

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-8768, Washington County) CHANGE IN PLACE 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.

Applicant

Edward, Henry, Donald & Gary Roshak
13794 SW Roy Rogers Rd
Sherwood, OR 97140

Receiving Landowner

Steven and Linda Price
13921 SW Roy Rogers Rd
Sherwood, OR 97140

Findings of Fact

Background

1. On April 24, 2001, EDWARD, HENRY, DONALD AND GARY ROSHAK, filed a transfer application to change the place of use under Ground Water Registration Application GR-366 (Certificate of Registration GR-352), Certificate 30332 (now superseded by Certificate 73179), Certificate 73697, and Permit S-52603 (now confirmed by Certificate 80706). The Department assigned the application number T-8768.
2. The right under Certificate 73697 is for storage of water in Blueberry Hill Reservoir. No change is proposed to the storage of water.
3. On January 24, 2005, the transfer application was amended to propose changes only to the rights under Certificates 73179 and 80706.
4. On April 12, 2010, the transfer application was amended to remove 0.44 acre under Certificate 73179.
5. The portion of the first right to be transferred is as follows:

Certificate: 73179 in the names of EDWARD, HENRY AND THEODORE ROSHAK
 (perfected under Permit G-488)
Use: IRRIGATION OF 1.82 ACRES

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.

Priority Date: FEBRUARY 7, 1957
Rate: 0.023 CUBIC FOOT PER SECOND
Limit/Duty: 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: A WELL in the TUALATIN RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	1 W	WM	6	SE SE	NORTH 63 DEGREES 54 MINUTES WEST, 1200.8 FEET FROM THE SE CORNER OF SECTION 6

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	1 W	WM	7	NE NE	1.82

6. Transfer Application T-8768 proposes to change the place of use of a portion of the right under Certificate 73179 to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	1 W	WM	6	SW SE	1.82

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

Certificate: 80706 in the name of EDWARD, HENRY, DON AND GARY ROSHAK (perfected under Permit S-52603)
Use: AGRICULTURAL USE AND SUPPLEMENTAL IRRIGATION ON 1.82 ACRES
Priority Date: NOVEMBER 30, 1994
Rate: 0.02 CUBIC FEET PER SECOND FROM AN UNNAMED STREAM AND 0.4 ACRE FOOT FROM BLUEBERRY RESERVOIR
Limit/Duty: ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre feet per acre during the irrigation season of each year from direct flow and storage.
Period of Use: Water may be appropriated from live flow for irrigation during the period March 1 through April 30 and for agricultural use during the period December 1 through April 30 of each year. Stored water may be used at any time throughout the year.
Source: AN UNNAMED STREAM AND BLUEBERRY RESERVOIR, constructed under Application R-75064, Certificate 69388, tributaries of the TUALATIN RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	1 W	WM	6	SE SE	800 FEET NORTH AND 625 FEET WEST FROM THE SE CORNER OF SECTION 6

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION AND AGRICULTURAL USE					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	1 W	WM	7	NE NE	1.82

8. Transfer Application T-8768 proposes to change the place of use of the transferred portion of the right under Certificate 80706 to:

SUPPLEMENTAL IRRIGATION AND AGRICULTURAL USE					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	1 W	WM	6	SW SE	1.82

9. Notice of the application for transfer was published on June 7, 2001, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
10. On April 14, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-8768 to the applicants. The draft Preliminary Determination set forth a deadline of May 14, 2010, 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 applicants are authorized to pursue the transfer.
11. On August 18, 2010, the Department issued a Preliminary Determination proposing to approve Transfer T-8768 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 August 24, 2010, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

12. Water has been used within the five years prior to submittal of the transfer according to the terms and conditions of the rights, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
13. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
14. The proposed change would not result in enlargement of the rights.
15. The proposed change would not result in injury to other water rights.

Conclusions of Law

The change in place of use proposed in Transfer Application T-8768 is consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in place of use proposed in Transfer Application T-8768 is 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 Certificates 73179 and 80706 and any related decree.
3. Water right certificates 73179 and 80706 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.
4. The water user shall maintain a 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 and shall be installed under the general supervision of the Department.
5. The former place of use shall no longer receive water as part of these rights.
6. The approved changes 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 Right 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, new certificates confirming the rights transferred will be issued.

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


Phillip C. Ward, Director

Mailing Date: SEP 27 2010