

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-8643 for a change in place of use, point) TRANSFER
of diversion and character of use –)
Jefferson County, Oregon)

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.

FINDINGS OF FACT

1. William and Carolyn Durette filed an application to transfer the place of use and point of diversion under Certificates 64424, 72279, 72281, 72283 and 76340. William and Carolyn Durette are the owners of the lands.
2. The transfer application was received December 18, 2000 and included the required fees. The Department assigned the transfer application number T-8643.
3. Certificate 64424 allows the use of Sagebrush Creek, tributary of Trout Creek, for irrigation of 64.1 acres. The maximum amount of water to which the right is entitled is 1.6 cubic feet per second (cfs) of continuous flow and 384.6 acre-feet (ac-ft) per irrigation season of each year. The date of priority of the right is June 20, 1972. The authorized point of diversion is in the SE¼ SE¼, SECTION 21, T 9 S, R 14 E, W.M.; 950 FEET NORTH AND 760 FEET WEST FROM THE SE CORNER OF SECTION 21. The authorized place of use is as follows:

Township		Range		Meridian	Section	QQ	Acres	Change
9	S	14	E	W.M.	20	SENE	37.3	POU/POD
9	S	14	E	W.M.	21	NWNW	10.2	POU/POD
9	S	14	E	W.M.	21	SWNW	16.6	POU/POD

4. Certificate 64424 allows the use of Sagebrush Creek, tributary of Trout Creek, for irrigation of 79.4 acres. The maximum amount of water to which the right is entitled is 1.99 cfs of continuous flow and 476.4 ac-ft per irrigation season of each year. The date of priority of the right is June 20, 1972. The authorized point of diversion is in the SE¼ SE¼, SECTION 21, T 9 S, R 14 E, W.M.; 950 FEET NORTH AND 760 FEET WEST FROM THE SE CORNER OF SECTION 21. The authorized place of use is as follows:

Township		Range		Meridian	Section	QQ	Acres	Change
9	S	14	E	W.M.	21	NENE	10.8	POD Only
9	S	14	E	W.M.	21	NWNE	35.8	POD Only
9	S	14	E	W.M.	21	SWNE	2.4	POD Only
9	S	14	E	W.M.	21	SENE	2.0	POD Only
9	S	14	E	W.M.	21	SESE	17.2	POD Only
9	S	14	E	W.M.	22	NWSW	11.2	POD Only

5. Certificate 72279 allows the use of the Deschutes River, Wickiup Reservoir constructed under Permit R-1677, and Haystack Reservoir constructed under Permit R-1754, tributaries of the Columbia River for irrigation of 26.8 acres. The maximum amount of water to which the right is entitled is 0.59 cfs of continuous flow and 140.7 ac-ft per irrigation season of each year, and is further subject to the terms and conditions of the State Engineer's Orders dated January 20, 1955 and February 4, 1955. The date of priority of the right is February 28, 1913. The authorized points of diversion are located as follows: Deschutes River - SE¼ NE¼, SECTION 29, T 17 S, R 12 E, W.M.; 1,700 FEET SOUTH AND 730 FEET WEST FROM THE NE CORNER OF SECTION 29; Wickiup Reservoir - SW¼ NE¼, SECTION 7, T 22 S, R 9 E, W.M.; Haystack Reservoir - SW¼ NE¼, SECTION 27, T 12 S, R 13 E, W.M.. The authorized place of use is as follows:

Township		Range		Meridian	Section	QQ	Acres	Change
9	S	14	E	W.M.	21	NWNW	10.2	POU/POD/USE
9	S	14	E	W.M.	21	SWNW	16.6	POU/POD/USE

6. Certificate 72281 allows the use of the Crooked River, tributary of the Deschutes River for supplemental irrigation of 26.8 acres. The maximum amount of water to which the right is entitled is 0.107 cfs of continuous flow and 107.2 ac-ft per irrigation season of each year. The date of priority of the right is June 23, 1955. The authorized point of diversion is in the SW¼ NE¼, SECTION 13, T 14 S, R 13 E, W.M.; 590 FEET NORTH AND 2,790 FEET EAST FROM THE W¼ CORNER OF SECTION 13. The authorized place of use is as follows:

Township		Range		Meridian	Section	QQ	Acres	Change
9	S	14	E	W.M.	21	NWNW	10.2	POU/POD
9	S	14	E	W.M.	21	SWNW	16.6	POU/POD

7. Certificate 72283 allows the use of the Crooked River, a tributary of the Deschutes River for irrigation of 37.3 acres. The maximum amount of water to which the right is entitled is 0.87 cfs of continuous flow and 149.2 ac-ft per irrigation season of each year, and is further subject to the terms and conditions of a stipulation between the North Unit Irrigation District and the Oregon State Game Commission which has been recorded in the Miscellaneous Records of the Water Resources Director. The date of priority of the right is September 18, 1968. The authorized point of diversion is in the SW¼ NE¼, SECTION 13, T 14 S, R 13 E, W.M.; 590 FEET NORTH AND 2,790 FEET EAST FROM THE W¼ CORNER OF SECTION 13. The authorized place of use is as follows:

Township		Range		Meridian	Section	QQ	Acres	Change
9	S	14	E	W.M.	20	SENE	37.3	POU/POD/USE

