

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

In the Matter of Transfer Application) FINAL ORDER APPROVING CHANGE IN
T-9737 & T-9803 Harney County) PLACE OF USE AND POINT OF DIVERSION
)

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 T-9737

Steve Rickman
69773 Old Experiment Road
Burns, OR 97720

Applicant T-9803

Charlotte Lamborn
P.O. Box 644
Burns, OR 97220

Agent T-9803

John Lamborn
90 W Washington St
Burns, OR 97720

Findings of Fact

1. Steve Rickman filed an application to transfer the place of use of a portion of the water right under Decree Number 914739. The Department assigned the application number T-9737.
2. The portion of the right to be transferred is as follows:

Water Right: Vol. 9, Pg. 147 of the Silvies River Decree
in the name of Ferdinand Denstedt
Use: Irrigation
Priority Date: 1894
Quantity: 2.18 cfs
Rate/Duty: 1/80 cfs per acre, not to exceed 2.0 acre-feet per acre
Acres: 174.3
Sources: Poison Creek and Foley Slough

This is a final order in other than 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 Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
23 S	31 E	WM	13	SW SE	BALZHISER DITCH - 1075' N & 570' E FROM S1/4 CORNER, SECTION 13. (POISON CREEK)
23 S	31 E	WM	24	NE NE	BROWN DAM - 450' S & 950' W FROM NE CORNER, SECTION 24. (POISON CREEK)
23 S	32 E	WM	18	NE SW	JACKSON DAM - 1704' N. & 1720' E. FROM THE SW CORNER OF SECTION 18 (POISON CREEK)

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
23 S	32 E	WM	18	SE NE		25.0
23 S	32 E	WM	18	NE NW		25.0
23 S	32 E	WM	18	NW NW	1	8.0
23 S	32 E	WM	18	SW NW	2	25.0
23 S	32 E	WM	18	SE NW		40.0
23 S	32 E	WM	18	NE SW		36.3
23 S	32 E	WM	18	NW SW	3	15.0

- The Foley Slough is a distributary of the Silvies River that divides from the Silvies in the NE¼ NE¼ of Section 26, T22S, R30E, WM. Water diverted down the Foley Slough Branch enhances the flow in Poison Creek that can be diverted from the Poison Creek diversions.
- Application T-9737 proposes to change the place of use of the right to:

Proposed Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
23 S	32 E	W.M.	18	NE SW		3.7
23 S	32 E	W.M.	18	SW SW	4	29.5
23 S	32 E	W.M.	18	SE SW		40.0
23 S	32 E	W.M.	18	NE SE		10.7
23 S	32 E	W.M.	18	NW SE		10.4
23 S	32 E	W.M.	18	SW SE		40.0
23 S	32 E	W.M.	18	SE SE		40.0

- Charlotte Lamborn filed an application to transfer the place of use and point of diversion of a portion of the water right under Decree Number 914739. The Department assigned the application number T-9803.
- The portion of the right to be transferred is as follows:

Water Right: Vol. 9, Pg. 147 of the Silvies River Decree
in the name of Ferdinand Denstedt

Use: Irrigation

Priority Date: 1894

Quantity: 0.50 cfs
Rate/Duty: 1/80 cfs per acre, not to exceed 2.0 acre-feet per acre
Acres: 40.0
Sources: Poison Creek and Foley Slough

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
23 S	31 E	WM	13	SW SE	BALZHISER DITCH - 1075' N & 570' E FROM S1/4 CORNER, SECTION 13. (POISON CREEK)
23 S	31 E	WM	24	NE NE	BROWN DAM - 450' S & 950' W FROM NE CORNER, SECTION 24. (POISON CREEK)
23 S	32 E	WM	18	NE SW	JACKSON DAM - 1704' N. & 1720' E. FROM THE SW CORNER OF SECTION 18 (POISON CREEK)

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
23 S	32 E	WM	18	NE NE		40.0

- The Foley Slough is a distributary of the Silvies River that divides from the Silvies in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26, T22S, R30E, WM. Water diverted down the Foley Slough Branch enhances the flow in Poison Creek that can be diverted from the Poison Creek diversions.
- Application T-9803 proposes to change the point of diversion on Poison Creek to:

Proposed Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
23 S	31 E	WM	34	NW SW	2665' S. & 140'E FROM THE NW CORNER OF SECTION 27 (POISON CREEK SLOUGH)

- Application T-9803 proposes to change the place of use of the right to:

Proposed Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	32 E	WM	34	SW NW	40.0

- Water has been used within the last five years according to the terms and conditions of the right, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
- The proposed changes would not result in enlargement of the right.
- The proposed changes would not result in injury to other water rights.

Cancellation of a Water Right

An affidavit was received from Steven E. Rickman and Kristi L. Rickman, owner of certain lands and the water rights appurtenant to it. A portion of Water Right Certificate 36883 has been abandoned and is requested to be cancelled.

Place of use

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
23 S	32 E	WM	18	NE NE		40.0
23 S	32 E	WM	18	SE NE		25.0
23 S	32 E	WM	18	NE NW	1	25.0
23 S	32 E	WM	18	NW NW		8.0
23 S	32 E	WM	18	SW NW	2	25.0
23 S	32 E	WM	18	SE SW		40.0
23 S	32 E	WM	18	NE SW		28.67
23 S	32 E	WM	18	NW SW	3	15.0

Conclusions of Law

The changes in place of use and point of diversion proposed in applications T-9737 and T-9803 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580, and OAR 690-380-5000. In addition, the abandoned portion of Certificate 36883 should be cancelled.

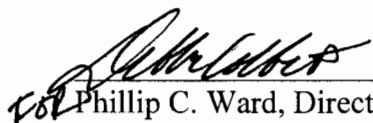
Now, therefore, it is ORDERED:

1. The changes in place of use and point of diversion proposed in application T-9737 and T-9803 are approved.
2. The right confirmed at Volume 9, Page 147 (Silvies River Decree) in the name of Ferdinand Denstedt is modified. Water right certificate 36883 is cancelled. A new certificate will be issued describing that portion of the right not abandoned.
3. The right to 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 the right confirmed at Volume 9, Page 147 and any related decree.
4. The proposed change shall be completed on or before October 1, 2006.
5. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted to the Department by October 1, 2007.
6. The former place of use shall no longer be irrigated as part of this water right.
7. When required by the Department, the water user shall install and maintain an in-line flow meter or other suitable device for measuring and recording the quantity of water appropriated. 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.

8. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 24th day of August, 2005.


Phillip C. Ward, Director

Mailing date: AUG 26 2005