

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

In the Matter of Transfer Application            )     FINAL ORDER APPROVING  
T-10001, Umatilla County                    )     CHANGES IN POINT OF DIVERSION  
  )     AND PARTIAL CANCELLATION OF  
  )     A WATER RIGHT

**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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

**Applicant**

YVONNE M. GAMBILL  
67362 HWY. 395 SOUTH  
PENDLETON, OR 97801

**Findings of Fact**

**Background**

1. On September 1, 2005, Yvonne M. Gambill filed a transfer application to change the point of diversion under Certificates 81000, 81001 and 2544, and Umatilla County Decree Vol. 15, P. 431. The Department assigned the application number T-10001. The transfer application included Affidavits for the Partial Cancellation of a Water Right Certificate for the domestic use portion of Certificates 81000, 81001, and 2544, and a portion of the irrigation use for Certificate 81000.
2. On December 20, 2006, and February 12, 2007, revised maps and application materials were submitted.

This is an order in 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 137-004-0080, you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

3. The right under Certificate 81000 to be transferred is as follows:

**Certificate:** 81000 in the name of Carl Jensen (confirmed by Umatilla River Decree)  
**Use:** Irrigation of 0.63 acre, Domestic and Stock use  
**Priority Date:** 1873 (0.27 acre) and 1907 (0.36 acre)  
**Quantity:** 0.008 cfs, being 0.003 cfs for the 1873 priority and 0.005 cfs for the 1907 priority  
**Source:** Birch Creek, tributary to Umatilla River

**Authorized Place of Use – 1873 priority date:**

Twp	Rng	Mer	Sec	¼ ¼	Acres
1 S	32 E	W.M.	9	NE NW	0.27

**Authorized Place of Use – 1907 priority date:**

Twp	Rng	Mer	Sec	¼ ¼	Acres
1 S	32 E	W.M.	9	NE NW	0.36

4. Certificate 81000 does not describe the location of the points of diversion, however information is available from the application map indicating that the authorized points of diversion are located as follows:

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	¼ ¼
1 S	32 E	W.M.	17	NE NE
1 S	32 E	W.M.	16	SW NW

5. Certificate 81000 does not describe the duty of the right, however information is available from the Umatilla River Decree (Vol. 3, at Page 127) indicating that the duty allowed for the right is one-eightieth (1/80<sup>th</sup>) of one cfs per acre under terms and conditions contained in said decree.

6. The right under Certificate 81001 to be transferred is as follows:

**Certificate:** 81001 in the name of Thos. Jacques (confirmed by Umatilla River Decree)  
**Use:** Irrigation of 12.55 acres, Domestic and Stock use  
**Priority Date:** 1904  
**Quantity:** 0.16 cfs  
**Source:** Birch Creek, tributary to Umatilla River

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	¼ ¼	Acres
1 S	32 E	W.M.	9	NW NE	12.55

7. Certificate 81001 does not describe the location of the points of diversion, however information is available from the application map indicating that the authorized points of diversion are located as follows:

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	¼ ¼
1 S	32 E	W.M.	17	NE NE
1 S	32 E	W.M.	16	SW NW

8. Certificate 81001 does not describe the duty of the right, however information is available from the Umatilla River Decree (Vol. 3, at Page 127) indicating that the duty allowed for the right is one-eightieth (1/80<sup>th</sup>) of one cfs per acre under terms and conditions contained in said decree.

9. The right under Certificate 2544 to be transferred is as follows:

**Certificate:** 2544 in the name of Jas. M. Hemphill (confirmed by Umatilla River Decree)

**Use:** Irrigation of 62.0 acres, Domestic and Stock use

**Priority Date:** 1904

**Quantity:** 0.78 cfs

**Source:** Birch Creek, tributary to Umatilla River

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	¼ ¼	Acres
1 S	32 E	W.M.	4	NW SE	24
1 S	32 E	W.M.	4	SW SE	25
1 S	32 E	W.M.	4	SE SW	11
1 S	32 E	W.M.	9	NE NW	2

10. Certificate 2544 does not describe the location of the points of diversion, however information is available from the application map indicating that the authorized points of diversion are located as follows:

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	¼ ¼
1 S	32 E	W.M.	17	NE NE
1 S	32 E	W.M.	16	SW NW

11. Certificate 2544 does not describe the duty of the right, however information is available from the Umatilla River Decree (Vol. 3, at Page 127) indicating that the duty allowed for the right is one-eightieth (1/80<sup>th</sup>) of one cfs per acre under terms and conditions contained in said decree.

