

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-10268, Columbia County)	PROPOSING APPROVAL OF A
)	CHANGE FROM A SURFACE WATER
)	POINT OF DIVERSION TO A GROUND
)	WATER POINT OF APPROPRIATION
)	AND A 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

SCAPPOOSE SAND AND GRAVEL
Attn: SCOTT PARKER
33485 EAST CROWN ZELLERBACH RD.
SCAPPOOSE, OR 97056

Agent

HANER, ROSS & SPORSEEN, INC.
Attn: J. H. GREENMAN
15 SE 82ND DR.
GLADSTONE, OR 97027

Findings of Fact

Background

1. On November 17, 2006, Scott Parker, on behalf of Scappoose Sand and Gravel, filed an application to change the point of diversion to reflect historic use, change the place of use and to change from a surface water point of diversion to a hydraulically connected ground water point of appropriation under Certificate 33149. The Department assigned the application number T-10268.
2. On March 14, 2007 the applicant submitted an amendment to the application and map removing the request for recognition of the historically used point of appropriation, as it was determined that a change from a surface water point of diversion to a ground water point of appropriation cannot be accomplished under ORS 690-380-2120, the rules for changing a point of diversion or appropriation to reflect historical use.
3. The portion of the right to be transferred is as follows:
Certificate: 33149 in the name of CHARLES T. PARKER CONSTRUCTION COMPANY (perfected under Permit S-28426)
Use: WASHING GRAVEL
Priority Date: JULY 31, 1962

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.

Rate: 1.0 CUBIC FOOT PER SECOND (cfs)

Source: SOUTH SCAPPOOSE CREEK, tributary to COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
3 N	2 W	WM	1	SE SW	T. LAMBERSON DLC 42	589.5 FEET NORTH AND 2466.2 FEET EAST FROM THE SW CORNER OF SECTION 1

Authorized Place of Use:

WASHING GRAVEL						
Twp	Rng	Mer	Sec	Q-Q	DLC	
3 N	2 W	WM	12	NW NE	T. LAMBERSON DLC 42	

4. Transfer Application T-10268 proposes to move the authorized point of appropriation approximately 900 feet from the existing point of diversion to a hydraulically connected well located at:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
3 N	2 W	WM	1	SW SE	T. LAMBERSON DLC 42	126.6 FEET NORTH AND 4626.7 FEET EAST FROM THE SW CORNER OF T. LAMBERSON DLC 42

5. Transfer Application T-10268 also proposes to change the place of use of the right to:

WASHING GRAVEL						
Twp	Rng	Mer	Sec	Q-Q	DLC	
3 N	2 W	WM	1	NW SE	T. LAMBERSON DLC 42	
3 N	2 W	WM	1	SW SE	T. LAMBERSON DLC 42	

6. Notice of the application for transfer was published on November 28, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. 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.
8. On June 25, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10268 to the applicants. The cover letter that accompanied the draft Preliminary Determination set forth a deadline of July 25, 2007, for the applicants to respond with comments. The applicant did not respond and had previously provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
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 Transfer Application T-10268.
11. The proposed well meets the requirements of ORS 540.531. Pumping of the well will cause a greater than 50 percent stream depletion in less than 10 days, in accordance with OAR 690-380-2130(2)(c) and (11)(b).
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The change in place of use and the change from a surface water point of diversion to a ground water point of appropriation proposed in Transfer Application T-10268 appear to be consistent with the requirements of ORS 540.505 to 540.580, OAR 690-380-5000 and 690-380-2130. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

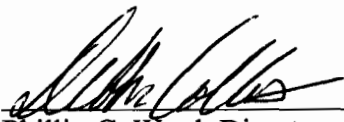
If Transfer Application T-10268 is approved, the final order will include the following:

1. *The changes in place of use and the change from a surface water point of diversion to a ground water point of appropriation proposed in application T-10268 are approved.*
2. *Water right certificate 33149 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
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 33149 and any related decree.*
4. *The well from which water is taken under the right shall be constructed so that the use of the well will affect the surface water source similarly to the use of the original authorized point of diversion.*
5. *The use of water under this right shall be subject to regulation consistent with other water rights from the surface water source and to all other applicable conditions and restrictions that existed at the original point of diversion.*
6. *If, within five years after approval of the transfer, the Department finds that the transfer results in substantial or undue interference with an existing ground water right due to use of the pump, that would not have occurred in the absence of the transfer, the new point of appropriation shall be subordinate to the existing right injured by the transfer.*
7. *The original point of diversion of surface water shall not be retained as an additional or supplemental point of diversion under the transferred portion of the right. However, if within five years after approval of the transfer, the Department receives a transfer*

application to return to the last authorized surface water point of diversion, the application shall be approved.

8. *The quantity of water diverted at the new point of diversion (well), together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.*
9. *The former place of use of the transferred rights shall no longer receive water under the right.*
10. *When required by the Department, the water user shall install, maintain and operate an in-line flow meter 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.*
11. *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.*
12. *When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.*

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


Phillip C. Ward, Director

This Preliminary Determination was prepared by Susan Douthit. If you have questions about the information in this document, you may reach me at 503-986-0858 or Susan.M.Douthit@wrdd.state.or.us.

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Salem, OR 97301-1271.