

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

In the Matter of Transfer Application	)	RECONSIDERATION OF A FINAL
T-10312, Douglas County	)	ORDER AND APPROVAL OF A
	)	CHANGE IN POINT OF DIVERSION,
	)	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. OAR 137-004-0080 describes the process for reconsideration of an order in other than contested case.

**Applicant**

Stanley E. Tenold  
P.O. Box 751  
Bodega Bay, California 94923

**Findings of Fact**

***Background***

1. On February 5, 2007, Stanley E. Tenold filed an application to change the place of use, the character of use and add two additional points of diversion under a portion of Certificate 81416. The Department assigned the application number T-10312.
2. On June 21, 2007, Stanley E. Tenold amended the application by providing additional and corrected information:
  - a) Confirming the transfer of 0.8 acre, use of water year-round at a rate not to exceed 0.003 cfs per each of two domestic households on a non-continuous basis, and installation of a flow restrictor for each domestic use;
  - b) Describing how to prevent irrigation on lands withdrawn from irrigation for purposes of the transfer to domestic uses; and,
  - c) Updating the application map to show the correct coordinates of the proposed points of diversion from North Myrtle Creek.

This is an order in other than a 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.

3. On August 24, 2007, Stanley E. Tenold further amended the application by providing a map to clarify and confirm the information cited in Finding of Fact No. 2, above.
4. The portion of the right to be transferred is as follows:

**Certificate:** 81416 in the name of Stanley E. Tenold (perfected under Permit S-47919)

**Use:** IRRIGATION of 2.1 ACRES

**Priority Date:** JULY 13, 1983

**Rate:** 0.026 CUBIC FOOT PER SECOND

**Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year

**Source:** NORTH MYRTLE CREEK, tributary to MYRTLE CREEK

**Authorized Point of Diversion:**

POD #	Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
*3	29 S	5 W	WM	13	SW SE	5	2160 FEET SOUTH AND 1715 FEET WEST FROM E1/4 CORNER OF SECTION 13

\*This existing, authorized POD will be referred to as POD No. 3 for the remainder of this document.

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
29 S	5 W	WM	13	SW SE	5	2.1

5. Application T-10312 proposes two additional points of diversion approximately 0.10 mile (POD No. 2) and 0.13 mile (POD No. 1) downstream from the authorized irrigation point of diversion (POD No. 3). The proposed additional points of diversion are located as follows:

POD No.	Twp	Rng	Mer	Sec	Q-Q	GLot	Tax Lot	Survey Coordinates
1	29 S	5 W	WM	13	SW SE	5	201	200 FEET NORTH AND 2380 FEET WEST FROM THE SE CORNER OF SECTION 13
2	29 S	5 W	WM	13	SW SE	5	202	300 FEET NORTH AND 2180 FEET WEST FROM THE SE CORNER OF SECTION 13

6. Application T-10312 proposes to change the character of use of 0.8 acre of irrigation use to Domestic Use for two households; one on Tax Lot 201 and one on Tax Lot 202.
7. Application T-10312 also proposes to change the season of use from the irrigation season to year round use for the two proposed domestic uses. To prevent enlargement of the right or injury to other water rights due to extension of the season of use, the applicant proposes to reduce the maximum rate of diversion and install flow restrictors at each point of diversion, as stated in Finding of Fact No. 2(a).

8. Application T-10312 also proposes to change the place of use of the right to:

DOMESTIC							
POD No.	Tax Lot	Twp	Rng	Mer	Sec	Q-Q	GLot
1	201	29 S	5 W	WM	13	SW SE	5
2	202	29 S	5 W	WM	13	SW SE	5

IRRIGATION								
POD No.	Tax Lot	Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
1 and 3	201	29 S	5 W	WM	13	SW SE	5	1.0
2 and 3	202	29 S	5 W	WM	13	SW SE	5	0.3

9. Notice of the application for transfer was published on February 13, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
10. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new points of diversion to prevent fish from entering the diversions and/or safely transport fish back to the body of water from which the fish were diverted and that the diversions are not currently equipped with an appropriate fish screening and/or by-pass device. The diversions may be eligible for screening cost share funds.
11. On July 17, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10312 to the applicant. The draft Preliminary Determination set forth a deadline of August 17, 2007, for the applicant to respond. On July 31, 2007, the applicant requested that the Department revise the document, consistent with the revised map as noted in Finding of Fact No. 3, before proceeding with issuance of a Preliminary Determination. On August 6, 2007, Mr. Tenold provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
12. On August 31, 2007 a revised draft Preliminary Determination was emailed to the applicant for review. Stan Tenold responded September 3, 2007, requesting the date for completion of the changes to be changed, to allow 3 to 5 years for development since the two lots are to be sold, and the new buyers will have responsibility for installing the equipment and putting the water to beneficial use. The Department considers the request reasonable and has extended the date for completion, as stated later in this document.
13. On September 17, 2007, the Department issued a Preliminary Determination proposing to approve Transfer T-10312 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 September 25, 2007, and in The Douglas County Mail newspaper on September 27 and October 4 and 11, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
14. On October 31, 2007, the Department issued a Final Order approving T-10312, recorded at Special Order Volume 73, Pages 589 to 593.

15. On November 16, 2007, Stan Tenold contacted the Department by e-mail and requested clarification of language in the order pertaining to the change in character of use, so as to more clearly state that domestic uses are to be established for two households.
16. Subsequent Department review of the order indicated a need to modify the language of the order to clarify the establishment of two domestic uses, as well as to specify that fish screen and/or by-pass requirements apply to both of the new points of diversion.
17. The Department reviewed the order and concluded that the order should be reconsidered pursuant to OAR 137-004-0080(5). This order is issued to supersede the previous order and to clarify the above mentioned points.

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

18. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
19. 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 Application T-10312.
20. The proposed changes, as conditioned, would not result in enlargement of the right.
21. The proposed changes, as conditioned, would not result in injury to other water rights.

**Conclusions of Law**

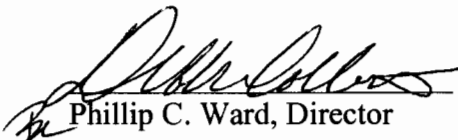
The changes in place of use, character of use and additional points of diversion proposed in application T-10312 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

**Now, therefore, it is ORDERED:**

1. The order recorded at Special Order Volume 73, pages 589 through 593 is superseded by this order and is of no further force or effect.
2. The changes in place of use, in character of use to domestic use for two households, and two additional points of diversion proposed in application T-10312 are approved.
3. Water right certificate 81416 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. 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 81416 and any related decree.

5. The quantity of water diverted at the proposed additional points of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
6. The former place of use of the transferred portion of the right shall no longer receive water under the right.
7. The quantity of water diverted at each of the additional points of diversion for domestic use may occur year-round at a rate not to exceed a maximum of 0.006 cfs, being 0.003 cfs per household on a non-continuous basis. A flow restrictor shall be installed at each of the two additional points of diversion to ensure that the rate is not exceeded.
8. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at each new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass devices meet ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that each required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass devices, as appropriate, at the points of diversion consistent with ODFW's operational and maintenance standards.
9. When required by the Department, the water user shall install, maintain and operate 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 measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
10. 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 changes and full beneficial use of the water.
11. When satisfactory proof of the completed changes is received, a new certificate confirming the portion of the right transferred will be issued.

Dated at Salem, Oregon this 13 day of December 2007.

  
Phillip C. Ward, Director

Mailing date: \_\_\_\_\_