

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

In the Matter of Transfer Application T-10250, Jackson County))))))	FINAL ORDER APPROVING A CHANGE IN PLACE OF USE AND CHARACTER OF USE AND PARTIAL CANCELLATION OF A WATER RIGHT
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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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

WILLIAM PARKER, SYLVIA VOORHIES, AND NANCY HALSELL
PO BOX 1281
MEDFORD, OR 97501

Findings of Fact

Background

1. On October 13, 2006, William Parker, Sylvia Voorhies, and Nancy Halsell filed an application to change the use and place of use under Certificate 29610. Herb Farber is the agent authorized to act on the applicant's behalf. Additional information submitted with the application requested the season of industrial use be extended to year round, with the rate adjusted to 0.495 cubic foot per second (cfs). The additional information also requested that the total diversion rate of 1.2 cubic foot per second not be reduced in conjunction with the cancellation of the acreage identified in the affidavits. The Department assigned the application number T-10250.

<p>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.</p>

2. The applicant initially proposed to transfer portions of both the primary and supplemental irrigation rights, but amended the application to delete reference to the supplemental rights. On January 25, 2007 and March 29, 2007, the applicant submitted revised maps, a revised application, and cancellation affidavits which resulted in identifying 75.95 acres for transfer and cancellation of 2.3 acres of primary irrigation rights and 69.7 acres of supplemental irrigation rights. Also on January 25, 2007, the applicant submitted a request to revise the initial adjusted rate requested to 0.443 cubic foot per second for year round industrial use.
3. The portion of the right to be transferred is as follows:

Certificate: 29610 in the name of T.R. PARKER (perfected under Permit S-19282)
Use: PRIMARY IRRIGATION of 75.95 ACRES
Priority Date: FEBRUARY 27, 1950
Rate: 0.77 CUBIC FOOT PER SECOND (cfs) during the irrigation season from April 2 to October 31 of each year
Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 4.5 acre feet per acre per year (total of 342.0 AF)
Source: BEAR CREEK, tributary to ROGUE RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC
36 S	2 W	WM	20	SW NE	49 (Kahler)
36 S	2 W	WM	20	SE NW	49 (Kahler)

Authorized Place of Use:

PRIMARY IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
36 S	2 W	WM	20	SW NE		49	7.00
36 S	2 W	WM	20	SW NW		49	0.15
36 S	2 W	WM	20	SW NW	9		2.40
36 S	2 W	WM	20	SE NW		49	36.80
36 S	2 W	WM	20	NE SW	7		29.60

4. Certificate 29610 describes the location of the point of diversion by ¼ ¼ section and DLC only, however information is available from the transfer application and map and Final Proof Survey Map indicating that the points of diversion are located more specifically as follows:

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
36S	2W	WM	20	SW/NE	49 (Kahler)	1550 FEET SOUTH AND 3440 FEET EAST FROM THE NW CORNER OF SECTION 20
36S	2W	WM	20	SE/NW	49 (Kahler)	1490 FEET SOUTH AND 1620 FEET EAST FROM THE NW CORNER OF SECTION 20

5. Application T-10250 proposes to change the place of use of the right to:

INDUSTRIAL USE							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
36 S	2 W	WM	20	SW NE		49	INDUSTRIAL
36 S	2 W	WM	20	SW NW		49	INDUSTRIAL
36 S	2 W	WM	20	SW NW	9		INDUSTRIAL
36 S	2 W	WM	20	SE NW		49	INDUSTRIAL
36 S	2 W	WM	20	NE SW	7		INDUSTRIAL
36 S	2 W	WM	20	NE SW		49	INDUSTRIAL
36 S	2 W	WM	20	NW SW			INDUSTRIAL
36 S	2 W	WM	20	NW SE		49	INDUSTRIAL
36 S	2 W	WM	20	NW SE	3		INDUSTRIAL
36 S	2 W	WM	20	SW SE	5		INDUSTRIAL

