

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

In the Matter of Transfer Application)
T-8080, Wasco County)
)
) FINAL ORDER APPROVING A
) CHANGE IN PLACE OF USE AND
) PARTIAL CANCELLATION OF A
) WATER RIGHT

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.

ORS 540.610 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

WILLIAM R. MCALLISTER
80420 ROSS ROAD
TYGH VALLEY, OREGON 97063

Findings of Fact

1. On September 8, 1998, William R. McAllister filed a transfer application to change the place of use under Certificates 11108, 51486, 51487, 60463, 76222, 76223 and 80637. The Department assigned the application number T-8080.
2. The Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-8080 to the applicant on November 30, 2006. The draft Preliminary Determination set forth a deadline in which the applicant could respond.
3. On December 6, 2006, oral comments were received via telephone from the applicant's agent, Larry Toll, CWRE identifying typos and errors needing correction. The Preliminary Determination issued on January 5, 2007, corrected those errors contained in the draft of the Preliminary Determination.

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.

4. The portion of the FIRST right to be transferred is as follows:

Certificate: 11108 in the name of JOSEPH WING, (perfected under Permit S-10195)
Use: IRRIGATION of 9.2 ACRES
Priority Date: MAY 27, 1931
Quantity: 0.12 CUBIC FOOT PER SECOND (CFS)
Rate/Duty: ONE-EIGHTIETH of one cubic foot per second per acre
Source: THREE MILE CREEK, tributary to WHITE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
4 S	11 E	WM	11	SE NW	NOT SPECIFIED ON CERTIFICATE

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	W.M.	11	NW NE	3.5
4 S	12 E	W.M.	11	NE NW	5.7
TOTAL:					9.2

5. Application T-8080 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4S	12 E	WM	2	SE SW	9.2
TOTAL:					9.2

6. 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 9.8 ACRES
Priority Date: APRIL 12, 1941 and MARCH 20, 1951
Quantity: 0.25 CUBIC FOOT PER SECOND (CFS), being 0.12 CFS (Priority Date APRIL 12, 1941) and 0.13 CFS (Priority Date MARCH 20, 1951)
Rate/Duty: ONE-FORTIETH of one cubic foot per second per acre, not to exceed 3.0 acre feet per acre
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	NOT SPECIFIED ON CERTIFICATE
3 S	11 E	WM	29	NE SW	NOT SPECIFIED ON CERTIFICATE

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	11	NW NE	3.3
4 S	12 E	WM	11	SW NE	0.7
4 S	12 E	WM	11	NE NW	2.7
4 S	12 E	WM	11	SE NW	3.1
TOTAL:					9.8

7. Application T-8080 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	13 E	WM	7	SE NW	6.4
4 S	13 E	WM	8	SW NW	3.4
TOTAL:					9.8

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

- Certificate:** 76223 in the name of BADGER IMPROVEMENT DISTRICT (perfected under Permit S-27390)
- Use:** IRRIGATION of 6.4 ACRES and SUPPLEMENTAL IRRIGATION of 7.8 ACRES
- Priority Date:** MARCH 22, 1961
- Quantity:** 0.15 CUBIC FOOT PER SECOND (CFS)
- Rate/Duty:** ONE-FORTIETH of one cubic foot per second per acre, and further limited to not to exceed 3.0 acre feet per acre for each acre irrigated during the irrigation season of each year from direct flow and storage from the reservoir constructed under Permit R-773 and the right allowed hereunder for the appropriation of water for lands having a valid prior right shall be limited to the amount necessary to make up any deficiency in water available to said lands under said prior right and the amount allowed herein, together with the amount secured under any other right existing for said lands, shall be limited by the duty of water as fixed herein
- 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	Badger Lake – 400 feet North and 800 feet East from SW corner, Section 16
3 S	11 E	WM	29	NE SW	Badger Creek – 1290 feet South and 550 feet West from the Center, Section 29

Authorized Place of Use:

Primary Irrigation					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	2	NW SE	4.0
4 S	12 E	WM	11	NW NE	1.4
4 S	12 E	WM	11	SE NW	1.0
TOTAL:					6.4

Supplemental Irrigation					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	2	SE NW	4.3
4 S	12 E	WM	11	NW NE	3.5
TOTAL					7.8

9. Application T-8080 proposes to change the place of use of the right to:

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	13 E	WM	7	SW NE	0.8
4 S	13 E	WM	7	SE NE	4.0
4 S	13 E	WM	8	SW NW	1.6
TOTAL:					6.4

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	2	SE SW	3.5
4 S	13 E	WM	7	SE NW	4.3
TOTAL:					7.8

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

Certificate: 60463 in the name of MELVIN DURETTE (perfected under Permit S-43524)

Use: SUPPLEMENTAL IRRIGATION of 7.3 ACRES

Priority Date: FEBRUARY 28, 1977

Quantity: 0.13 CUBIC FOOT PER SECOND (CFS) (Note: this value corrects a scrivener's error in the Preliminary Determination)

Rate/Duty: ONE-FORTIETH of one cubic foot per second per acre, further limited to 3.0 acre feet per acre for each acre irrigated during the irrigation season

Source: PINE HOLLOW CREEK, tributary to WHITE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
4 S	12 E	WM	11	NE NW	Pine Hollow Creek POD #2 – 1140 feet South and 1910 feet East from NW corner, Section 11

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	11	NW NE	3.5
4 S	12 E	WM	11	NE NW	3.8
TOTAL:					7.3

11. Application T-8080 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4S	12 E	WM	2	SE SW	7.3
TOTAL:					7.3

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

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

Use: SUPPLEMENTAL IRRIGATION of 29.0 ACRES

Priority Date: JULY 23, 1968

Quantity: 30.0 ACRE FEET (AF)

