

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-9430, Wallowa County) CHANGE IN POINT OF DIVERSION
) TO REFLECT HISTORIC 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

Billy D. Norman
66618 Lostine River Road
Lostine, Oregon 97857

Findings of Fact

1. On May 12, 2003, Billy D. Norman filed a transfer application to change the point of diversion to reflect historic use under Certificates 81223 and 34490. The Department assigned the application number T-9430. On November 15, 2004, the applicant submitted an amended transfer application.

2. The portion of the first right to be transferred is as follows:

Certificate: 81223 in the name of West Side Irrigation and Water Ditch Company
Use: Irrigation of 17.5 acres
Priority Date: March 27, 1901
Rate/Duty: 1.5 acre-feet per acre in any 30 day period prior to July 31, and 1 acre-foot per acre for the entire remainder of the irrigation season.
Source: South Fork Wallowa River (AKA Lostine River), tributary to Wallowa River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼	¼
1	S	43	E	W.M.	27	NW	SE

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.

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Tract	Acres
1	S	43	E	W.M.	27	NW NE	3	17.5

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

Certificate: 34490 in the name of Donel E. Courtney
Use: Irrigation of 15.4 acres
Priority Date: August 17, 1960
Quantity: 0.14 cubic foot per second (cfs)
Rate/Duty: 1/40th cfs per acre, not to exceed 3.5 acre-feet per acre per year
Source: Lostine River, tributary to Wallowa River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
1	S	43	E	W.M.	27	NW SE	170 feet East & 2310 feet North from the S¼ Corner, Section 27

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Acres
1	S	43	E	W.M.	27	NW NE	0.5
1	S	43	E	W.M.	27	SW NE	10.0
1	S	43	E	W.M.	27	SE NW	4.9

4. Application T-9430 proposes to move the authorized point of diversion approximately 0.5 mile downstream in the Lostine River to:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
1	S	43	E	W.M.	27	NE NW	Sheep Ridge Ditch – 4113 feet North & 174 feet West from the S¼ Corner, Section 27

5. Pursuant to 690-380-2120 (a), evidence has been submitted that the actual, current point of diversion for the water rights in question, as described in Finding of Fact #4, has been in use for more than 10 years.
6. Pursuant to 690-380-2121 (c), the Watermaster provided a statement that to his knowledge there has been no complaint of injury due to the use of water at the actual, current point of diversion, prior to the transfer request.
7. Pursuant to 690-380-2121(4) the applicant provided notice to the Sheep Ridge Ditch Co. A letter from the Sheep Ridge Ditch Co. president, dated August 13, 2004 stated that the Sheep Ridge Ditch Co. agreed to let the applicant transfer water rights to the Sheep Ridge ditch, which satisfies proof of service.

8. 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 last five years according to the terms and conditions of the rights and no evidence is available that would demonstrate that the right are 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 rights.
12. The proposed change would not result in injury to other water rights.

CANCELLATION OF A WATER RIGHT

An affidavit was received from Billy D. Norman, the owner of certain land and the water rights appurtenant to it. A portion of Certificate 34490 has been abandoned and is requested to be cancelled.

13. The right to be cancelled pursuant to OAR 690-380-2320 is as follows:

Certificate: 34490 in the name of Donel E. Courtney
Use: Irrigation of 19.0 acres
Priority Date: August 17, 1960
Quantity: 0.18 cubic foot per second (cfs)
Rate/Duty: 1/40th cfs per acre, not to exceed 3.5 acre-feet per acre per year
Source: Lostine River, tributary to Wallowa River
Authorized Place of Use:

Township		Range		Meridian	Sec	¼	¼	Acres
1	S	43	E	W.M.	27	SW	NE	19.0

Conclusions of Law

The proposed changes in point of diversion in application T-9430 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

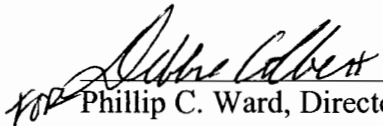
Now, therefore, it is ORDERED:

1. The changes in point of diversion proposed in application T-9430 are approved.
2. The portion of the water right described in Finding of Fact #13 is cancelled.
3. Water right certificates 81223 and 34490 are cancelled. Certificate 81643 describes that portion of the right under certificate 81223 affected by the change in point of diversion and Certificate 81644 is issued describing that portion of the right not involved in this transfer,

and they, together, supersede Certificate 81223. Certificate 81645 describes that portion of the right under certificate 34490 affected by the change in point of diversion and Certificate 81646 is issued describing that portion of the right not involved in this transfer and they, together, supersede Certificate 34490.

4. 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 81223, 34490 and any related decree.
5. The proposed change is effective immediately upon issuance of the special order approving T-9430.
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.

Dated at Salem, Oregon this 3rd day of February, 2006.


Phillip C. Ward, Director

Mailing date: FEB 15 2006