

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-10468, Clackamas County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF DIVERSION
)	AND OF A RE-DESCRIPTION OF
)	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

SAH-HAH-LEE GOLF COURSE
17104 SE 130TH AVENUE
CLACKAMAS OR 97015

Findings of Fact

Background

1. On October 3, 2007, Sah-Hah-Lee Golf Course filed an application to change the point of diversion to reflect historical use, and to re-describe the place of use under Certificate 14307. The Department assigned the application number T-10468.
2. On October 26, 2007, Sah-Hah-Lee Golf Course amended the application to clarify that the “historic point of diversion” should be processed as a proposed point of diversion under OAR 690-380 rules.
3. The right to be transferred is as follows:

Certificate: 14307 in the name of FRANK HABERLACH; ESTATE (perfected under Permit S-14462)

Source: CLACKAMAS RIVER, tributary to WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
2 S	2 E	WM	14	SW NE	52	None specified in Certificate 14307

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 (As listed on the Certificate)						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
2 S	2 E	WM	14	SW NE	52	15.3
2 S	2 E	WM	14	SE NW	52	7.6
2 S	2 E	WM	14	NE SW	52	10.5
2 S	2 E	WM	14	NW SE	52	6.0

4. Certificate 14307 describes the authorized place of use as 39.4 acres in the SW NE, SE NW, NE SW, and NW SE quarter-quarter sections of Section 14, Township 2 SOUTH, Range 2 EAST, WILLAMETTE Meridian, CLACKAMAS County, Oregon.
- a. Upon examination of the Final Proof Survey performed on May 26, 1941, under Permit S-14462, Department staff observed that there had been a mapping error, being that the re-entrant corner for Capps DLC 52 had been located farther north than it should have been. This caused the place of use to appear to be too far south in relation to the Public Land Survey quarter-quarter divisions. This transfer provides an opportunity to make corrections based upon the Department's notes on the Survey.
- b. The following table lists the place of use as described in existing certificate 14307 and a proposed re-description based on the above findings:

Original Description of Place of Use		Proposed Re-Description of Place of Use	
$\frac{1}{4}$ - $\frac{1}{4}$	Acres	$\frac{1}{4}$ - $\frac{1}{4}$	Acres
		NW NE	0.5
SW NE	15.3	SW NE	18.5
SE NW	7.6	SE NW	13.0
NE SW	10.5	NE SW	5.0
NW SE	6.0	NW SE	2.4
TOTAL	39.4	TOTAL	39.4

5. Application T-10468 proposes to move the authorized point of diversion approximately 0.5 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
2 S	2 E	WM	14	NE SW	52	1540 FEET SOUTH AND 330 FEET EAST FROM THE RE-ENTRANT CORNER OF CAPPS DLC 52

6. Notice of the application for transfer was published on October 9, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

7. On December 26, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10296 to the applicant. The draft Preliminary Determination set forth a deadline of January 31, 2007, 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.
8. 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 that meets current state criteria for fish protection.

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 submission of Application T-10468.
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.

Determination and Proposed Action

The change in point of diversion proposed in application T-10468 appears 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.

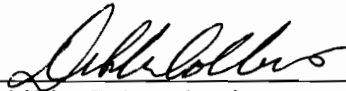
If application T-10468 is approved, the final order will include the following:

1. *The change in point of diversion proposed in application T-10468 is approved.*
2. *Water right certificate 14307 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 14307 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. *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 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. *The approved changes shall be completed and full beneficial use of the water shall be made on or before October 1, 2009. 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.*
8. *When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued, consistent with the re-description of the place of use in Finding of Fact #4.*

Dated at Salem, Oregon this 28th day of January 2008.


Phillip C. Ward, Director

PN

This Preliminary Determination was prepared by a Reimbursement Authority contractor. If you have questions about the information in this document, you may reach Dorothy Pedersen at 503-986-0890 or Dorothy.I.Pedersen@wrд.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.