

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

In the Matter of Transfer Application)
T-10473, Polk County)
)
)

FINAL ORDER APPROVING A CHANGE
IN POINT OF REDIVERSION, PLACE OF
USE AND PARTIAL CANCELLATION OF
A WATER RIGHT

Authority

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 540.621 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

Agent

BROADMEAD, LLC
11120 McCANN ROAD
AMITY, OR 97101

JEANNE BOATWRIGHT
2613 12TH STREET
SALEM, OREGON 97302

Findings of Fact

Background

1. On October 19, 2007, The Broadmead Trust filed an application to change the point of diversion and the place of use under Certificate 79992. The Department assigned the application number T-10473. Transfer Application was assigned to Broadmead, LLC on September 14, 2009
2. The portion of the right to be transferred is as follows:

Certificate: 79992 in the name of Ken Eichler (updated on August 14, 2007 to The Broadmead Trust, perfected under Permit S-50853
Use: Irrigation of 13.31 acres

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.

Priority Date: December 13, 1989

Rate: 28.0 acre feet

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: Walker Van-Otten Reservoir, perfected under Certificate 30028, tributary to Salt Creek

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
6 S	5 W	WM	14	NW NE	3	WALKER – VAN OTTEN RESERVOIR DAM
6 S	5 W	WM	14	NW NE	3	REDIVERSION POINT: 1800 FEET NORTH AND 170 FEET EAST FROM THE SE CORNER OF JOHN EADES DLC 47

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
6 S	5 W	WM	14	NE NE	2	3.1
6 S	5 W	WM	14	NW NE	3	1.01
6 S	5 W	WM	14	SW NE	4	7.2
6 S	5 W	WM	14	SE NE	1	2.0

3. Transfer Application T-10473 proposes to change the authorized point of redirection to Rediversion Points B and C listed below, being 235.0 feet upstream and 2.0 miles downstream, respectively:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	5 W	WM	11	SE SW	47	REDIVERSION POINT B: 3138 FEET SOUTH AND 1420 FEET EAST FROM THE NW CORNER OF JOHN EADES DLC 47
6 S	5 W	WM	11	SE NE	47	REDIVERSION POINT C: 400 FEET SOUTH AND 3750 FEET EAST FROM THE NE CORNER OF GEORGE BILLINGS DLC 48

4. Application T-10473 also proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
6 S	5 W	WM	11	SW NE		47	0.73
6 S	5 W	WM	11	NE NW		67	1.82
6 S	5 W	WM	11	NW NW		67	0.52
6 S	5 W	WM	11	SE NW		47	1.23
6 S	5 W	WM	11	SE NW		67	0.19
6 S	5 W	WM	11	SW SW		47	0.88
6 S	5 W	WM	11	NW SE		47	0.58
6 S	5 W	WM	11	NW SE	4		0.17
6 S	5 W	WM	14	NE NW		47	0.01
6 S	5 W	WM	14	NW NW		47	7.18

5. Notice of the application for transfer was published on October 30, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. On August 10, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10473 to the applicants. The draft Preliminary Determination set forth a deadline of September 9, 2009, for the applicants to respond. The applicants requested the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
7. On September 11, 2009, a Request for Assignment was received assigning Transfer Application T-10473 from The Broadmead Trust to Broadmead, LLC.
8. On September 29, 2009, the Department issued a Preliminary Determination proposing to approve Transfer T-10473 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on September 29, 2009, and in the Polk County Itemizer-Observer on October 7, 14, and 21, 2009. No protests were received.
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 points of diversion to prevent fish from entering the diversions and/or safely transport fish back to the body of water from which the fish were diverted and that the diversions are 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. The right was used under Temporary Transfer T-9322 during the 2003 through 2007 irrigation seasons and there is no information in the record 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 were present within the five-year period prior to submittal of Transfer Application T-10473.
12. The proposed changes would not result in enlargement of the right.
13. The proposed changes would not result in injury to other water rights.

Partial Cancellation of a Water Right

14. On September 9, 2009, an affidavit requesting cancellation of a portion of the right was received from Broadmead, LLC. The cancellation, which only affects acreage, will allow the applicant to apply 2.10 acre-feet of water per acre to the non-cancelled lands under this right. The portion of the right to be cancelled is as follows:

Certificate: 79992 in the name of Ken Eichler (updated on August 14, 2007 to The Broadmead Trust), perfected under Permit S-50853
Use: Irrigation of 14.69 acres
Priority Date: December 13, 1989
Source: Walker Van-Otten Reservoir, perfected under Certificate 30028, tributary to Salt Creek

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
6 S	5 W	WM	14	NW NE	3	1800 FEET NORTH AND 170 FEET EAST FROM THE SE CORNER OF JOHN EADES DLC 47

Authorized Place of Use to be Cancelled:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
6 S	5 W	WM	14	NW NE	3	14.69

Conclusions of Law

The change in point of diversion and change in place of use proposed in Transfer Application T-10473 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000, and a portion of the right should be cancelled.

Now, therefore, it is ORDERED:

1. The changes in point of diversion and place of use proposed in application T-10473 are approved. The portion of the right that has been abandoned is cancelled.
2. Water right certificate 79992 is cancelled.
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 79992 and any related decree.
4. The quantity of water diverted at the new diversion points shall not exceed the quantity of water lawfully available at the original point of diversion.
5. Water use measurement conditions:
 - a. Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of diversion.
 - b. The water user shall maintain the meters or measuring devices in good working order.
 - c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.

6. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at each 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 devices meet 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 devices were installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass devices, as appropriate, at the points of diversion consistent with ODFW's operational and maintenance standards.
7. The former place of use of the transferred right shall no longer receive water under the right.
8. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2012**. 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.
9. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 23rd day of November 2009.



Phillip C. Ward, Director *pc*

Mailing date: DEC 11 2009