

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

In the Matter of Transfer Application) FINAL ORDER APPROVING CHANGE
T-8997, Jackson County) IN POINT OF DIVERSION
)
)

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

Bruce Carpenter
2435 Arrowpoint CT
Medford, OR 97504-3638

Findings of Fact

1. On January 2, 2002, BRUCE CAPRENTER filed a transfer application to change the point of diversion under Certificate(s) 75604, 75605 AND 75606. The Department assigned the application number T-8997.
2. On March 15, 2005 a letter was received from Walter D. Nunley, Trustee/Lawyer and Contractor/Manager for Rogue River Land Trust, authorizing Bruce Lee Carpenter to sign and make decisions concerning transfer of water rights.
3. The application contains a scrivener’s error in describing the additional point of diversion. The coordinates given locate the proposed diversion within the NE¼ NW¼ as shown in finding number 7 rather than within the NW¼ NW¼, Section 29.
4. The portion of the FIRST right to be transferred is as follows:

Certificate: 75604 in the name of LUTHER HART
Use: IRRIGATION of 5.6 acres
Priority Date: MARCH 29, 1930
Quantity: 0.07 CFS
Rate/Duty: 1/80 cfs per acre,
Source: ROGUE RIVER, tributary to PACIFIC OCEAN

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 Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
35	S	1	W	W.M.	29	NW NW	936 FT. SOUTH AND 1215 FT. EAST FROM THE NW CORNER OF SECTION 29

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Acres
35	S	1	W	W.M.	30	SE NE	5.6

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

Certificate: 75605 in the name of EDWARD R. STUEDLI
Use: IRRIGATION of 13.9 acres
Priority Date: APRIL 16, 1975
Quantity: 0.17 CFS
Rate/Duty: 1/80 cfs per acre, not to exceed 4 ½ acre-feet per year
Source: ROGUE RIVER, tributary to PACIFIC OCEAN
Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Lot	Survey Coordinates
35	S	1	W	W.M.	29	NW NW	8	960 FT. SOUTH AND 1280 FT. EAST FROM THE NW CORNER OF SECTION 29

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Lot	Acres
35	S	1	W	W.M.	29	NW NW	8	5.4
35	S	1	W	W.M.	29	SW NW	7	1.2
35	S	1	W	W.M.	30	NE NE		2.3
35	S	1	W	W.M.	30	SE NE		5.0

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

Certificate: 75606 in the name of BRUCE CARPENTER
Use: IRRIGATION of 0.4 acres
Priority Date: OCTOBER 11, 1990
Quantity: 0.6 ACRE-FEET
Rate/Duty: 0.6 ACRE-FEET PER YEAR, not to exceed 4 ½ acre feet per acre per year
Source: LOST CREEK RESERVOIR tributary to ROGUE RIVER
Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Lot	Survey Coordinates
35	S	1	W	W.M.	29	NW NW	8	RIVER – 936 FT. SOUTH AND 1215 FT. EAST FROM THE NW CORNER OF SECTION 29

Township		Range		Meridian	Sec	¼ ¼	Lot	Survey Coordinates
33	S	1	E	W.M.	26	SE NW		RESERVOIR - 2000 FT. SOUTH AND 1700 FT. EAST OF THE NW CORNER OF SECTION 26

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Acres
35	S	1	W	W.M.	30	SE NE	0.4

7. Application T-8997 proposes to ADD an ADDITIONAL point of diversion for each of the three rights described in findings 4, 5 and 6. The additional point of diversion is to be located approximately 400 feet downstream in the source to:

Township		Range		Meridian	Sec	¼ ¼	Lot	Survey Coordinates
35	S	1	W	W.M.	29	NE NW		1310 FT. SOUTH AND 1360 FT. EAST FROM THE NW CORNER SECTION 29

8. The application and application map differ by 10 feet in the south direction when describing the additional point of diversion. The application description has been determined to be the more accurate.
9. 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. However, the Oregon Department of Fish and Wildlife did request inclusion of a condition requiring installation of proper fish screens.
10. Water has been used within the last five years 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.
11. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
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.

Conclusions of Law

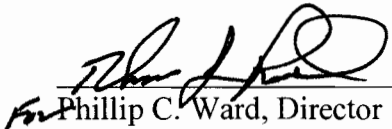
The proposed changes in point of diversion in application T-8997 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in point of diversion proposed in application T-8997 are approved.

2. Water right certificates 75604, 75605, and 75606 are cancelled. New certificates will be issued describing those portions of the rights not involved in this transfer and in transfer T-8996.
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 75604, 75605, 75606 and any related decree.
4. The proposed change shall be completed on or before October 1, 2006.
5. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department by October 1, 2007.
6. The quantity of water diverted at the additional point of diversion, together with that diverted at the old point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
7. Prior to diverting water, 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.
8. The water user shall install and maintain a fish screen or fish by-pass device, as appropriate, at the new point of diversion. 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 Department of Fish and Wildlife. The water user may participate in the Department of Fish and Wildlife's cost-sharing program for installation of screening and by-pass devices in accordance with ORS 540.525.
9. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 29th day of June, 2005.


 Phillip C. Ward, Director

Mailing date: JUL 11 2005