

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-8459, Josephine County)	CHANGE IN POINT OF DIVERSION,
)	PLACE OF USE AND PARTIAL
)	CANCELLATION OF A WATER
)	RIGHT

Authority

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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

DUTCHER CREEK ENTERPRISES, INC.
4611 UPPER RIVER ROAD
GRANTS PASS, OREGON 97526

Findings of Fact

Background

1. On March 7, 2000, Dutcher Creek Enterprises, Inc. filed an application to change the place of use and point of diversion under Certificates 1953 and 81595 The Department assigned the application number T-8459.
2. The portion of the first right to be transferred is as follows:
Certificate: 1953 in the name of S Loughbridge (perfected under Permit S-1290)
Use: IRRIGATION of 32.8 ACRES
Priority Date: JULY 8, 1912
Rate: 0.41 CUBIC FOOT PER SECOND (cfs)
Source: ROGUE RIVER, tributary to PACIFIC OCEAN

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.

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	6 W	WM	15	SE NW	14.8
36 S	6 W	WM	15	NE SW	18.0

3. Certificate 1953 does not describe the location of the point of diversion, however information is available from the permit which indicates that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
36 S	6 W	WM	15	SW SE	2	26.26 CHAINS SOUTH OF THE CENTER OF SEC 15

4. Transfer Application T-8459 proposes to move the authorized point of diversion for this right approximately 3/4 mile upstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	6 W	WM	14	NE SW	SOUTH 61 DEGREES EAST, 1580 FEET FROM E1/4 CORNER, SECTION 15

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

Certificate: 81595 in the name of Fort Vannoy Irrigation District (perfected under Permit S-9692)

Use: IRRIGATION of 3.9 ACRES

Priority Date: JUNE 12, 1930

Rate: 0.05 CUBIC FOOT PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre per year

Source: ROGUE RIVER, tributary to PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	6 W	WM	14	NE SW	POD #1; SOUTH 61 DEGREES EAST, 1580 FEET FROM E1/4 CORNER, SECTION 15

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	6 W	WM	15	SW NW	0.30
36 S	6 W	WM	15	SE NW	1.45
36 S	6 W	WM	15	NE SW	0.80
36 S	6 W	WM	15	NW SW	1.35

6. Transfer Application T-8459 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	6 W	WM	15	SW NW	3.9

7. Notice of the application for transfer was published in the Department's weekly notice, on March 14, 2000, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. Notice of the application for transfer was published in the Grants Pass Daily Courier on May 8, 2001, May 15, 2001 and May 22, 2001 pursuant to OAR 690-380-4020. No comments were filed in response to the notice.
9. 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)]

10. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
11. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights was present within the five-year period prior to submittal of Application T-8459.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.

Partial Cancellation of a Water Right

14. An affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Dutcher Creek Enterprises. The portion of the right to be cancelled is as follows:

Certificate: 1953 in the name of S Loughbridge (perfected under Permit S-1290)

Use: IRRIGATION of 1.0 ACRE

Priority Date: JULY 8, 1912

Rate: 0.02 CUBIC FOOT PER SECOND

Source: ROGUE RIVER, tributary to PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
36 S	6 W	WM	15	SW SE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	6 W	WM	15	SE NW	0.2
36 S	6 W	WM	15	NE SW	0.8

15. An affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Dutcher Creek Enterprises. The right to be cancelled is as follows:

Certificate: 3564 in the name of W A/Cora W Sharp (perfected under Permit S-4669)

Use: IRRIGATION of 1.45 ACRES

Priority Date: JUNE 28, 1920

Rate: 0.01 CUBIC FOOT PER SECOND

Source: SHARPS BAYOU, tributary to the ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
36 S	6 W	WM	15	SW SE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	6 W	WM	15	SE NW	1.45

Conclusions of Law

The changes in place of use and point of diversion proposed in Transfer Application T-8459 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled.

Now, therefore, it is ORDERED:

1. The changes in place of use and point of diversion proposed in Transfer Application T-8459 are approved. The portions of the rights that have been abandoned are cancelled.
2. Water right certificates 1953, 3564 and 81595 are cancelled. New certificates will be issued describing that portion of the right not affected by this transfer and cancellation.
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 Certificates 81595, 1953 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. The former place of use of the transferred right shall no longer receive water under the right.
6. 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.
7. Prior to diverting water, the water user shall install 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 measuring device 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 and operate the measuring device as required by the Department.
8. When required by the Department, the water user shall install, maintain and operate 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.
9. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2010**. 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.
10. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 3rd day of February, 2009.


Phillip C. Ward, Director

Mailing date: 2-6-2009