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

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|---|---|---|
| In the Matter of Transfer Application T-10516, Douglas County | ) ) | FINAL ORDER APPROVING A 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

OREGON DEPARTMENT OF FORESTRY
1758 NE AIRPORT ROAD
ROSEBURG, OR 97470

## Findings of Fact

### *Background*

1. On January 22, 2008, Oregon Department of Forestry filed an application to change the point of diversion under Certificate 49769. The Department assigned the application number T-10516.

2. The right to be transferred is as follows:

   **Certificate:** 49769 in the name of OREGON DEPARTMENT OF FORESTRY (perfected under Permit S-22157)
   **Use:** IRRIGATION of 155.2 ACRES
   **Priority Date:** FEBRUARY 27, 1953
   **Rate:** 1.94 CUBIC FEET PER SECOND
   **Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year
   **Source:** UMPQUA RIVER, tributary to PACIFIC OCEAN

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 Points of Diversion:**

| Twp | Rng | Mer | Sec | Q-Q | DLC | Survey Coordinates |
|---|---|---|---|---|---|---|
| 23 S | 8 W | WM | 2 | SW SE | 38 | NO. 3: 320 FEET NORTH AND 2160 FEET WEST FROM THE SE CORNER OF SECTION 2 |
| 23 S | 8 W | WM | 11 | NE NE | 38 | NO. 1: 440 FEET SOUTH AND 40 FEET WEST FROM THE SE CORNER OF SECTION 2 |
| 23 S | 8 W | WM | 11 | NE NE | 38 | NO. 2: 250 FEET SOUTH AND 480 FEET WEST FROM THE SE CORNER OF SECTION 2 |

**Authorized Place of Use:**

| IRRIGATION | | | | | | |
|---|---|---|---|---|---|---|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 23 S | 8 W | WM | 2 | SW NE | 38 | 2.7 |
| 23 S | 8 W | WM | 2 | SW NE | 38 | 0.8 |
| 23 S | 8 W | WM | 2 | NE NW | 38 | 15.6 |
| 23 S | 8 W | WM | 2 | SE NW | 38 | 34.7 |
| 23 S | 8 W | WM | 2 | SE NW | 38 | 0.4 |
| 23 S | 8 W | WM | 2 | NE SW | 38 | 17.2 |
| 23 S | 8 W | WM | 2 | NE SW | 38 | 13.9 |
| 23 S | 8 W | WM | 2 | SE SW | 38 | 2.4 |
| 23 S | 8 W | WM | 2 | NE SE | 38 | 4.0 |
| 23 S | 8 W | WM | 2 | NW SE | 38 | 31.0 |
| 23 S | 8 W | WM | 2 | SW SE | 38 | 25.4 |
| 23 S | 8 W | WM | 2 | SE SE | 38 | 7.1 |

3. Application T-10516 proposes to move the authorized point of diversion to the original point of diversion described in Certificate 49769 as:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Survey Coordinates |
|---|---|---|---|---|---|---|
| 23 S | 8 W | WM | 2 | SW NW | 38 | SOUTH 43 DEGREES, 30 MINUTES WEST, 2050 FEET FROM THE N¼ CORNER OF SECTION 2 |

4. Notice of the application for transfer was published on January 29, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

5. On April 11, 2008, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10516 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of May 15, 2008, for the applicant to respond. The applicant 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.

6. On July 28, 2008, the Department issued a Preliminary Determination proposing to approve Transfer T-10516 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 5, 2008, and in the Roseburg News-Review newspaper on August 10, 17 and 24, 2008, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

7. 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.

8. Russell and Lois Four ELL Trust, 2950 Wells Rd., Elkton, OR 97436 are designated as the receiving landowners.

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

9. 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.

10. 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-10516.

11. The proposed change would not result in enlargement of the right.

12. 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-10516 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-10516 are approved.

2. Water right certificate 49769 is cancelled.

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 49769 and any related decree.

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(s) of diversion.

5. 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.

6. 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.

7. When required by the Department, the water user shall install, maintain and operate a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.

8. 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.

9. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 31ST day of October 2008.

Phillip C. Ward, Director

*Mailing date:* NOV 03 2008