

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-10632, Douglas County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN PLACE OF USE AND
	)	CHARACTER 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

PAULETTO RANCH LLC
844 JOELSON RD
UMPQUA, OR 97486

Findings of Fact

Background

1. On May 14, 2008, Pauletto Ranch LLC filed an application to change the use, place of use under Certificate 58676. The Department assigned the application number T-10632.
2. The right to be transferred is as follows:

Certificate: 58676 in the name of JOE B. PAULETTO (perfected under Permit S-42957)

Use: STOCK WATER

Priority Date: APRIL 19, 1978

Rate: 0.02 CUBIC FOOT PER SECOND

Source: MILL CREEK AND RESERVOIR, tributary to UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
26 S	7 W	WM	3	NE SE	42	850 FEET SOUTH AND 395 FEET WEST FROM THE SW CORNER OF CLAYTON DLC 41

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC
26 S	7 W	WM	3	NE SE	42

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.

3. Application T-10632 proposes to change the character of use to IRRIGATION.
4. Application T-10632 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
26 S	7 W	WM	3	NW SE	42	2.0

5. Notice of the application for transfer was published on May 27, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. The usual rate and duty for irrigation in this area is 1/80 cfs per acre and 2.5 acre-feet per acre per year. Thus, irrigation of 2.0 acres would require an instantaneous rate of 0.025 cfs and an annual volume of 5.0 acre-feet per year. Beneficial use is the measure of a right and a transfer can only be approved for the amount of water that can be beneficially used for the existing character of use within the terms and conditions of the right. Use of more water for a proposed use (irrigation) than could have been beneficially used under the existing use (stock water) would constitute enlargement of the right and cannot be allowed.
7. The instantaneous rate of 0.02 cfs cannot be exceeded. Therefore, no more than 1.6 acres could be irrigated at the standard rate of 1/80 cfs per acre. The standard duty of 2.5 acre-feet per acre would equal 4.0 acre-feet.
8. On July 22, 2008 the Department issued a letter requesting additional information to substantiate the amount of water put to beneficial use under the existing right. On August 19, 2008 the applicant responded with additional detail, but the new information was insufficient to substantiate beneficial use of more than approximately 2.25 acre-feet per year. In addition, historical information in the water right record from a Final Proof site visit May 12, 1982 estimated use of water for chickens at 7,500 gallons per day for 30,000 birds. Assuming an average maximum use of 7,500 gallons per day for each day from May through October (184 days) would yield 4.2 acre-feet per year.
9. The above information suggests that the existing use under the terms and conditions of the right cannot exceed a diversion rate of 0.02 cfs and would not exceed more than 4.2 acre-feet per year.
10. The authorized rate of 0.02 cfs and estimated annual volume would be sufficient for 1.6 acres of irrigation at the standard rate of 1/80 cfs per acre with the standard duty of 2.5 acre-feet per acre. However, the proposal to irrigate 2.0 acres would represent enlargement of the right unless limited to 0.02 cfs and no more than 4.2 acre feet. That would average 1/100 cfs per acre and 2.1 acre-feet per acre.
11. On April 23, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-10632 to the applicants because there is a potential for enlargement. The draft Preliminary Determination cover letter set forth a deadline of May 24, 2010, for the applicants to respond. On May 17, 2010, the applicants agreed to limit the right on 2.0 acres to no more than 0.02 cfs and 4.2 acre-feet per year

(1/100 cfs per acre and 2.1 acre-feet per acre), which is less than the full standard rate and duty for irrigation in that area. The applicants also provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer, and requested that the Department proceed with issuance of a Preliminary Determination.

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 Application T-10632.
14. The proposed change to irrigate 2.0 acres with no more than 0.02 cfs and 4.2 acre-feet per year (1/100 cfs per acre and 2.1 acre-feet per acre), which is less than the full standard rate and duty for irrigation in that area, 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 character of use and place of use as proposed in application T-10632, as conditioned, 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 transfer application will be approved.

If Transfer Application T-10632 is approved, the final order will include the following:

1. *The changes in character of use and place of use proposed in Transfer Application T-10632 are approved.*
2. *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 58676 and any related decree.*
3. *Water right certificate 58676 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The former place of use of the transferred right shall no longer receive water under the right.*
5. *Water use on 2.0 acres is limited to no more than 0.02 cfs and 4.2 acre-feet per year (1/100 cfs per acre and 2.1 acre-feet per acre).*
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, 2011**. 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 26 day of May 2010.


Phillip C. Ward, Director

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@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.