

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

In the Matter of Transfer Application            )     FINAL ORDER APPROVING A  
T-10228, Wasco County                            )     CHANGE IN PLACE OF USE

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**

JAMES E. AND MARY SUZANNE BUSSARD  
901 NW CARLON AVENUE, SUITE 3  
BEND, OR 97701

**Findings of Fact**

1. On August 14, 2006, James E. and Mary Suzanne Bussard filed a transfer application to change the place of use under Certificates 76223, 76222, 80637, 51486, and 51487. The Department assigned the application number T-10228.
2. On January 11, 2007 Larry Toll, the applicant's agent, notified the Department of a scrivener's error in the listing of the source under Certificate 76223 in the Preliminary Determination. The source is correctly listed in this order.
3. The portion of the FIRST right to be transferred is as follows:  
**Certificate:** 76223 in the name of BADGER IMPROVEMENT DISTRICT (perfected under Permit S-27390)  
**Use:** IRRIGATION of 8.03 ACRES and SUPPLEMENTAL IRRIGATION of 4.4 ACRES  
**Priority Date:** March 22, 1961  
**Rate:** 0.13 CUBIC FOOT PER SECOND (CFS)  
**Limit/Duty:** ONE- FORTIETH of one cfs per acre and 3.0 acre feet per acre per 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.

**Source:** BADGER CREEK and a RESERVOIR constructed under Permit R-773, tributaries to WHITE RIVER for primary irrigation and the RESERVOIR (BADGER LAKE) for supplemental irrigation.

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	1/4 - 1/4	Survey Coordinates
3 S	11 E	W.M.	29	NE SW	BADGER CREEK – 1290 FEET SOUTH AND 550 FEET WEST FROM THE CENTER OF SECTION 29
3 S	10 E	W.M.	16	SW SW	BADGER LAKE – 400 FEET NORTH AND 800 FEET EAST FROM THE SW CORNER OF SECTION 16

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	1	SE NE	1.13
4 S	13 E	WM	6	SW NW	1.00
4 S	13 E	WM	6	SE NW	0.60
4 S	13 E	WM	6	NE SW	5.00
4 S	13 E	WM	6	NW SW	0.30
<b>TOTAL:</b>					<b>8.03</b>

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	13 E	WM	6	NE SW	1.90
4 S	13 E	WM	6	NW NW	2.50
<b>TOTAL:</b>					<b>4.40</b>

4. Application T-10028 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	11	NE NE	8.03
<b>TOTAL:</b>					<b>8.03</b>

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	11	NE NE	1.76
4 S	12 E	WM	11	SE NW	2.64
<b>TOTAL:</b>					<b>4.40</b>

5. The portion of the SECOND right to be transferred is as follows:

**Certificate:** 76222 in the name of BADGER IMPROVEMENT DISTRICT (perfected under Permit S-22633)

**Use:** IRRIGATION of 3.7 ACRES

**Priority Date:** APRIL 12, 1941 and MARCH 20, 1951

**Rate:** 0.09 CUBIC FOOT PER SECOND (CFS), BEING 0.04 CFS (Priority Date April 12, 1941) and 0.05 CFS (Priority Date March 20, 1951)

**Limit/Duty:** ONE-FORTIETH of one cfs per acre, not to exceed 3.0 acre feet per acre per year

**Source:** BADGER CREEK and a RESERVOIR (constructed under Permit R-773), tributaries to WHITE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
3 S	10 E	WM	16	SW SW	NONE SPECIFIED
3 S	11 E	WM	29	NE SW	NONE SPECIFIED

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	13 E	WM	6	NE SW	3.2
4 S	13 E	WM	6	NW SW	0.50
<b>TOTAL:</b>					<b>3.70</b>

6. Application T-10228 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	11	NE NE	3.70
<b>TOTAL:</b>					<b>3.70</b>

7. The portion of the THIRD right to be transferred is as follows:

**Certificate:** 80637 in the name of BADGER IMPROVEMENT DISTRICT (perfected under Permit S-2163)  
**Use:** IRRIGATION of 4.4 ACRES  
**Priority Date:** AUGUST 8, 1914  
**Rate:** 0.06 CUBIC FOOT PER SECOND (CFS)  
**Limit/Duty:** ONE-EIGHTIETH of one cfs per acre, not to exceed 3.0 acre feet per acre per year  
**Source:** SOUTH FORK BADGER CREEK, tributary to TYGH CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
3 S	11 E	WM	32	SW NE	HIGHLAND DITCH - NORTH 65 DEGREES 21 MINUTES WEST, 1938.2 FEET FROM THE E1/4 CORNER OF SECTION 32

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	13 E	WM	6	NE SW	1.90
4 S	13 E	WM	6	NW SW	2.50
<b>TOTAL:</b>					<b>4.40</b>

8. Application T-10228 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	11	NE NE	1.76
4 S	12 E	WM	11	SE NW	2.64
<b>TOTAL:</b>					<b>4.40</b>

9. The portion of the FOURTH right to be transferred is as follows:

**Certificate:** 51486 in the name of PINE HOLLOW COOPERATIVE, INC. and DEPARTMENT OF FISH & WILDLIFE (perfected under Permit S-33228)