12. The portion of the right under Umatilla River Decree Vol. 15, P. 431 to be transferred is as follows:

**Certificate:** Umatilla River Decree Vol. 15, P. 431 in the name of Jas. M. Hemphill  
**Use:** Irrigation of 34.2 acres  
**Priority Date:** 1904  
**Quantity:** 0.43 cfs  
**Rate/Duty:** 1/80 cfs per acre  
**Source:** Birch Creek, tributary to Umatilla River

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	¼ ¼	Acres
1 S	32 E	W.M.	4	NE SW	3.5
1 S	32 E	W.M.	4	SE SW	1.0
1 S	32 E	W.M.	4	SW SE	11.5
1 S	32 E	W.M.	4	SE SE	18.0
1 S	32 E	W.M.	9	NE NW	0.2

13. The Umatilla River Decree Vol. 15, P. 431 does not describe the location of the points of diversion, however information is available from the application map indicating that the authorized points of diversion are located as follows:

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	¼ ¼
1 S	32 E	W.M.	17	NE NE
1 S	32 E	W.M.	16	SW NW

14. The Umatilla River Decree Vol. 15, P. 431 does not describe the duty of the right, however information is available from the Umatilla River Decree (Vol. 3, at Page 127) indicating that the duty allowed for the right is one-eightieth (1/80<sup>th</sup>) of one cfs per acre under terms and conditions contained in said decree.

15. Application T-10001 proposes to move the authorized points of diversion approximately 1.0 mile downstream in the source to:

Twp	Rng	Mer	Sec	¼ ¼	Survey Coordinates
1 S	32 E	W.M.	4	NW SE	<b>POD 1</b> - 1,595 FEET NORTH AND 510 FEET EAST FROM THE S¼ CORNER, SECTION 4
1 S	32 E	W.M.	4	SE SW	<b>POD 2</b> - 1,010 FEET NORTH AND 280 FEET WEST FROM THE S¼ CORNER, SECTION 4

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

16. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice, with the exception of comments from the District # 5 Watermaster (see findings #17 and #18) and the Oregon Department of Fish and Wildlife (see findings #19 and #20).
17. On October 3, 2005, the Watermaster in District #5 commented that the existing right may not be valid because it appears there has been some difficulty with diverting water and conveying it to the property for those lands east of Birch Creek.
18. On October 3, 2005, the Watermaster in District #5 commented that the proposed change may be made without injury, but the following breakdown of the irrigated acreage (located within Township 2 South, Range 32 East, W.M.) by proposed point of diversion and priority date must be incorporated into the transfer:

Decree/Certificate	Acres/Loc. From POD#1	Acres/Loc. From POD#2	Priority Date
81000	0.27 ac NE NW, Sec. 9	--	1873
	0.36 ac NE NW, Sec. 9	--	1907
81001	12.55 ac NW NE, Sec. 9	--	1904
2544	7.79 ac NW SE, Sec. 4	16.21 ac NW SE, Sec. 4	1904
	25.0 ac SW SE, Sec. 4	--	1904
	8.84 ac SE SW, Sec. 4	2.16 ac SE SW, Sec. 4	1904
	2.0 ac NE NW, Sec. 9	--	1904
Vol. 15, P. 431	--	3.5 ac NE SW, Sec. 4	1904
	1.0 ac SE SW, Sec. 4	--	1904
	11.5 ac SW SE, Sec. 4	--	1904
	18.0 ac SE SE, Sec. 4	--	1904
	0.2 ac NE NW, Sec. 9	--	1904
<b>Total Acres by POD #:</b>	<b>87.51 ac</b>	<b>21.87 ac</b>	

19. On August 3, 2005, the Oregon Department of Fish and Wildlife commented that the transfer, as proposed, is "fish friendly". The point of diversion will be moved approximately one mile downstream, thereby increasing flow in this reach, and the transfer of this water right will allow an irrigation diversion dam to be removed which has been a long-standing impediment to fish passage. This transfer will benefit summer steelhead and redband trout.
20. On September 30, 2005, the Oregon Department of Fish and Wildlife commented that there does not appear to be a potential for injury to instream or other water rights as a result of the transfer, and requested inclusion of a condition requiring installation of proper fish screens.
21. On October 25, 2005, the Department issued a Draft Preliminary Determination that proposed to reject T-10001 unless revised maps and additional materials were submitted.

