

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A CHANGE
T-10170, Morrow County) IN POINT OF DIVERSION TO REFLECT
) HISTORIC 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.

Applicants

Vilas D. and Deborah G. Ropp
PO Box 575
Lexington, OR 97839

Findings of Fact

Background

1. On May 11, 2006, Vilas D. and Deborah G. Ropp filed an application to transfer the point of diversion to reflect the use of a historic point of diversion under a portion of water right evidenced by Certificate 167. The Department assigned the application number T-10170.
2. On July 10, 2007, the application and map were amended to more accurately describe the place of use.
3. The portion of the right to be transferred is as follows:

Certificate: 167, in the names of G. L. McMILLAN, S. G. McMILLAN, J. F. McMILLAN
Use: Irrigation of 1.0 acre
Priority Date: 1901
Quantity: 0.015 cubic foot per second (cfs)
Source: Willow Creek, tributary to Columbia River
Season of Use: March 1 to July 1 of each year

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

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.

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Additional information	Acres
1 S	25 E	WM	27	SW SE	Block 14 Town of Lexington	1.0

4. Certificate 167 does not describe the location of the point of diversion, however information is available from the Willow Creek Decree and associated adjudication map indicating that the point of diversion was authorized at the following location:

Authorized Point of Diversion:

Tw p	Rng	Mer	Sec	Q-Q
1 S	25 E	WM	34	NW NE

5. Transfer Application T-10170 proposes to change the point of diversion to reflect historical use of a point of diversion. This point of diversion is approximately 700 feet downstream from the authorized point of diversion and is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
1 S	25 E	WM	34	NW NE	80 FEET SOUTH AND 580 FEET EAST FROM THE S1/4 CORNER OF SECTION 27

6. Notice of the application for transfer was published on May 30, 2006, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
7. On July 12, 2007, a *draft* Final Order was sent to the applicants. On July 16, 2007, the applicants acknowledged receipt and acceptance of the terms and conditions contained in the *draft* Final Order.
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 not currently equipped with an appropriate fish screening and/or by-pass device. Listed fish species are not present at the point of diversion, the originating water right diversion is not screened, cost-share funds are not currently available, and the proposed diversion may be eligible for ODFW's cost-share program. A grace period of two years is appropriate until such time as cost share funds become available to assist in the construction of a fish screening and/or by-pass device. If cost share funds do not become available, the water user must screen within the indicated time period regardless of the availability of cost share funding.
9. Pursuant to 690-380-2120(2)(a), evidence has been submitted that the actual, current point of diversion for the water rights in question, as described in Finding of Fact #4, has been in use for more than 10 years.
10. Pursuant to OAR 690-380-2120 (2)(c), the Watermaster provided a statement that to his knowledge there has been no complaint of injury due to the use of water at the actual, current point of diversion on Willow Creek, prior to submittal of the transfer application.

11. There were no affected water rights requiring proof of service by the applicant. Therefore, no proof of service was provided as required by OAR 690-380-2120(4).
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 are present.
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.

Conclusions of Law

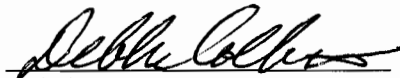
The change in point of diversion to reflect historical use proposed in Transfer Application T-10170 is consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change proposed in T-10170 is approved. The proposed change shall be effective immediately upon issuance of the special order approving T-10170.
2. Certificate 167 is cancelled. Certificate 83475 will be issued to describe that portion of the right affected by the change in point of diversion to reflect historical use and Certificate 83476 will be issued to describe that portion of the right not modified by this transfer, and together they shall supersede Certificate 167.
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 167 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. When required by the Department, the water user shall install, maintain and operate 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.
6. 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.
7. Prior to October 1, 2008, 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.

Dated at Salem, Oregon this 17 day of August 2007.


Phillip C. Ward, Director

FR

Mailing date: AUG 22 2007