

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-10792, Jackson County) CHANGE IN POINT OF DIVERSION

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

TED DOLE
262 OBENCHAIN RD
EAGLE POINT OR 97524

Findings of Fact

Background

1. On February 26, 2009, TED DOLE filed an application to change the point of diversion under Certificate 50149. The Department assigned the application number T-10792.

2. The right to be transferred is as follows:

Certificate: 50149 in the name of W. E. GIBSON (confirmed by Little Butte Creek (F) decree)

Use: IRRIGATION of 20.3 ACRES

Priority Date: DECEMBER 31, 1874

Rate: 0.40 CUBIC FOOT PER SECOND; measured at the head of the ditch or the point where the same leaves the natural stream, from April 1st to October 1st of each year.

Source: LITTLE BUTTE CREEK, tributary to ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	1 E	WM	11	SE SW	HENRY BROWN DITCH 810 FEET NORTH AND

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may 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.

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
					1300 FEET WEST FROM THE S1/4 CORNER OF SECTION 11

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	1 E	WM	4	NE SE	11.0
36 S	1 E	WM	4	NW SE	9.3

- Transfer Application T-10792 proposes to move the authorized point of diversion approximately 2.0 miles downstream on Little Butte Creek, and to deliver water to the lands through a pipeline under State Hwy 140. The proposed diversion is located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36S	1E	WM	4	SE SE	1660 FEET SOUTH AND 40 FEET WEST FROM THE E¼ CORNER OF SECTION 4

- Notice of the application for transfer was published on March 10, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On July 13, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10792 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 14, 2009, for the applicant to respond. 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.
- On September 10, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10792 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 September 15, 2009, and in the Upper Rogue Independent newspaper on September 15, 22 and 28, 2009, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
- 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. This diversion may be eligible for screening cost share funds.

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

- Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.

9. A diversion structure and ditch were present within the five-year period prior to submittal of Transfer Application T-10792 that theoretically has the capacity to carry the full amount of water allowed under the existing right. Certificate 50149 indicates the full amount allowed under the right for these lands is 0.40 cfs, measured at the head of the ditch or the point where the ditch leaves the natural stream. The transfer application indicates that the two miles of open ditch from the authorized POD to the transfer property are difficult to maintain and leak. Therefore, while theoretically having the capacity to carry the full amount, the current ditch is currently unable to deliver the full amount due to leakage.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.

Conclusions of Law

The change in point of diversion proposed in Transfer Application T-10792 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 in point of diversion proposed in application T-10792 is approved.
2. The old point of diversion will not be used for the water right affected by the transfer.
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 50149 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. Water use measurement conditions:
 - a. Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at the new point of diversion.
 - b. The water user shall maintain the meter or measuring device in good working order.
 - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.
6. 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.

7. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.
8. The approved change 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 change 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 30th day of October 2009.



Phillip C. Ward, Director *fw*

Mailing date: NOV 03 2009