**Use:** SUPPLEMENTAL IRRIGATION of 16.13 ACRES  
**Priority Date:** JULY 23, 1968  
**Quantity:** 16.67 ACRE FEET (AF)  
**Limit/Duty:** Not to exceed 3.0 acre feet per acre per year during the irrigation season and further limited to the use of stored water only on lands described as supplemental. Water from the reservoir is to provide a supplemental irrigation supply for lands being benefited by exchange of water with lands below the reservoir under the terms of an agreement between the Badger Improvement District and Pine Hollow Cooperative, Inc., and the Pine Hollow Cooperative Water Users agreement. In the exchange, upper lands use water diverted for the lower lands entitled thereto and replace it in a like amount from the reservoir authorized under Permit R-5250.  
**Source:** PINE HOLLOW RESERVOIR, constructed under Permit R-5250, tributary to WHITE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
4 S	12 E	WM	10	NE NW	PINE HOLLOW RESERVOIR - 700 FEET SOUTH AND 1930 FEET EAST FROM THE NW CORNER OF SECTION 10

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	1	SE NE	1.13
4 S	13 E	WM	6	SW NW	1.00
4 S	13 E	WM	6	SE NW	0.60
4 S	13 E	WM	6	NE SW	10.10
4 S	13 E	WM	6	NW SW	3.30
<b>TOTAL:</b>					<b>16.13</b>

10. Application T-10228 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	11	NE NE	13.49
4 S	12 E	WM	11	SE NW	2.64
<b>TOTAL:</b>					<b>16.13</b>

11. The portion of the FIFTH right to be transferred is as follows:

**Certificate:** 51487 in the name of PINE HOLLOW COOPERATIVE, INC. (perfected under Permit S-39616)

**Use:** SUPPLEMENTAL IRRIGATION of 16.13 ACRES

**Priority Date:** MAY 1, 1975

**Quantity:** 16.67 ACRE FEET (AF)

**Limit/Duty:** Not to exceed 3.0 acre feet per acre per year during the irrigation season. Water from the reservoir is to provide a supplemental supply for lands being benefited by exchange of water with lands below the reservoir under the terms of an agreement between the Badger Improvement District and Pine

Hollow Cooperative, Inc. and the Pine Hollow Cooperative Water Users agreement. In the exchange, upper lands use water diverted for the lower lands entitled thereto and replace it in like amount from the reservoir.

**Source:** PINE HOLLOW RESERVOIR, constructed under Permit R-6368, tributary to WHITE RIVER

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	1	SE NE	1.13
4 S	13 E	WM	6	SW NW	1.00
4 S	13 E	WM	6	SE NW	0.60
4 S	13 E	WM	6	NE SW	10.10
4 S	13 E	WM	6	NW SW	3.30
<b>TOTAL:</b>					<b>16.13</b>

12. Application T-10228 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	11	NE NE	13.49
4 S	12 E	WM	11	SE NW	2.64
<b>TOTAL:</b>					<b>16.13</b>

13. Notice of the application for transfer was published on August 22, 2006, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
14. On January 5, 2007, the Department issued a preliminary determination proposing to approve Transfer T-10228 and mailed a copy to the applicants. Additionally, notice of the preliminary determination for the transfer application was published on the Department's weekly notice on January 9, 2007 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
15. A portion of the proposed place of use under T-10228 for lands coming from Certificate 76223, 76222, 80637, 51486 and 51487 (*being 13.49 acres in the NE ¼ NE ¼ of Section 11, Township 4 south, Range 12 east, W.M.*) is already covered by existing water use Permit 50066. The transfer application indicates, however, that the lands under Permit 50066 described above will not be perfected. Therefore, a conflict between Permit 50066 and the incoming lands proposed by Transfer Application T-10228 will not occur.
16. Transfer Application T-10228 is being processed concurrently with transfer applications T-8080, T-9990 and T-10016 which also affect Certificates 51486, 51487, 76222, 76223, and 80637. Upon issuance of the final orders for these transfers, Certificates 51486, 51487, 76222, 76223 and 80637 will be cancelled and new certificates will be issued describing the portion of the rights not affected by the transfers.
17. Water has been used within the last five years according to the terms and conditions of the rights, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.

18. Ditches, a pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
19. The Department requires a suitable device for measuring and recording the quantity of water diverted under the rights. Currently the Badger Improvement District has a headgate and Parshall flume at the point of diversion that satisfies this requirement.
20. The proposed change would not result in enlargement of the rights.
21. The proposed change would not result in injury to other water rights.

**Conclusions of Law**

The change in place of use proposed in Transfer Application T-10228 is consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.

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

1. The changes in place of use proposed in application T-10228 are approved.
2. 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 80637, 76222, 76223, 51486, 51487, and any related decree.
3. Certificates 80637, 76222, 76223, 51486, 51487 are cancelled. New certificates will be issued describing the portions of the rights not affected by T-8080, T-9990, T-10016 and T-10228.
4. 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.
5. The former place of use of the transferred water shall no longer receive water as part of these rights.
6. When satisfactory proof of the completed change is received, new certificates confirming the portions of the rights transferred will be issued.

Dated at Salem, Oregon this 12<sup>th</sup> day of February 2007.

  
Phillip C. Ward, Director *For*

Mailing date: FEB 15 2007