

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

In the Matter of Transfer Application )  
T-9868, Clackamas, County ) FINAL ORDER APPROVING  
) CHANGES IN PLACE OF USE AND  
) POINT OF DIVERSION TO REFLECT  
) HISTORIC 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.

**Applicants**

ERIC AND LYNDA STROM  
39391 S MERIDIAN RD  
HUBBARD, OREGON 97032

**Findings of Fact**

**Background**

1. On February 17, 2005, Eric and Lynda Strom filed a transfer application for a change in place of use under Certificates 16448 and 64511. The Department assigned the application number T-9868.
2. On February 16, 2007, the applicant submitted a revised application and a revised map, adding a change in point of diversion to include historic use under Certificate 16648.
3. On August 5, 2009, Oregon Department of Fish and Wildlife submitted a revised fish and wildlife comment form to reflect the amendment to the transfer.
4. The portion of the first right to be transferred is as follows:  
**Certificate:** 16648 in the name of Floyd Lenhardt (perfected under Permit S-13550)  
**Use:** IRRIGATION of 25.2 ACRES  
**Priority Date:** APRIL 4, 1939  
**Rate:** 0.315 CUBIC FOOT PER SECOND

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.

**Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, 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:** PUDDING RIVER, tributary to the MOLALLA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
4 S	1 W	WM	36	SW NE

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	1 W	WM	36	NE NE	9.4
4 S	1 W	WM	36	SW NE	14.6
4 S	1 W	WM	36	SE NE	1.2
Total Acres					25.2

5. Transfer Application T-9868 proposes to change to authorized point of diversion to reflect historic use and to accompany a change in place of use. The historical POD is approximately 1570 feet downstream from the authorized POD and is located at:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
4 S	1 W	WM	36	NW NE	POD # 1: 210 FEET SOUTH AND 190 FEET EAST FROM N1/4 CORNER OF SECTION 36

6. Transfer Application T-9868 also proposes to change the place of use with the place of use described in Finding of Fact #7, also known as "a flip flop." The proposed place of use is to be located at:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
4 S	1 W	WM	25	NW SE	3		0.2
4 S	1 W	WM	25	SW SE	4		14.8
4 S	1 W	WM	36	NE NW		53	2.6
4 S	1 W	WM	36	SE NW		53	7.6
Total Acres:							25.2

7. The portion of the second right to be transferred is as follows:

**Certificate:** 64511 in the name of Lynda E. Strom (perfected under Permit S-43868)

**Use:** IRRIGATION of 25.2 ACRES

**Priority Date:** JANUARY 23, 1979

**Rate:** 0.315 CUBIC FOOT PER SECOND

**Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for

each acre irrigated, 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:** PUDDING RIVER, tributary to the MOLALLA RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
4 S	1 W	WM	36	NW NE	POD #1; 210 FEET SOUTH AND 190 FEET EAST FROM N1/4 CORNER OF SECTION 36
4 S	1 W	WM	36	SW NE	POD #2; 1780 FEET SOUTH AND 550 FEET EAST FROM N1/4 CORNER OF SECTION 36

**Authorized Place of Use:**

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
4 S	1 W	WM	25	NW SE	3		0.2
4 S	1 W	WM	25	SW SE	4		14.8
4 S	1 W	WM	36	NE NW		53	2.6
4 S	1 W	WM	36	SE NW		53	7.6
Total Acres:							25.2

8. Application T-9868 proposes to change the place of with the place of use described in Finding of Fact #4, also known as a “flip flop.” The proposed place of use is to be located at:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	1 W	WM	36	NE NE	9.4
4 S	1 W	WM	36	SW NE	14.6
4 S	1 W	WM	36	SE NE	1.2
Total Acres:					25.2

9. Notice of the application for transfer was published on March 15, 2005, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
10. On November 3, 2009, the Department mailed a copy of the document proposing to approve Transfer Application T- 9868 to the applicant. On November 5, 2009 the applicant reviewed the draft document and approved the items addressed. The applicant provided the necessary information to demonstrate that they are authorized to pursue the transfer.
11. On December 11, 2009, the Department issued a Preliminary Determination proposing to approve Transfer T-9868 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 December 15, 2009, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
12. 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)]***

13. Pursuant to OAR 690-380-2120(2)(a), evidence has been submitted that the actual, current point of diversion for the water right in question, as described in Finding of Fact #5, has been in use for more than 10 years.
14. Pursuant to OAR 690-380-2120(2)(c), the Watermaster provided a statement that to his knowledge there has been no complaint of injury due to the use of water at the actual, current point of diversion, prior to the transfer request.
15. Pursuant to OAR 690-380-2120(3), the Department provided the applicant a list of the affected water rights and a copy of the notice to be provided to each affected water right holder. The department mailed the notice of the proposed transfer to all affected water right holders. No comments were received in response to the notice.
16. Water has been used within the last five years according to the terms and conditions of the rights. There is no evidence available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
17. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
18. The proposed changes would not result in enlargement of the rights.
19. The proposed changes would not result in injury to other water rights.

**Conclusions of Law**

The changes in place of use and point of diversion to reflect historic use proposed in application T-9868 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

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

1. The changes proposed in T-9868 are approved and the historic point of diversion change described in Finding of Fact #5 is effective immediately.
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 Certificates 16648, 64511 and any related decree.
3. Water right certificates 16448 and 64511 are cancelled. New certificates shall be issued to describe the portion not modified by this order.

4. The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.
5. The former place of use of the transferred rights shall no longer receive water under the original rights.
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. Prior to October 1, 2011, 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.
8. The approved change in place of use 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 applicant to the Department within one year after the deadline for completion of the change in place of use and full beneficial use of the water.
9. When satisfactory proof of the completed change in place of use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 15<sup>th</sup> day of January 2010.

  
Phillip C. Ward, Director

Mailing date: JAN 22 2010