

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-7281, Polk County) PROPOSING APPROVAL OF A
) CHANGE IN POINT OF DIVERSION
) 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

HUT DEVELOPMENT CORPORATION
1620 OXFORD STREET SE
SALEM, OR 97302

Receiving Landowners

ARTHUR SPADA TRUST
ARTHUR & MARY SPADA, TRUSTEES
7251 ST. PAUL HWY.
ST. PAUL, OR 97137

Findings of Fact

Background

1. On January 5, 1995, Hut Development Corporation filed an application to change the place of use and character of use under Certificate 54878. The Department assigned the application number T-7281.
2. On May 25, 2007, the applicant's agent (Jeanne Boatwright) submitted an amended transfer application and maps for Transfer T-7281. The new application and maps revised the location of the proposed place of use, added a change in point of diversion and removed the character of use change.
3. The right to be transferred is as follows:
Certificate: 54878 in the name of GORDON DAGUE (perfected under Permit S-44460)
Use: IRRIGATION of 25.6 ACRES
Priority Date: DECEMBER 18, 1978
Rate: 0.32 CUBIC FOOT PER SECOND (CFS)
Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre feet per acre per year
Source: WILLAMETTE RIVER, tributary to COLUMBIA RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Survey Coordinates |
|-----|-----|-----|-----|-------|-----|---|
| 7 S | 3 W | WM | 28 | SW NW | 51 | 290 FEET NORTH AND 960 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 28 |

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.

Authorized Place of Use:

| IRRIGATION | | | | | | | |
|---------------|-----|-----|-----|-------|------|-----|-------------|
| Twp | Rng | Mer | Sec | Q-Q | GLot | DLC | Acres |
| 7 S | 3 W | WM | 28 | SW NW | | 51 | 11.0 |
| 7 S | 3 W | WM | 28 | NW SW | | 51 | 2.6 |
| 7 S | 3 W | WM | 29 | SE NE | 4 | | 0.1 |
| 7 S | 3 W | WM | 29 | SE NE | | 51 | 1.2 |
| 7 S | 3 W | WM | 29 | NE SE | | 51 | 4.0 |
| 7 S | 3 W | WM | 29 | NE SE | 1 | | 6.7 |
| TOTAL: | | | | | | | 25.6 |

4. Application T-7281 proposes to move the authorized point of diversion approximately 16.0 miles downstream to:

| Twp | Rng | Mer | Sec | Q-Q | GLot | Survey Coordinates |
|-----|-----|-----|-----|-------|------|---|
| 5 S | 3 W | WM | 25 | SW NW | 6 | SOUTH 33 DEGREES 30 MINUTES EAST 1860.2 FEET FROM THE NW CORNER OF SECTION 25 |

5. Application T-7281 also proposes to change the place of use of the right to:

| IRRIGATION | | | | | | | |
|---------------|-----|-----|-----|-------|------|-------|-------------|
| Twp | Rng | Mer | Sec | Q-Q | GLot | Acres | |
| 5 S | 3 W | WM | 23 | NE SW | | 0.2 | |
| 5 S | 3 W | WM | 23 | SE SW | 1 | 11.8 | |
| 5 S | 3 W | WM | 23 | SW SE | | 1.6 | |
| 5 S | 3 W | WM | 23 | SE SE | | 10.3 | |
| 5 S | 3 W | WM | 25 | NE NW | 7 | 1.0 | |
| 5 S | 3 W | WM | 26 | NE NW | 2 | 0.7 | |
| TOTAL: | | | | | | | 25.6 |

6. Notice of the revised application for transfer was published on June 19, 2007, pursuant to OAR 690-380-4000. No comments 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 currently equipped with an appropriate fish screening and/or by-pass device.
8. On July 23, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-7281 to the applicant and the receiving landowners. The draft Preliminary Determination set forth a deadline of August 22, 2007, for the applicant and the receiving landowners to respond. The applicant and the receiving landowners requested that the Department proceed with issuance of a Preliminary Determination.

9. The Department determined that a portion of the land to which Certificate 54878 is proposed to move is already covered by portions of three ground water registrations for irrigation use. The overlapping portions are as follows:

| Ground Water Registration Application No. | Certificate of Registration No. | Twp | Rng | Mer | Sec | Q-Q | Acres |
|---|---------------------------------|-----|-----|-----|-----|-------|-------|
| GR-1540 | GR-1483 | 5 S | 3 W | WM | 23 | SE SE | 10.3 |
| GR-3156 | GR-2962 | 5 S | 3 W | WM | 23 | SW SE | 1.6 |
| GR-3567 | GR-3276 | 5 S | 3 W | WM | 23 | NE SW | 0.2 |
| GR-3567 | GR-3276 | 5 S | 3 W | WM | 23 | SE SW | 11.8 |

10. Upon the issuance of a final order approving Transfer T-7281, the portions of Certificate 54878 and the certificates of registration that are appurtenant to the same place of use, as described in Finding #9, will become “layered” as defined by OAR 690-380-0100(4).
11. The Department notified the applicant and receiving landowners in the July 23, 2007, draft Preliminary Determination that, in accordance with OAR 690-380-2240, any future changes in place of use or character of use to the right evidenced by Certificate 54878 may only be approved if concurrent changes to the “layered” portion of the ground water registrations (described in Finding #9) are also recognized, or if affidavits of voluntary cancellation for the “layered” portion of the ground water registrations are submitted.

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

12. Water was used within the five-year period prior to submittal of Application T-7281 (January 5, 1995) according to the terms and conditions of the rights, and there is no information in the record 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 right were present within the five-year period prior to submittal of Application T-7281 (January 5, 1995).
14. The proposed change would not result in enlargement of the right.
15. The proposed change would not result in injury to other water rights.

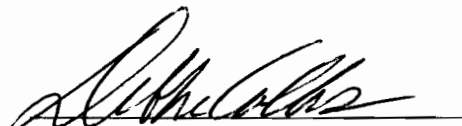
Determination and Proposed Action

The changes in point of diversion and place of use proposed in application T-7281 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If application T-7281 is approved, the final order will include the following:

1. *The changes in point of diversion and place of use proposed in application T-7281 are approved.*
2. *Water right certificate 54878 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 54878 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 of diversion.*
5. *The former place of use of the transferred right shall no longer receive water under the right.*
6. *The water user shall maintain and operate a fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.*
7. *When required by the Department, the water user shall install, maintain and operate 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.*
8. *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.*
9. *When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 28th day of August 2007.


Phillip C. Ward, Director

This Preliminary Determination was prepared by Lisa Jaramillo. If you have any questions about the information in this document, you may reach me at 503-986-0880 or Lisa.J.Jaramillo@wrdd.state.or.us.

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.