8. Certificate 76340 allows the use of Sagebrush Creek, tributary of Trout Creek for irrigation of 1.7 acres. The maximum amount of water to which the right is entitled is 0.04 cfs of continuous flow and 10.2 ac-ft per irrigation season of each year. The date of priority of the right is June 20, 1972. The authorized point of diversion is in the SE¼ SE¼, SECTION 21, T 9 S, R 14 E, W.M.; 950 FEET NORTH AND 760 FEET WEST FROM THE SE CORNER OF SECTION 21. The authorized place of use is as follows:

Township		Range		Meridian	Section	QQ	Acres	Change
9	S	14	E	W.M.	21	NWSE	1.7	POU/POD

9. Certificate 76340 allows the use of Sagebrush Creek, tributary of Trout Creek for irrigation of 41.3 acres. The maximum amount of water to which the right is entitled is 1.03 cfs of continuous flow and 247.8 ac-ft per irrigation season of each year. The date of priority of the right is June 20, 1972. The authorized point of diversion is in the SE¼ SE¼, SECTION 21, T 9 S, R 14 E, W.M.; 950 FEET NORTH AND 760 FEET WEST FROM THE SE CORNER OF SECTION 21. The authorized place of use is as follows:

Township		Range		Meridian	Section	QQ	Acres	Change
9	S	14	E	W.M.	21	NESE	8.8	POD Only
9	S	14	E	W.M.	21	NWSE	32.5	POD Only

10. Application T-8643 involves changing the place of use of the rights as follows:

Certificate	Township		Range		Meridian	Section	QQ	Acres	Use
64424	9	S	14	E	W.M.	21	NWNE	2.7	PRIM
64424	9	S	14	E	W.M.	21	SWNE	37.6	PRIM
64424	9	S	14	E	W.M.	21	SENE	14.2	PRIM
64424	9	S	14	E	W.M.	21	NESE	7.8	PRIM
64424	9	S	14	E	W.M.	21	NWSE	1.8	PRIM

Certificate	Township		Range		Meridian	Section	QQ	Acres	Use
76340	9	S	14	E	W.M.	21	NWSE	1.7	PRIM
72279	9	S	14	E	W.M.	21	NWNE	2.7	SUPP
72279	9	S	14	E	W.M.	21	SWNE	0.3	SUPP
72279	9	S	14	E	W.M.	21	SENE	14.2	SUPP
72279	9	S	14	E	W.M.	21	NESE	7.8	SUPP
72279	9	S	14	E	W.M.	21	NWSE	1.8	SUPP
72281	9	S	14	E	W.M.	21	NWNE	2.7	SUPP
72281	9	S	14	E	W.M.	21	SWNE	0.3	SUPP
72281	9	S	14	E	W.M.	21	SENE	14.2	SUPP
72281	9	S	14	E	W.M.	21	NESE	7.8	SUPP
72281	9	S	14	E	W.M.	21	NWSE	1.8	SUPP
72283	9	S	14	E	W.M.	21	SWNE	37.3	SUPP

11. Application T-8643 also involves changing the points of diversion to the SE $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 21, T 9 S, R 14 E, W.M.; 730 FEET NORTH AND 700 FEET WEST FROM THE SE CORNER OF SECTION 21.
12. Application T-8643 also involves changing the character of use for Certificates 72279 and 72283 from primary irrigation to supplemental irrigation.
13. Notice of this application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
14. Water has been used under the right within the last five years and no evidence has been submitted that would demonstrate that the right is subject to forfeiture under ORS 540.610.
15. A diversion structure, ditch, pump, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
16. The proposed change will not result in enlargement of the right.
17. The proposed change will not result in injury to other water rights.
18. Conserved water application number C-24 has been filed associated with this transfer and is being processed concurrently.

CONCLUSIONS OF LAW

The proposed changes in place of use, point of diversion and character of use in application T-8643 are consistent with the requirements of ORS 540.505 to 540.580.

ORDER

It is hereby ORDERED:


1. The proposed change shall be completed on or before October 1, 2005.
2. The former place of use shall no longer be irrigated as part of these water rights.
3. The right to the use of the water is restricted to beneficial use on the lands or place of use described and is subject to all other conditions and limitations contained in the original water right 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 points of diversion.
5. Water shall be acquired from the same surface water source as the original point of diversion.
6. When required by the Department, the water user shall install and maintain a headgate, 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 headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
7. The water user **shall** install and maintain a fish screen or fish by-pass device. 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 Oregon Department of Fish and Wildlife.

The water user may participate in the Oregon Department of Fish and Wildlife's cost sharing program for installation of screening and by-pass devices in accordance with ORS 540.525.

8. Certificates 64424 and 76340 are canceled. When satisfactory proof of the completed changes are received, new certificates confirming these water rights will be issued.
9. Except as modified herein, all other conditions and restrictions on Certificates 72279, 72281 and 72283 remain in effect. When the Director determines that it is necessary, or to facilitate records keeping, new certificates will be issued to confirm all completed changes for which satisfactory proof has been made and to confirm that portion of the right not modified by this or any other order.

10. If the order approving conserved water application number C-24 is appealed and as a result does not become final, this order shall not become final.

Dated at Salem, Oregon this 4th day of February, 2004.


Paul R. Cleary
Director