW	1	1.0
36	S	6	W	W.M.	16	NW	SW	1	7.0
36	S	6	W	W.M.	17	SE	SE	2	10.0
36	S	6	W	W.M.	20	NE	NE	1	10.0
36	S	6	W	W.M.	21	NW	NW	1	10.0

3. Application T-8366 proposes to move the authorized point of diversion approximately 1/16th mile downstream in the source to:

Township		Range		Meridian	Sec	¼ ¼		Survey Coordinates	
36	S	6	W	W.M.	21	NW	NW	POD 1 (Rogue River) – 515 Feet South & 890 Feet East from NW Corner, Section 21	

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

Certificate: 3247 in the name of H. Wood, A.H. Fetters and H.B. Wyman

Use: Irrigation of 39.5 acres

Priority Date: March 27, 1919

Quantity: 0.49 cfs

Rate/Duty: 1/80 cfs per acre

Source: Rogue River, tributary to the Pacific Ocean

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼		Survey Coordinates	
36	S	6	W	W.M.	21	NE	NW	15 Rods South & 100 Rods East from SW Corner, Section 16	

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼		Acres
36	S	6	W	W.M.	16	NW	SW	10.0
36	S	6	W	W.M.	16	NE	SW	4.5
36	S	6	W	W.M.	16	SW	SW	12.0
36	S	6	W	W.M.	16	SE	SW	5.0
36	S	6	W	W.M.	21	NE	NW	2.0
36	S	6	W	W.M.	21	NW	NW	3.5
36	S	6	W	W.M.	21	NW	NW	2.5*

* Applicant submitted an affidavit to diminish from primary irrigation to supplemental irrigation. See Finding of Fact #12.

5. Application T-8366 proposes to move the authorized point of diversion approximately 1/8th mile downstream in the source to:

Township	Range	Meridian	Sec	¼ ¼	Survey Coordinates		
36	S	6	W	W.M.	21	NW NW	POD 1 (Rogue River) – 515 Feet South & 890 Feet East from NW Corner, Section 21

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

Certificate: 8942 in the name of Fort Vannoy Irrigation District

Use: Irrigation of 179.0 acres

Priority Date: June 21, 1930

Quantity: 2.24 cfs

Rate/Duty: 1/80 cfs per acre

Source: Rogue River, tributary to the Pacific Ocean

Authorized Point of Diversion:

Township	Range	Meridian	Sec	¼ ¼	Survey Coordinates		
36	S	6	W	W.M.	14	NE SW	POD 1 – South 61 Degrees East 1580 Feet from E¼ Corner, Section 15
36	S	6	W	W.M.	15	SW SE	POD 2 –North 71 Degrees East 3150 Feet from SW Corner, Section 15

Authorized Place of Use:

Township	Range	Meridian	Sec	¼ ¼	POD	Acres		
36	S	6	W	W.M.	16	NW NE	1	6.2
36	S	6	W	W.M.	16	SW NE	1	29.8
36	S	6	W	W.M.	16	SE NE	1	2.2
36	S	6	W	W.M.	16	NE NW	1	18.0
36	S	6	W	W.M.	16	SE NW	1	21.5
36	S	6	W	W.M.	16	NE SW	1	8.5
36	S	6	W	W.M.	16	NE SW	1	5.5*
36	S	6	W	W.M.	16	NW SW	1	8.0*
36	S	6	W	W.M.	16	NW SW	2	7.0*
36	S	6	W	W.M.	16	SW SW	2	0.3
36	S	6	W	W.M.	16	SW SW	2	39.0*
36	S	6	W	W.M.	16	SW SW	2	0.7**
36	S	6	W	W.M.	16	SE SW	2	10.0*
36	S	6	W	W.M.	20	NE NE	1	10.0*
36	S	6	W	W.M.	21	NE NW	1	0.5
36	S	6	W	W.M.	21	NE NW	1	2.0*
36	S	6	W	W.M.	21	NW NW	1	13.5*
36	S	6	W	W.M.	21	NW NW	1	0.5**

* Applicant submitted an affidavit to diminish from primary irrigation to supplemental irrigation. See Finding of Fact #12.

** Applicant submitted an affidavit to cancel a portion of the water right. See Finding of Fact #13.

7. Application T-8366 proposes to move the authorized point of diversion approximately 2.0 miles downstream in the source to:

Township		Range		Meridian	Sec	¼ ¼		Survey Coordinates	
36	S	6	W	W.M.	21	NW	NW	POD 1 (Rogue River) – 515 Feet South & 890 Feet East from NW Corner, Section 21	

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

Certificate: 8943 in the name of Fort Vannoy Irrigation District
Use: Supplemental Irrigation of 45.7 acres
Priority Date: April 6, 1922
Quantity: 0.57 cfs
Rate/Duty: 1/80 cfs per acre
Source: Dutcher Creek, tributary to Vannoy Creek, tributary to the Rogue River
Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼		Survey Coordinates	
36	S	6	W	W.M.	16	NW	NE	POD 1 – 910 Feet South & 1090 Feet East from N¼ Corner, Section 16	
36	S	6	W	W.M.	16	SE	NW	POD 2 – 627 Feet North & 20 Feet West from SE Corner, NW¼, Section 16	