6. Application T-10250 proposes to change the character of use to INDUSTRIAL USE and to extend the season of use to year round with a rate of diversion of 0.443 cfs.
7. The requested rate of diversion, if exercised constantly year round (320.3 acre-feet), will not exceed the face value of the authorized annual duty.
8. Notice of the application for transfer was published on October 24, 2006, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
9. The Oregon Department of Fish and Wildlife has determined that a fish screening and/or bypass device is not necessary to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted.
10. The transfer application did not include a map meeting current mapping standards, or standards which were in effect at the time the application was filed, being OAR 690-380-3100(e)(A through E). Specifically, written or E-mail approval of another standard engineering scale was not requested in advance. However, on January 11, 2007, an E-mail request for approval of the use of 1 inch equals 500 feet was approved by the Department.
11. On May 16, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10250 to the applicants. The draft Preliminary Determination set forth a deadline of June 15, 2007, for the applicants to respond. The applicants 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.
12. On June 8, 2007, the Department issued a Preliminary Determination proposing to approve Transfer T-10250 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on June 12, 2007, and in the Medford Mail Tribune newspaper on June 21, 28 and July 5, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

13. By law, the land use associated with this water use must be in compliance with statewide land use goals and any local acknowledged land-use plan. Approval of the water right transfer does not exempt the applicant from obtaining any approvals or permits that may be required. Land uses to be served by proposed water uses involve discretionary land use approvals from Jackson County. Approval has been obtained under Section 4.4.8(A) of the Jackson County Land Development Ordinance. Section (A)(4) of Section III in Jackson County Case File #98-2-SPRA/98-1-CUP (Water Quality) as it relates to aggregate removal was conditionally approved July 6, 1998.

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

14. 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.
15. 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-10250.
16. The proposed change, as conditioned, would not result in enlargement of the right.
17. The proposed change, as conditioned, would not result in injury to other water rights.

Partial Cancellation of a Water Right

18. Affidavits for partial cancellation of a water right were received from William Parker, Sylvia Voorhies and Nancy Halsell as follows:

Certificate: 29610 in the name of T.R. PARKER (perfected under Permit S-19282)
Use: PRIMARY IRRIGATION of 2.3 ACRES and SUPPLEMENTAL IRRIGATION of 69.7 ACRES
Priority Date: FEBRUARY 27, 1950
Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 4.5 acre feet per acre per year
Source: BEAR CREEK, tributary to ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC
36 S	2 W	WM	20	SW NE	49 (Kahler)
36 S	2 W	WM	20	SE NW	49 (Kahler)

Authorized Place of Use to be Cancelled:

PRIMARY IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
36 S	2 W	WM	20	NW NE		49	1.2
36 S	2 W	WM	20	SW SE	5		1.1

SUPPLEMENTAL IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
36 S	2 W	WM	20	SW NE		49	30.0
36 S	2 W	WM	20	NW SE	3		4.3
36 S	2 W	WM	20	NW SE		49	35.4

Note: No quantity of water is being cancelled in connection with these acres, since the instantaneous rate allowed in the certificate is less than the nominal per-acre rate of 1/80 cfs, even after the cancellation of these acres.

Conclusions of Law

The changes in use and place of use, to include season of use, proposed in application T-10250 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned portion of the right should be cancelled.

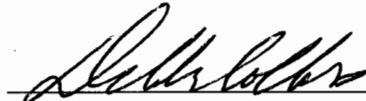
Now, therefore, it is ORDERED:

1. The changes in place of use and character of use, to include season of use, proposed in application T-10250 are approved. The portion of the right that has been abandoned is cancelled.
2. Water right certificate 29610 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation.
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 29610 and any related decree, with the exception that the use may be exercised year round at the maximum flow rate of 0.443 cfs, thereby ensuring that the total annual volume of water for industrial use does not exceed 320.3 acre-feet.
4. The former place of use of the transferred or cancelled portion of the right that is not within the new industrial place of use shall no longer receive water under the right.
5. Prior to diverting water, the water user shall install 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. The water user shall maintain and operate the measuring device as required by the Department.
6. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2008**. 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.

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

Dated at Salem, Oregon this 17th day of August 2007.



Phillip C. Ward, Director

Mailing date: AUG 22 2007