- 22. The information and revised maps submitted on December 20, 2006 and February 12, 2007 are sufficient to remedy the deficiencies.
- 23. On March 30, 2007, the Department mailed a draft of a revised Preliminary Determination proposing to approve Transfer Application T-10001 to the applicant. On May 7, 2007, the applicant submitted a notarized statement withdrawing the Affidavits for Partial Cancellation of a Water Right Certificate for the domestic use portion of Certificates 81000, 81001 and 2544. The applicant did not withdraw the partial cancellation affidavit for the portion of irrigation use under Certificate 81000. 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.
- 24. On May 31, 2007, the Department issued a Preliminary Determination proposing to approve Transfer T-10001 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on June 5, 2007, and in The Pendleton Record newspaper on June 14, 21 and 28, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the Department notice or the newspaper notice.
- 25. Evidence was submitted with the application indicating that water has been used within the last five years according to the terms and conditions of the rights. The condition of the diversion structure and ditches and the existing vegetation on the lands to which the rights are appurtenant suggest that there has been an extended period of time during which the rights were not exercised. However, the information in the record is not sufficient to initiate cancellation proceedings under ORS 540.631.
- 26. The proposed change would not result in enlargement of the rights.
- 27. The proposed change would not result in injury to other water rights.

***Partial Cancellation of a Water Right***

28. An affidavit for partial cancellation of a water right was received from Yvonne M. Gambill as follows:

**Certificate:** 81000 in the name of Carl Jensen (confirmed by Umatilla River Decree)  
**Use:** Irrigation of 0.17 acres  
**Priority Date:** 1873 (0.07 acres) and 1907 (0.10 acres)  
**Quantity:** 0.002 cfs, being 0.001 cfs for the 1873 priority and 0.001 cfs for the 1907 priority  
**Source:** Birch Creek, tributary to Umatilla River

**Authorized Place of Use – 1873 priority date:**

Twtp	Rng	Mer	Sec	¼ ¼	Acres
1 S	32 E	W.M.	9	NE NW	0.07

**Authorized Place of Use – 1907 priority date:**

Twp	Rng	Mer	Sec	¼ ¼	Acres
1 S	32 E	W.M.	9	NE NW	0.10

29. Certificate 81000 does not describe the location of the point of diversion, however information is available from the application map indicating that the authorized point of diversion is located as follows:

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	¼ ¼
1 S	32 E	W.M.	17	NE NE
1 S	32 E	W.M.	16	SW NW

30. Certificate 81000 does not describe the duty of the right, however information is available from the Umatilla River Decree (Vol. 3, at Page 127) indicating that the duty allowed for the right is one-eightieth (1/80<sup>th</sup>) of one cfs per acre under terms and conditions contained in said decree.

**Conclusions of Law**

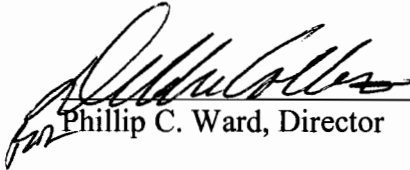
The proposed changes in point of diversion in application T-10001 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled.

**Now, therefore, it is ORDERED:**

1. The changes in point of diversion proposed in application T-10001 are approved. The portion of the right that has been abandoned is cancelled.
2. Water right Certificates 81000, 81001, and 2544 are cancelled and the right evidenced by Umatilla River Decree, Vol. 15, Page 431, is modified.
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 Certificates 81000, 81001, and 2544, Umatilla River Decree Vol. 15, P. 431 and any other related decree.
4. The quantity of water diverted at the new points of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.
5. The breakdown of water rights by priority date and POD presented in Finding #18 is hereby incorporated into this transfer order.
6. The place of use included in the partial cancellation for the irrigation use portion of Certificate 81000 (Finding #28, above) shall no longer be irrigated as part of this water right.

7. Prior to diverting water, the water user shall install and maintain a headgate, 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 headgate and 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 water user shall install and maintain a fish screen or fish by-pass device, as appropriate, at the new point of diversion. 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 of construction, and shall be installed under the supervision of the Department of Fish and Wildlife.
9. 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.
10. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 1<sup>ST</sup> day of August 2007.

  
Phillip C. Ward, Director

Mailing date: AUG 14 2007