

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-9656, Washington County)	PROPOSING TERMINATION OF A
)	TEMPORARY TRANSFER
)	RECORDED IN SPECIAL ORDER
)	VOLUME 61 PAGES 314 – 316 (T-9657)
)	AND PROPOSING APPROVAL OF 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

MATRIX DEVELOPMENT CORPORATION
ATTN – JACKI HERB
12755 SW 69TH AVE., SUITE 100
PORTLAND, OR 97223

Findings of Fact

Background

1. On February 20, 2004, JACKI HERB, on behalf of MATRIX DEVELOPMENT CORPORATION, filed an application to change a portion of the character of use to an instream use and to change the place of use under Certificate 20291. The Department assigned the application number T-9656.
2. On July 18, 2007, an amended application and map clarifying the authorized and proposed place of use and changing the type of transfer from instream to only a place of use transfer were received by the Department.
3. Special Order Volume 61 Pages 314 – 316 temporarily affects lands also involved in Transfer Application T-9656. The applicant has requested that the changes approved by this temporary transfer be included in this permanent transfer. In order to process the new request the previous change under Temporary Transfer T-9657 must first be terminated.

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.
--

4. On January 4, 2008, Jackie Herb, on behalf of Matrix Development Corporation, submitted a request to terminate Temporary Transfer Application T-9657 prior to the expiration date in the order and revert this right back to the place of use evidenced by the respective certificate.
5. The Department finds that Jacki Herb is authorized to seek termination of temporary transfer T-9657.
6. Termination of Temporary Transfer Application T-9657 in advance of the 2008 irrigation season is consistent with OAR 690-380-8002 (3).
7. The final order recorded in Special Order Volume 61, Pages 314 - 316 will be of no further force or effect upon issuance of the order approving Transfer Application T-9656.
8. The portion of the right to be transferred is as follows:

Certificate: 20291 in the name of LOUIS SPOUSTA (perfected under Permit S-20617)

Use: IRRIGATION of 17.4 ACRES

Priority Date: AUGUST 6, 1951

Rate: 0.218 CUBIC FOOT PER SECOND (cfs)

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre during the irrigation season of each year

Source: TUALATIN RIVER, tributary to the WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
2 S	1 W	WM	16	SE SW

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	1 W	WM	16	SE NW	5.75
2 S	1 W	WM	16	NE SW	11.65

9. Transfer Application T-9656 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	1 W	WM	16	NE SW	0.50
2 S	1 W	WM	16	SE SW	12.65
2 S	1 W	WM	16	NW SE	0.10
2 S	1 W	WM	16	SW SE	4.15

10. Notice of the application for transfer was first published on February 20, 2004, pursuant to OAR 690-380-4000. Because the transfer application was amended to remove the instream transfer element, the application was re-noticed on July 18, 2007. No comments were filed in response to the notice.
11. On November 21, 2007, the Department mailed a copy of the *draft* Preliminary Determination proposing to approve Transfer Application T-9656 to the applicant. The cover

letter that accompanied the *draft* Preliminary Determination set forth a deadline of December 24, 2007, for the applicant to respond. On January 3, 2008, the applicant provided the information necessary for the Department to proceed with issuance of a Preliminary Determination (See Finding of Fact #5).

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

12. 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.
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 Transfer Application T-9656.
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 change in place of use proposed in Transfer Application T-9656 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-9656 is approved, the final order will include the following:

1. *The Special Order recorded at Volume 61 Pages 314 - 316 approving Temporary Transfer Application T-9657 is terminated and of no further force or effect.*
2. *The change in place of use proposed in application T-9656 is approved.*
3. *Water right certificate 20291 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *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 20291 and any related decree.*
5. *The former place of use of the transferred right shall no longer receive water under the right.*
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. *Prior to diverting water, the water user shall install 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. The water user shall maintain the headgate as required by the Department.*
8. *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.*
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 29th day of January, 2008.


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@ wrd.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.