

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

In the Matter of Transfer Application            )     FINAL ORDER APPROVING A  
T-7427, Wallowa County                            )     CHANGE IN POINT OF DIVERSION  
  )     AND 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**

WALLOWA-WHITMAN NATIONAL FOREST  
1550 DEWEY STREET  
PO BOX 907  
BAKER CITY, OR 97814

**Findings of Fact**

1. On September 25, 1995, Wallowa-Whitman National Forest filed a transfer application to change the Point of Diversion and Place of Use under a portion of Certificate 35042. The Department assigned the application number T-7427.
2. The portion of the right to be transferred is as follows:  
**Certificate:** 35042 in the name of Walter Purcell (perfected under Permit S-27724)  
**Use:** Irrigation and Domestic for One Family  
**Priority Date:** November 17, 1961  
**Rate:** 0.05 CFS being 0.04 for Irrigation and 0.01 for Domestic  
**Irrigation Duty:** 1/40 CFS per acre not to exceed 4.0 AF per acre in any irrigation season  
**Acres:** 1.46  
**Source:** Cache Creek and Garden Creek

**Authorized Points of Diversion:**

Township		Range		Meridian	Sec	¼ ¼		Survey Coordinates
6	N	47	E	W.M.	22	SE	SE	Cache Creek POD #1—1400 feet South & 2720 feet West from the most northerly

**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.

Township		Range		Meridian	Sec	¼ ¼		Survey Coordinates
								meander line of H.E.S. 38*****
6	N	47	E	W.M.	23	SE	SW	Cache Creek POD #2—1100 feet South & 230 feet West from the most northerly meander line of H.E.S. 38
6	N	47	E	W.M.	26	SW	NE	Garden Creek POD #3—520 feet South & 2140 feet West from the most easterly meander line of H.E.S. 38
*****The Section and ¼¼ location description for Cache Creek POD #1 has been changed from the description in the Preliminary Determination to describe the location consistently with the description on the Certificate.								

**Authorized Place of Use:**

Township	Range	Meridian	H.E.S	Sec	¼ ¼	Acres	Change
6 N	47 E	W.M.	38	23	NW SE	0.80	POD
6 N	47 E	W.M.	38	23	NW SE	Domestic	POD
6 N	47 E	W.M.	38	26	SE NE	0.66	POU/POD

3. Application T-7427 proposes to change the Point of Diversion #1 in Cache Creek for Irrigation to:

Township		Range		Meridian	Sec	¼ ¼		Survey Coordinates
6	N	47	E	W.M.	23	SE	SW	996 feet North & 2251 feet East from SW Corner of Section 23

4. Application T-7427 proposes to change the Point of Diversion #2 in Cache Creek for Domestic to:

Township		Range		Meridian	Sec	¼ ¼		Survey Coordinates
6	N	47	E	W.M.	23	SE	SW	991 feet North & 2448 feet East from SW Corner of Section 23

5. Application T-7427 proposes to change the Place of Use to:

Township	Range	Meridian	H.E.S.	Sec	¼ ¼	Acres
6 N	47 E	W.M.	38	23	NW SE	0.66

6. Application T-7427 proposes to eliminate Garden Creek as a source and the use of Point of Diversion #3 for irrigating the lands affected by the place of use change described in Finding of Fact #5. Garden Creek will remain an authorized source, and Point of Diversion #3 will continue to be used as a point of diversion for the lands under Certificate 35042 not modified by this transfer.
7. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.

9. Water has been used within the five years prior to the transfer submittal according to the terms and conditions of the right, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
10. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.

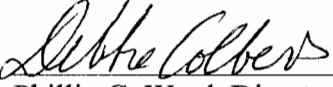
### **Conclusions of Law**

The proposed changes in Point of Diversion and Place of Use in application T-7427 are 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 point of diversion and place of use proposed in application T-7427 are approved.
2. Water right certificate 35042 is cancelled. A new certificate will be issued describing that portion of the right not involved in this transfer.
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 Certificate 35042 and any related decree.
4. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2007**. 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. 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.
6. 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.
7. The former place of use of the transferred water shall no longer receive water as part of this right.
8. When satisfactory proof of the completed changes is received, a new certificate confirming the transferred portion of the right will be issued.

Dated at Salem, Oregon this 27<sup>th</sup> day of March 2006.

  
for Phillip C. Ward, Director

Mailing date: MAR 29 2006