

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-9505, Douglas County)	CHANGE IN CHARACTER OF USE, A
)	CHANGE IN PLACE OF USE, A
)	REDESCRIPTION OF THE
)	AUTHORIZED PLACE OF USE
)	UNDER CERTIFICATE 7306; AND
)	PARTIAL DIMINUTION OF WATER
)	RIGHT CERTIFICATE 17042

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

GLOCKNER INVESTMENTS
TOM OR LOIS MICHAELS, AGENTS
PO BOX 40
DAYS CREEK OR 97429

Findings of Fact

Background

1. On July 22, 2003, GLOCKNER INVESTMENTS filed an application to change the character of use and place of use under Certificate 7306. The Department assigned the application number T-9505.
2. The map depicting the place of use described by water right Certificate 7306 fails to define the actual location of the irrigated lands and is of poor quality. No final proof survey was performed by the Department and the original Application map (S-10008) for Certificate 7306 was used as the final map.
3. As part of the field inspection, the CWRE found 10.0 acres of the place of use for Certificate 7306, being 3.0 acres located in the SWNW and 7.0 acres located in the SENW,

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.

Township 30 South, Range 3 West, W.M, was improperly depicted on the original application map and thus, incorrectly described in Certificate 7306.

4. Dave Williams, the Watermaster for District 15, concurred with the CWRE's findings on February 26, 2004.
5. The Department conducted an investigation utilizing 1926 Basin maps and USGS Quadrangle maps finding that Application (S-10008) map was skewed due to the inaccurate placement of the hydrologic features, specifically Corn Creek. The original surveyor placed Corn Creek running through Section 25, when both the 1926 and the USGS Quadrangle map show Corn Creek as running through the west portion of Section 26. Therefore, the acreages depicted on the original Application (S-10008) map were shown as farther east than their actual location.
6. Aerial photos from 1953 and 1967 confirm the CWRE's findings and the Department's investigation that the lands depicted on the map for Application S-10008 were depicted east of the actual location of the irrigated lands.
7. Based on the CWRE's field inspection and the Department's investigation, the place of use for Certificate 7306 has always been located as follows:

Certificate 7306						Findings	
Twp	Rng	Mer	Sec	Q-Q	Acres	Q-Q	Acres
30 S	3 W	WM	24	SWSW	4.0	SWSW	4.0
30 S	3 W	WM	25	NWNW	20.0	NWNW	20.0
30 S	3 W	WM	25	SWNW	3.0	SWNW	4.9
30 S	3 W	WM	25	SENW	7.0	SENW	5.1

8. Based on Finding of Fact #7 above, the portion of the right to be transferred is as follows:

Certificate: 7306 in the name of G.F. NORMAN (perfected under Permit S-6668)
Use: IRRIGATION of 7.5 ACRES
Priority Date: FEBRUARY 20, 1925
Rate: 0.09 CUBIC FOOT PER SECOND
Limit: The amount of water used for irrigation, together with the amount secured under any other right for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre
Source: CORN CREEK, tributary to the SOUTH UMPQUA RIVER

Authorized Point of Diversion: Not listed on Certificate

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
30 S	3 W	WM	25	SW NW	3.4
30 S	3 W	WM	25	SE NW	4.1

9. Certificate 7306 does not describe the location of the point of diversion, however information is available from the field inspection performed by a Certified Water Rights Examiner indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
30 S	3 W	WM	24	SWNW	150 FEET NORTH AND 580 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 24

10. Transfer Application T-9505 proposes to change the character of use for the portion of the right under Certificate 7306 as described in Finding of Fact #8 to industrial/road watering.
11. Transfer Application T-9505 also proposes to change the place of use of the right to:

INDUSTRIAL/MANUFACTURING USES					
Twp	Rng	Mer	Sec	Q-Q	Description
30 S	3 W	WM	24	SW SW	Road watering within Douglas County road system, Bureau of Land Management road system, and U.S. Forest Service road system, and private roads located within Douglas County, Oregon

