

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

In the Matter of Transfer Application                    )  
T-8805 to Change Type of Use, Place of            )  
Use and Point of Diversion, Wallowa                )  
County, Oregon

FINAL ORDER

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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**

JAMES A SMEJKAL  
42142 NW PLACE DR  
BANKS, OREGON 97106

**Findings of Fact**

1. James A. Smejkal submitted a transfer application to change the point of diversion, place of use and character of use of water under Certificate 72349. The application was received on May 15, 2001, and included the required fees. The Department assigned the transfer application number T-8805.
  
2. T-8805 proposes to modify the following portion of a water right:  
**Certificate:** 72349 issued in the name of Chamberlain Ditch Company  
**Use:** Domestic, Stock, and Irrigation  
**Priority Date:** 1883 for Tracts 1, 2, & 3; 1893 for Tracts 4 through 30  
**Quantity:** 1.5 acre-feet per acre per 30 day period prior to July 31, and 1.0 acre-feet per acre for the remainder of the irrigation season  
**Acres:** 2.0  
**Source:** Bear Creek, tributary to Wallowa River

**Authorized Point of Diversion:**

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Location
1	N	42	E	W.M.	22	SE SW			Chamberlain Ditch

**NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW**

This is an order other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2).

Pursuant to ORS 536.075 and OAR 137-004-080 and OAR 690-01-005, you may either petition for judicial review or petition the Director for reconsideration of this order

**Authorized Place of Use:**

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Acres
1	N	42	E	W.M.	8	NE NW			2.0

3. Application T-8805 proposes to move the authorized point of diversion downstream to a point on the Wallowa River located below the confluence of Bear Creek and the Wallowa River located as follows:

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Location
2	N	42	E	W.M.	31	NE SW			1147 feet South and 662 feet West from the center ¼ corner of Section 31

4. Application T-8162 proposes to change the place of use of the right to:

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Acres
2	N	42	E	W.M.	31	NW SW			
2	N	42	E	W.M.	31	SW SW			

5. Application T-8805 proposes to change the character of use to maintenance of a pond under Permit R-12606.
6. Notice of the application for transfer was published on May 29, 2001, pursuant to ORS 540.520 and OAR 690-015-0080. No comments were filed in response to the notice.
7. The Board of Directors of Chamberlain Ditch and Pipe Company voted in favor of the transfer.
8. Water has been used on the subject lands within five years prior to filing the transfer application according to the terms and conditions of the right, and no evidence is available that would demonstrate that this portion of the right is subject to forfeiture under ORS 540.610.
9. The proposed changes would not result in enlargement of the right or injury to other water rights, provided a suitable measuring device is installed prior to diversion of water from the proposed diversion points.
10. Wallowa County has granted the applicant land use approval for the proposed changes.
11. Pursuant to ORS 540.520 (5), notice of the changes proposed by T-8805 was published for three consecutive weeks in the Wallowa County Chieftain and no protests were filed.

**Conclusions of Law**

The proposed changes in place of use, point of diversion and character of use in application T-8805 are consistent with the requirements of ORS 540.505 to 540.580, provided the applicant installs a measurement device and fish screen or by-pass device.

**Now, it is therefore ORDERED:**

1. Transfer T-8805 is approved, provided the following conditions are met by the water user:
  - a. Water shall be acquired from the same surface water source as the original point of diversion.
  - b. 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, and further shall not exceed 3.0 acre-feet during any period of 30 days prior to July 31<sup>st</sup> of each year,, and thereafter not exceed 2.0 acre-feet for the entire remainder of the irrigation season.
  - c. The season of diversion for this right shall continue to be limited to the irrigation season each year.
  - d. The proposed changes shall be completed on or before October 1, 2005.
  - e. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department by October 1, 2006.
  - f. Prior to diverting water at the new points of diversion, the water user shall install and maintain 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.
  - g. The water user shall install and maintain a fish screen or fish by-pass device. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning construction and shall be installed under the supervision of the Department of Fish and Wildlife. The water user may participate in the Oregon Department of Fish and Wildlife's cost sharing program for installation of screening and by-pass devices in accordance with ORS 540.525.
  - h. The original place of use affected by this transfer shall no longer be irrigated as a part of this water right.
2. Certificate 72349 is cancelled. The Department shall issue Certificate 80878 to confirm the remaining portion of the water right NOT involved in transfer T-8805.
3. When satisfactory proof of the completed changes is received, a new certificate confirming the transferred portion of the water right shall be issued.

Dated at Salem, Oregon this 9<sup>th</sup> day of AUGUST, 2004.

  
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Phillip C. Ward  
Acting Director