Rate/Duty: A diversion of not to exceed 3.0 acre feet per acre for each acre irrigated during the irrigation season of each year. 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 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 NW corner, Section 10

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	2	SE NW	4.3
4 S	12 E	WM	2	NW SE	4.0
4 S	12 E	WM	11	NW NE	8.2
4 S	12 E	WM	11	SW NE	0.7
4 S	12 E	WM	11	NE NW	7.7
4 S	12 E	WM	11	SE NW	4.1
TOTAL:					29.0

13. Application T-8080 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	2	SE SW	8.5
4 S	13 E	WM	7	SW NE	0.8
4 S	13 E	WM	7	SE NE	4.0
4 S	13 E	WM	7	SE NW	10.7
4 S	13 E	WM	8	SW NW	5.0
TOTAL:					29.0

14. The portion of the SIXTH 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 29.0 ACRES

Priority Date: May 1, 1975

Quantity: 30.0 ACRE FEET (AF)

Rate/Duty: A diversion of not to exceed 3.0 acre feet per acre for each acre irrigated during the irrigation season of each year. 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: THREE MILE CREEK and PINE HOLLOW RESERVOIR (constructed under Permit R-6368), tributaries of WHITE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
4 S	11 E	WM	11	SW NW	Three Mile Creek – 1530 feet South and 4580 feet West from NE corner, Section 11

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	2	SE NW	4.3
4 S	12 E	WM	2	NW SE	4.0
4 S	12 E	WM	11	NW NE	8.2
4 S	12 E	WM	11	SW NE	0.7
4 S	12 E	WM	11	NE NW	7.7
4 S	12 E	WM	11	SE NW	4.1
TOTAL:					29.0

15. Application T-8080 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	2	SE SW	8.5
4 S	13 E	WM	7	SW NE	0.8
4 S	13 E	WM	7	SE NE	4.0
4 S	13 E	WM	7	SE NW	10.7
4 S	13 E	WM	8	SW NW	5.0
TOTAL:					29.0

16. The portion of the SEVENTH right to be transferred is as follows:

Certificate: 80637 in the name of BADGER IMPROVEMENT DISTRICT (perfected under Permit S-2163)
Use: IRRIGATION of 4.3 ACRES
Priority Date: AUGUST 8, 1914
Quantity: 0.05 CUBIC FOOT PER SECOND (CFS)
Rate/Duty: ONE-EIGHTIETH of one cubic foot per second per acre, not to exceed 3.0 acre feet per acre
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 – N 65°21'W, 1938.2 feet from the E¼ corner, Section 32

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	2	SE NW	4.3
TOTAL:					4.3

17. Application T-8080 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	13 E	WM	7	SE NW	4.3
TOTAL:					4.3

Partial Cancellation of a Water Right

18. On November 3, 2006, Stix LLC, Pintail LLC, John Patrick Kennedy, Mary Elizabeth Kennedy, Barry Fletcher Kennedy and Carrie Marie Kennedy, owners of certain lands to which a portion of water right Certificate 60463 is appurtenant, submitted affidavits meeting the requirements of ORS 540.621 for partial cancellation of a water right as follows:

Certificate: 60463 in the name of MELVIN DURETTE (perfected under Permit S-43524)

Use: SUPPLEMENTAL IRRIGATION of 11.0 ACRES

Priority Date: FEBRUARY 28, 1977

Source: PINE HOLLOW CREEK, a tributary of WHITE RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	1/4 - 1/4	Survey Coordinates
4 S	12 E	WM	11	NE NW	1140 feet South and 1910 feet East from the NW Corner of Section 11
4 S	12 E	WM	11	NW NW	940 feet South and 900 feet East from the NW Corner of Section 11

Authorized Place of Use to be Cancelled:

Twp	Rng	Mer	Sec	1/4 - 1/4	Acres
4 S	12 E	WM	11	NW NE	4.7
4 S	12 E	WM	11	SW NE	0.5
4 S	12 E	WM	11	NE NW	2.7
4 S	12 E	WM	11	SE NW	3.1
TOTAL:					11.0

19. The partial cancellation described in Finding of Fact #18 represents, as requested by the water right holder, a reduction in the number of acres to which the water may be applied under the right, but does not reduce the total cubic foot per second rate allowed under the right. Use of the full rate allowed by Certificate 60463 on the remaining acres will not increase the rate per acre beyond the nominal 1/80 cfs per acre allowed by the right.
20. Transfer application T-8080 is being processed concurrently with transfer applications T-9990, T-10016 and T-10028 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.
21. 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.
22. On January 5, 2007, the Department issued a preliminary determination proposing to approve Transfer T-8080 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.

23. 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.
24. Ditches, pumps, pipeline and sprinkler systems sufficient to use the full amount of water allowed under the existing rights are present.
25. 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.
26. The proposed change would not result in enlargement of the rights.
27. 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-8080 is consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.


The portion of Certificate 60463 described in Finding #18 as abandoned will be cancelled.

Now, therefore, it is ORDERED:

1. The changes in place of use proposed in application T-8080 are approved. The portion of the right that has been abandoned is cancelled.
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 11108, 51486, 51487, 60463, 76222, 76223 and 80637 and any related decree.
3. Certificates 11108, 51486, 51487, 60463, 76222, 76223 and 80637 are cancelled. New certificates will be issued describing the portions of the rights not voluntarily cancelled or transferred 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 rights transferred will be issued.

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


Phillip C. Ward, Director *PM*

Mailing date: FEB 15 2007