

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

In the Matter of Transfer Application) ORDER APPROVING CHANGE IN
T-10815, Jackson County) 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

ASHLAND FLOWER SHOP
AND GREEN HOUSES, INC.
C/O GREG WILLIAMS
744 HELMAN STREET
ASHLAND OR 97520

Receiving Landowner

SCIONTI / LANDT FAMILY TRUST
RICK LANDT AND LYNNE SCIONTI, TRUSTEES
468 HELMAN STREET
ASHLAND OR 97520

Findings of Fact

Background

1. On March 13, 2009, ASHLAND FLOWER SHOP & GREEN HOUSES, INC. filed an application to change the place of use for a portion of the water right under Certificate 16035. The Department assigned the application number T-10815.
2. The portion of the right to be transferred is as follows:
Certificate: 16035 in the name of W.G. AND LEO SANDER (confirmed by Rogue River Final Decree)
Use: IRRIGATION of 0.5 ACRE AND STOCK
Priority Date: 1864
Rate: 0.008 CUBIC FOOT PER SECOND
Source: ASHLAND CREEK, tributary to BEAR CREEK

Authorized Place of Use:

IRRIGATION AND STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	1 E	WM	4	NE NW	0.5

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.

- Certificate 16035 does not list a point of diversion; however, information available from the Certified Water Right Examiner indicates that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
39 S	1 E	WM	4	NE SW	40	850 FEET NORTH AND 300 FEET WEST FROM THE SW CORNER OF DLC 41

- Application T-10815 also proposes to change the place of use of the right to:

IRRIGATION AND STOCK						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
39 S	1 E	WM	4	NE SW	40	0.5

- Notice of the application for transfer was published on March 24, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On January 22, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10815 to the applicant and the receiving landowners. The draft Preliminary Determination cover letter set forth a deadline of February 22, 2010 for the applicant and receiving landowners to respond. The applicant and receiving landowners requested the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate the applicant is authorized to pursue the transfer.
- February 18, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10815, and mailed a copy to the applicant and receiving landowners. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on February 23, 2010, 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)]

- Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
- A diversion structure and ditch 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-10815.
- The proposed change would not result in enlargement of the right.
- 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-10815 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is OREDERED:

1. The change in place of use proposed in application T-10815 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 Certificate 16035 and any related decree.
3. Water right certificate 16035 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. The Director may require the water user to install a totalizing flow meter or other suitable measuring devices at each point of diversion. If the Director notifies the water user to install totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.
5. When required by the Department, the water user shall install, maintain, and operate a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
6. The former place of use of the transferred right shall no longer receive water under the right.
7. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the receiving landowner to the Department within one year after the deadline for completion of the change and full beneficial use of the water.
8. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 26th day of March 2010.

William E. Ferber
for Phillip C. Ward, Director

MAR 31 2010

Mailing date: _____