

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

In the Matter of Transfer Application)
T-7211, to Change the Place of Use of Water) FINAL ORDER APPROVING A
Marion County, Oregon) TRANSFER

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

Franz Neff
17769 Mt. Angel-Scotts Mills Rd. NE
Silverton, Oregon 97381

Findings of Fact

1. Franz Neff filed an application to transfer the place of use under Certificate 33326. The Department assigned the application number T-7211.
2. The portion of the right to be transferred is as follows:

Certificate: 33326 in the name of Alois Imper
Use: Irrigation
Priority Date: June 29, 1961
Quantity: 0.06 cfs
Rate/Duty: 1/80 cfs per acre, not to exceed 2½ acre feet per acre
Acres: 4.5
Source: Butte Creek, tributary to Pudding River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Location
6	S	1	E	W.M.	16	NE NW		39	925 feet south and 650 feet west from the N¼ corner of Section 16

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Acres
6	S	1	E	W.M.	16	SE SW		39	4.5

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 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

3. Application T-7211 proposes to change the place of use of the right to:

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Acres
6	S	1	E	W.M.	16	SE NW		39	4.5

4. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
5. The transfer application did not meet OAR 690 Division 15 completeness standards in effect at the time of filing, because it did not include the following required information:
 - a) A copy of the current deed for the lands from which the water right is proposed to be transferred, indicating whether there are any liens or other encumbrances on the land.
 - b) If applicable, affidavits from any other landowners or encumbrance holders stating that they have no objection to the proposed transfer.
 - c) A description of the water delivery system for irrigating the affected land, and an estimation of the system capacity in gallons per minute or cfs.
6. Ernest Neff, on behalf of Neff Dairy, submitted the required documentation listed above on May 25 and May 28, 2004.
7. Water has been used within the five-year period prior to filing the application according to the terms and conditions of the right and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
8. A diversion structure, ditch, pump, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
9. The proposed change would not result in enlargement of the right.
10. The proposed change would not result in injury to other water rights.
11. Notice of the Preliminary Determination was published as per ORS 540.520 and OAR 690-380-4020. No protests were filed pursuant to OAR 690-380-4030.

Conclusions of Law

The change in place of use proposed in application T-7211 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 place of use proposed in application T-7211 is approved.
2. Water right certificate 33326 is cancelled. A new certificate will be issued to confirm that portion of the right not involved in this transfer.

3. 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 33326 and any related decree.
4. The proposed change shall be completed on or before October 1, 2005.
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, 2006.
6. When required by the Department, 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.
7. When satisfactory proof of the completed change is received, a new certificate confirming the rights transferred will be issued.

Dated at Salem, Oregon this 21st day of July, 2004.



For
Phillip C. Ward
Acting Director

Mailing date: JUL 22 2004