

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-9990, 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

MCALLISTER RANCH
80455 WAMIC MARKET ROAD
TYGH VALLEY, OR 97063

Findings of Fact

1. On August 5, 2005, McAllister Ranches filed a transfer application to change the place of use under Certificates 7221, 46532, 80637, 76222, 76223, 51486, and 51487. The Department assigned the application number T-9990.
2. On November 27, 1979, Certificate 46532 was cancelled by an order of the Water Resources Director approving Transfer T-4313. Certificate 82086 was issued to supersede Certificate 46532 and describes the portion of the right not affected by Transfer T-4313.
3. On January 11, 2007 Larry Toll, the applicant's agent, amended the application to clear up an inconsistency between the application and the map, to clarify that 2.3 acres of supplemental irrigation under Certificate 82086 is being transferred with the associated primary right appurtenant to the same lands. Findings of Fact #6 and #8 contain the corrected supplemental acreage.
4. The portion of the FIRST right to be transferred is as follows:
Certificate: 7221 in the name of F. A. MORROW (perfected under Permit S-6734)
Use: IRRIGATION of 3.0 ACRES
Priority Date: APRIL 27, 1925
Rate: 0.039 CUBIC FOOT PER SECOND (CFS)

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.

Limit/Duty: ONE-EIGHTIETH of one cfs per acre
Source: BADGER CREEK, tributary to WHITE RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	1	SW NW	3.0
TOTAL:					3.0

5. Application T-9990 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4S	12E	WM	1	SW SW	1.2
4S	12E	WM	1	SE SW	1.8
TOTAL:					3.0

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

Certificate: 82086 in the name of BADGER IMPROVEMENT DISTRICT (perfected under Permit S-15165)

Use: IRRIGATION of 5.3 ACRES and SUPPLEMENTAL IRRIGATION of 5.3 ACRES and STOCK

Priority Date: OCTOBER 21, 1929

Rate: 0.13 CUBIC FOOT PER SECOND (CFS) from BADGER CREEK for IRRIGATION and 0.10 CFS from BADGER LAKE for SUPPLEMENTAL IRRIGATION

Limit/Duty: ONE-FORTIETH of one cfs per acre up to July 1 of each year and thereafter not to exceed ONE-EIGHTIETH of one cfs per acre, not to exceed 1.0 acre-foot per acre during any 30 day period up to July 1st of each year and not to exceed 3.0 acre-feet per acre during any irrigation season; provided further that the amount of water allowed herein, together with the amount of water secured under any other right existing for the same lands shall not exceed the limitation allowed herein.

Source: BADGER CREEK AND BADGER LAKE RESERVOIR (constructed under Permit R-773), tributaries to WHITE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
3 S	11 E	WM	32	SW NE	NONE SPECIFIED

Authorized Place of Use:

IRRIGATION and STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	1	SW NW	2.3
4 S	12 E	WM	1	SE NW	3.0
TOTAL:					5.3

SUPPLEMENTAL IRRIGATION and STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	1	SW NW	2.3
4 S	12 E	WM	1	SE NW	3.0
TOTAL:					5.3

7. Certificate 82086 allows use of water for irrigation, supplemental irrigation, domestic and stock uses. The applicant has indicated that no domestic use is involved with this transfer, furthermore no domestic use of water has been claimed for these lands in the past or present.

8. Application T-9990 proposes to change the place of use of the right to:

IRRIGATION and STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
4S	12E	WM	1	NE SW	2.3
4S	12E	WM	1	NW SW	1.1
4S	12E	WM	1	SW SW	1.0
4S	12E	WM	1	SE SW	0.9
TOTAL:					5.3

SUPPLEMENTAL IRRIGATION and STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
4S	12E	WM	1	NE SW	2.3
4S	12E	WM	1	NW SW	1.1
4S	12E	WM	1	SW SW	1.0
4S	12E	WM	1	SE SW	0.9
TOTAL:					5.3

9. 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 0.4 ACRE

Priority Date: AUGUST 8, 1914

Rate: 0.005 CUBIC FOOT PER SECOND

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	12 E	WM	1	SW NW	0.4
TOTAL:					0.4

10. Application T-9990 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4S	12E	WM	1	SE SW	0.4
TOTAL:					0.4

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

Certificate: 76222 in the name of BADGER IMPROVEMENT DISTRICT (perfected under Permit S-22633)
Use: IRRIGATION of 5.5 ACRES
Priority Date: APRIL 12, 1941 and MARCH 20, 1951
Rate: 0.14 CUBIC FOOT PER SECOND (CFS), being 0.07 CFS (Priority Date APRIL 12, 1941) and 0.07 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	12 E	WM	1	SW NW	0.6
4 S	12 E	WM	1	SE NW	4.9
TOTAL:					5.5

12. Application T-9990 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4S	12 E	WM	1	SW SW	1.5
4S	12 E	WM	1	SE SW	4.0
TOTAL:					5.5

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

Certificate: 76223 in the name of BADGER IMPROVEMENT DISTRICT (perfected under Permit S-27390)
Use: SUPPLEMENTAL IRRIGATION of 3.0 ACRES
Priority Date: MARCH 22, 1961
Quantity: 0.03 CUBIC FOOT PER SECOND (CFS)
Limit/Duty: ONE-FORTIETH of one cfs per acre, not to exceed 3.0 acre feet per acre per year

Source: A RESERVOIR (constructed under Permit R-773), tributary to WHITE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
3 S	10 E	WM	16	SW SW	BADGER LAKE - 400 FEET NORTH AND 800 FEET EAST FROM THE SW CORNER OF SECTION 16

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	1	SW NW	3.0
TOTAL:					3.0

14. Application T-9990 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	1	SW SW	1.2
4 S	12 E	WM	1	SE SW	1.8
TOTAL:					3.0

15. The portion of the SIXTH 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 11.5 ACRES

Priority Date: JULY 23, 1968

Quantity: 11.9 ACRE FEET (AF)

Limit/Duty: Not to exceed 3 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	SW NW	3.6
4 S	12 E	WM	1	SE NW	7.9
TOTAL:					11.5

16. Application T-9990 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	1	NE SW	0.3
4 S	12 E	WM	1	NW SW	0.8
4 S	12 E	WM	1	SW SW	3.7
4 S	12 E	WM	1	SE SW	6.7
TOTAL:					11.5

17. The portion of the SEVENTH 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 11.5 ACRES

Priority Date: MAY 1, 1975

Quantity: 11.88 ACRE FEET

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	SW NW	3.6
4 S	12 E	WM	1	SE NW	7.9
TOTAL:					11.5

18. Application T-9990 also 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	1	NE SW	0.3
4 S	12 E	WM	1	NW SW	0.8
4 S	12 E	WM	1	SW SW	3.7
4 S	12 E	WM	1	SE SW	6.7
TOTAL:					11.5

19. Notice of the application for transfer was published on August 16, 2005, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
20. On January 5, 2007, the Department issued a preliminary determination proposing to approve Transfer T-9990 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.
21. Transfer application T-9990 is being processed concurrently with transfer applications T-8080, T-10016 and T-10228 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 portions of the rights not affected by the transfers.
22. 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.
23. Ditches and sprinkler systems sufficient to use the full amount of water allowed under the existing right are present.
24. 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.
25. The proposed change would not result in enlargement of the rights.
26. 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-9990 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-9990 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 7221, 82086, 80637, 76222, 76223, 51486, 51487, and any related decree.
3. Certificates 7221, 82086, 80637, 76222, 76223, 51486 and 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 changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 12th day of February 2007.


Phillip C. Ward, Director *PCW*

Mailing date: FEB 15 2007