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼		POD	Acres
36	S	6	W	W.M.	16	NW	NE	1	5.0
36	S	6	W	W.M.	16	NW	NE	2	1.2
36	S	6	W	W.M.	16	NE	NW	1	12.6
36	S	6	W	W.M.	16	NE	NW	2	5.4
36	S	6	W	W.M.	16	SE	NW	2	21.5

9. Application T-8366 proposes to move the authorized point of diversion approximately 1/4th mile downstream in the source to:

Township		Range		Meridian	Sec	¼ ¼		Survey Coordinates	
36	S	6	W	W.M.	17	SE	SE	POD 2 (Dutcher Creek/Drain Creek) – 895 Feet North & 160 Feet West from SE Corner, Section 17	

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

Certificate: 15340 in the name of Ada Weston
Use: Irrigation of 11.7 acres
Priority Date: May 31, 1945
Quantity: 0.15 cfs
Rate/Duty: 1/80 cfs per acre
Source: Drain Creek, tributary to Vannoy Creek, tributary to the Rogue River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼		Survey Coordinates
36	S	6	W	W.M.	16	NW	NE	1130 Feet South & 340 Feet East from N¼, Section 16

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼		Acres
36	S	6	W	W.M.	16	NW	NE	1.7*
36	S	6	W	W.M.	16	NE	NW	10.0

* Applicant submitted an affidavit to diminish from primary irrigation to supplemental irrigation. See Finding of Fact #12.

11. Application T-8366 proposes to move the authorized point of diversion approximately 1/8th mile downstream in the source to:

Township		Range		Meridian	Sec	¼ ¼		Survey Coordinates
36	S	6	W	W.M.	17	SE	SE	POD 2 (Dutcher Creek/Drain Creek) – 895 Feet North & 160 Feet West from SE Corner, Section 17

12. Affidavits of partial diminution of a water right were received on August 31, 2000 from the Crouse Family Trust and Ken Wahl Farms, Inc. The portion of the water rights to be diminished are:

Certificate: 3247 in the name of H. Wood, A.H. Feters and H.B. Wyman
Use: Irrigation of 2.5 acres
Priority Date: March 27, 1919
Quantity: 0.03 cfs
Rate/Duty: 1/80 cfs per acre
Source: Rogue River, tributary to the Pacific Ocean

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼		Acres
36	S	6	W	W.M.	21	NW	NW	2.5

Certificate: 8942 in the name of Fort Vannoy Irrigation District
Use: Irrigation of 72.5 acres
Priority Date: June 21, 1930
Quantity: 0.91 cfs
Rate/Duty: 1/80 cfs per acre
Source: Rogue River, tributary to the Pacific Ocean

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼		POD	Acres
36	S	6	W	W.M.	16	NE	SW	1	5.5
36	S	6	W	W.M.	16	NW	SW	1	8.0
36	S	6	W	W.M.	16	NW	SW	2	7.0
36	S	6	W	W.M.	16	SW	SW	2	39.0
36	S	6	W	W.M.	20	NE	NE	1	10.0

Township		Range		Meridian	Sec	¼ ¼		POD	Acres
36	S	6	W	W.M.	21	NE	NW	1	2.0
36	S	6	W	W.M.	21	NW	NW	1	13.5

Certificate: 15340 in the name of Ada Weston

Use: Irrigation of 1.7 acres

Priority Date: May 31, 1945

Quantity: 0.02 cfs

Rate/Duty: 1/80 cfs per acre

Source: Drain Creek, tributary to Vannoy Creek, tributary to the Rogue River

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼		Acres
36	S	6	W	W.M.	16	NW	NE	1.7

13. Affidavits attesting to the abandonment and requesting cancellation of a portion of a water right were received on August 31, 2000 from the Crouse Family Trust. The portions of the water right to be cancelled are:

Certificate: 8942 in the name of Fort Vannoy Irrigation District

Use: Irrigation of 1.2 acres

Priority Date: June 21, 1930

Quantity: 0.015 cfs

Rate/Duty: 1/80 cfs per acre

Source: Rogue River, tributary to the Pacific Ocean

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼		Acres
36	S	6	W	W.M.	16	SW	SW	0.7
36	S	6	W	W.M.	21	NW	NW	0.5

14. Notice of the application for transfer was published pursuant to ORS 540.520. Protests were filed by Fort Vannoy Irrigation District and Herman Baertschiger, Jr. Pursuant to ORS 540.520(7), a hearing was conducted, the protests were dismissed, and Application T-8366 was approved.

15. In approving the application, the Water Resources Commission concluded that:

- a) The consent of the District is not statutorily required in order for the transfer to be approved.
- b) The water rights proposed for transfer are water rights subject to transfer and have been used in the five years preceding the filing of the transfer application.
- c) The changes proposed in the transfer application, changing and consolidating points of diversion will not cause injury to existing water rights.

16. Pursuant to ORS 540.525, the Oregon Department of Fish and Wildlife requested inclusion of a condition requiring installation of proper fish screens.

17. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights are present.
18. The proposed change will not result in enlargement of the right.

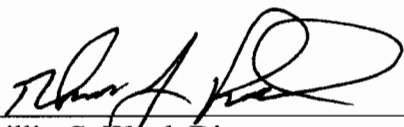
Conclusions of Law

The proposed change in points of diversion in application T-8366 is 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 change in points of diversion proposed in application T-8366 is approved.
2. Water right certificates 2803, 3247, 8942, 8943 and 15340 are cancelled. The rights described in Findings of Fact #12 are diminished from primary irrigation to supplemental irrigation. The rights described in the Findings of Fact #13 as abandoned are cancelled. New certificates will be issued describing the portions of the rights not involved in this transfer and not cancelled by this order.
3. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued. 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 2803, 3247, 8942, 8943 and 15340, any related decree, and the diminishments described in the Findings of Fact.
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 quantity of water diverted at the new points of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.
7. Prior to diverting water, 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.
8. 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.

Dated at Salem, Oregon this 29th day of July, 2005.


Phillip C. Ward, Director

Mailing date: AUG 03 2005

Memo

To: Transfer Application File T-8366 (Ken-Wal Farms, Inc.)
From: Bernadette Williams, Transfer Specialist
Date: 9/2/2005
Re: Correction of Scrivener's Errors

The Department issued an order approving T-8366 on July 29, 2005. The order was recorded at Special Order Volume 65 at Pages 480 to 487. During subsequent review of the order, some scrivener's errors were discovered.

First, the number of acres under Certificate 8942 subject to transfer and the rate associated with those acres in Findings of Fact #6 are incorrect because they were not changed from a draft version of the order and include acres that were cancelled in another part of the order (Findings of Fact #13).

The Q-Q listing of the lands involved in the transfer as listed in the table is correct. However, the current authorized points of diversion listed for the lands in Sections 20 and 21 were incorrectly listed as POD 1 and should have been listed as POD 2. Following is the corrected Findings of Fact #6 (corrections showed in bold):

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

Certificate: 8942 in the name of Fort Vannoy Irrigation District

Use: Irrigation of **182.0 acres**

Priority Date: June 21, 1930

Quantity: **2.27 cfs**

Rate/Duty: 1/80 cfs per acre

Source: Rogue River, tributary to the Pacific Ocean

Authorized Point of Diversion:

Township	Range	Meridian	Sec	¼ ¼	Survey Coordinates
36	S	6	W	W.M.	14 NE SW POD 1 – South 61 Degrees East 1580 Feet from E¼ Corner, Section 15
36	S	6	W	W.M.	15 SW SE POD 2 –North 71 Degrees East 3150 Feet from SW Corner, Section 15

Authorized Place of Use:

Township	Range	Meridian	Sec	¼ ¼	POD	Acres
36	S	6	W	W.M.	16 NW NE	1 6.2
36	S	6	W	W.M.	16 SW NE	1 29.8
36	S	6	W	W.M.	16 SE NE	1 2.2
36	S	6	W	W.M.	16 NE NW	1 18.0
36	S	6	W	W.M.	16 SE NW	1 21.5

Township	Range		Meridian	Sec	¼ ¼		POD	Acres
36	S	6	W	W.M.	16	NE SW	1	8.5
36	S	6	W	W.M.	16	NE SW	1	5.5*
36	S	6	W	W.M.	16	NW SW	1	8.0*
36	S	6	W	W.M.	16	NW SW	2	7.0*
36	S	6	W	W.M.	16	SW SW	2	0.3
36	S	6	W	W.M.	16	SW SW	2	39.0*
36	S	6	W	W.M.	16	SE SW	2	10.0*
36	S	6	W	W.M.	20	NE NE	2	10.0*
36	S	6	W	W.M.	21	NE NW	2	0.5
36	S	6	W	W.M.	21	NE NW	2	2.0*
36	S	6	W	W.M.	21	NW NW	2	13.5*

* Applicant submitted an affidavit to diminish from primary irrigation to supplemental irrigation. See Finding of Fact #12.

Finally, the rate associated with the number of acres being cancelled under Certificate 8942 was calculated incorrectly. Following is the corrected Findings of Fact #13 (corrections are in bold):

Affidavits attesting to the abandonment and requesting cancellation of a portion of a water right were received on August 31, 2000 from the Crouse Family Trust. The portions of the water right to be cancelled are:

Certificate: 8942 in the name of Fort Vannoy Irrigation District

Use: Irrigation of 1.2 acres

Priority Date: June 21, 1930

Quantity: 0.01 cfs

Rate/Duty: 1/80 cfs per acre

Source: Rogue River, tributary to the Pacific Ocean

Authorized Place of Use:

Township	Range		Meridian	Sec	¼ ¼		Acres
36	S	6	W	W.M.	16	SW SW	0.7
36	S	6	W	W.M.	21	NW NW	0.5

These corrections are reflected in the remaining right that is being issued to the Fort Vannoy Irrigation District. The corrections do not affect the Q-Q listing that would otherwise be included in the remaining right.