12. Transfer application requests that the diversion rate and duty of water allowed under Certificate 7306 be applied to industrial/road watering. The calculated rate of diversion is 1/80 cfs or 0.0125 cfs per acre or 0.09 cfs for 7.5 acres.
13. Certificate 7306 does not list an annual duty of water. Therefore, the standard duty of water for other streams within OWRD Administrative Basin 16 will be used. This standard duty is 2.5 acre feet per acre. The annual volume limitation is calculated as 2.5 acre feet per acre x 7.5 acres for a total of 18.75 acre feet.
14. Certificate 7306 does not list an irrigation season. OAR 690-250-0070 states that whenever the dates or times of year within which an irrigation right may be exercised are not specified in a certificate, the season is between March 1 and October 31.
15. Notice of the application for transfer was published on August 12, 2003, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
16. On January 27, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-9505. The draft Preliminary Determination cover letter set forth a deadline of March 22, 2010, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
17. On February 25, 2010, the Department issued a Preliminary Determination proposing to approve Transfer T-9505 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's

weekly notice on March 2, 2010, and in The News Review of Douglas County newspaper on March 17, 17, and 24, 2010, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

Partial Diminution of a Water Right

18. On January 26, 2010, the applicant submitted an affidavit to partially diminish a water right from primary irrigation to supplemental irrigation. The right to be partially diminished is as follows:

Certificate: 17042 in the name of KARL S. STAATZ (perfected under Permit S-6668)
Use: IRRIGATION of 24.7 ACRES
Priority Date: JULY 26, 1940
Rate: 0.31 CUBIC FOOT PER SECOND
Limit: The amount of water used for irrigation, together with the amount secured under any other right for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre and shall be further limited to a diversion of not to exceed 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year.
Source: CANYON CREEK, tributary to CORN CREEK

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
30 S	3 W	WM	24	SW SW	4.0
30 S	3 W	WM	25	NW NW	20.0
30 S	3 W	WM	25	SW NW	0.7

Transfer Review Criteria [OAR 690-380-4010(2)]

19. 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.
20. 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-9505.
21. The proposed changes, if not conditioned to limit the annual volume, could result in enlargement of the right. The proposed changes, if conditioned to limit the annual volume as indicated in Finding of Fact #13, would not result in enlargement of the right.
22. The proposed changes, if not conditioned to limit the use to the irrigation season, may result in injury to existing instream water rights on the South Umpqua River. The proposed changes, if conditioned as indicated in Finding of Fact #14, would not result in injury to other water rights.

Conclusions of Law

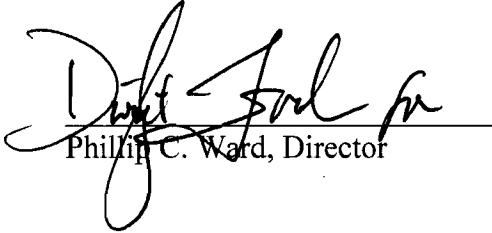
The change in character of use and change in place of use proposed in Transfer Application T-9505 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the portion of the right proposed to be diminished will be diminished.

Now, therefore, it is ORDERED:

1. The change in character of use and place of use proposed in Transfer Application T-9505 are approved.
2. The water right for the irrigation of 24.7 acres under Certificate 17042 as described in Finding of Fact #18 is diminished from primary irrigation to supplemental irrigation.
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 7306 and any related decree.
4. The annual volume limitation under this right is 18.75 acre-feet.
5. The season of use under this right is March 1 to October 31.
6. Water right certificate 7306 is cancelled. Certificate 86105 will be issued describing that portion of the right not affected by this transfer and diminution.
7. 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.
8. The former place of use of the transferred right shall no longer receive water under the right.
9. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2012**. 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.
10. Water Right Certificate 86058 is issued to confirm that portion of the right described by Certificate 17042 diminished by this order.

11. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 23 day of April 2010.


Phillip C. Ward, Director

Mailing Date: APR 27 2010