

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-10677, Washington County) CHANGE IN POINT OF DIVERSION
)

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

MARK UNGER
33640 SW UNGER RD
CORNELIUS, OR 97113

Findings of Fact

Background

1. On July 18, 2008, Mark Unger filed an application to change the point of diversion under Certificate 45713. The Department assigned the application number T-10677.
2. The portion of the right to be transferred is as follows:

Certificate: 45713 in the name of CHRISTENSEN BROTHERS (perfected under Permit S-13696)

Use: IRRIGATION of 34.8 ACRES

Priority Date: MAY 12, 1939

Rate: 0.43 CUBIC FOOT PER SECOND

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

Source: TUALATIN RIVER, tributary to WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	2 W	WM	5	NE NW	NOT SPECIFIED ON CERTIFICATE

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.

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
2 S	2 W	WM	5	NW NE	2		2.9
2 S	2 W	WM	5	SW NE		42	10.4
2 S	2 W	WM	5	NE NW			10.2
2 S	2 W	WM	5	SE NW	3		8.7
2 S	2 W	WM	5	SE NW		42	2.6

3. Application T-10677 proposes to move the authorized point of diversion approximately 0.12 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
2 S	2 W	WM	5	NW NE	2	775 FEET NORTH AND 440 FEET EAST FROM THE NW CORNER OF DLC 42

4. Notice of the application for transfer was published on August 12, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
5. On March 17, 2009, the Department sent a letter to the applicant and applicant's CWRE to notify them of the deficiencies in the map and application. The Department requested that the deficiencies be resolved by April 24, 2009.
6. On April 20, 2009, the applicant's representative, Stuntzner Engineering & Forestry, LLC, submitted a revised transfer Supplemental Form A, Form B and map, however the acreage listed in the NE NW of Section 5 in the Supplemental Forms A and B did not match the acreage shown on the map. It was determined that the acreage shown in the map was correct, so the draft preliminary determination was drafted based on the map information.
7. On May 27, 2009, the Department sent a draft Preliminary Determination and cover letter to the applicant, as well as to the applicant's representative and CWRE. The draft Preliminary Determination cover letter identified deficiencies that needed to be resolved and indicated that the transfer application may be rejected unless by June 15, 2009, the applicants removed the deficiencies or requested to withdraw the application.
8. On July 13, 2009, the applicant's CWRE submitted a revised transfer application map which corrected the deficiencies identified in the draft preliminary determination cover letter, and on July 22, 2009 submitted land ownership information documenting that the applicant is authorized to pursue the transfer.
9. On July 30, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10677 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 August 11, 2009, pursuant to ORS 540.520 and OAR 690-380-4020. No protests 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 point of diversion to prevent fish from entering

the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

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

11. 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.
12. 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-10677.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.

Conclusions of Law

The change in point of diversion proposed in application T-10677 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in point of diversion proposed in application T-10677 are 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 45713 and any related decree.
3. Water right certificate 45713 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.
5. Water use measurement conditions:
 - a. Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of diversion.
 - b. The water user shall maintain the meters or measuring devices in good working order.
 - c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.

6. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the 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 device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the 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 device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.
7. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2010**. 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.
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 15th day of September 2009.


Phillip C. Ward, Director *PCW*

Mailing date: SEP 21 2009