

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

In the Matter of Transfer Application)
T-10172, Polk County)
)
) FINAL ORDER APPROVING A
) TEMPORARY CHANGE IN POINT OF
) DIVERSION AND PLACE OF USE

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to temporarily transfer the place of use and, if necessary to convey the water to the temporary place of use, the point of appropriation 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

DUANE DITCHEN OF DITCHEN LAND CO.
7385 HOWELL PRAIRIE RD
SILVERTON OR 97381

PHIL WALKER
4780 BRUSH COLLEGE RD
SALEM OR 97304

Findings of Fact

1. On May 12, 2006, Duane Ditchen of Ditchen Land Company and Phil Walker filed an application to temporarily change the place of use and point of diversion under Certificate 26068 and to change the place of use and add a point of appropriation under Certificate 45798 for a period of one year. The Department assigned the application number T-10172. Pacific-Hydro Geology Inc. is the agent authorized to act on the applicant's behalf.
2. On July 3, 2006, an amendment was received from Malia Kupillas of Pacific-Hydro Geology Inc., agent for the applicants, requesting the removal of the request for an additional point of appropriation identified by well log POLK 1261 for the Certificate 45798 right.
3. On July 7, 2006, a second amendment and revised map were received from Pacific-Hydro Geology, Inc. confirming the request under the Certificate 26068 right for a change in point of diversion to an existing bulge-in-the-system reservoir located at NENW, Section 6, Township 7 South, Range 3 West, and adjusting the acreage proposed to be transferred.

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.

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

Certificate: 45798 in the name of GORDON WALKER (perfected under Permit G-5655)

Use: IRRIGATION of 20.6 ACRES

Priority Date: DECEMBER 18, 1972

Rate: 0.08 CUBIC FOOT PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre feet per acre per year

Source: A WELL, tributary to SPRING VALLEY CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	4 W	WM	25	SE SE	49	420 FEET NORTH AND 330 FEET WEST FROM SE CORNER OF SECTION 25

Authorized Place of Use:

IRRIGATION

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	4 W	WM	36	NE NE	49	4.7
6 S	4 W	WM	36	NW NE	49	7.7
6 S	4 W	WM	36	SW NE	49	5.0
6 S	4 W	WM	36	SE NE	49	3.2

5. Application T-10172 proposes to change the place of use of the right to:

IRRIGATION

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
7 S	3 W	WM	6	NW NE		4.6
7 S	3 W	WM	6	NE NW	62	16.0

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

Certificate: 26068 in the name of K W NOTEBOOM (perfected under Permit S-19692)

Use: IRRIGATION of 13.0 ACRES

Priority Date: JUNE 30, 1950

Rate: 0.06 CUBIC FOOT PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre feet per acre per year

Source: An unnamed stream, tributary to Willamette River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
7 S	3 W	WM	6	NW NW	62	NONE GIVEN

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
7 S	3 W	WM	6	NE NW	62	0.4
7 S	3 W	WM	6	NW NW	62	6.3
7 S	3 W	WM	6	SW NW	62	3.6
7 S	4 W	WM	1	NE NE	57	2.7

7. A change in point of diversion is necessary to convey the water to the proposed temporary place of use. Application T-10172 proposes to change the point of diversion to a point approximately 750 feet in an easterly direction from the authorized point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
7 S	3 W	WM	6	NE NW	62	390 FEET SOUTH AND 2150 FEET EAST FROM THE NW CORNER OF SECTION 6

8. Notice of the application for temporary transfer was published on May 30, 2006, pursuant to ORS 540.520 and OAR 690-380-4000. Comments were filed in response to the notice by the following:

Bill Bingle, Pioneer Park Co-Op, Inc.
4185 Briarwood NW
Salem, OR 97304

LaMonte Hochstetler
3400 Brush College Rd NW
Salem, OR 97304

Bob and Shirley Noteboom
3290 Brush College Rd NW
Salem, OR 97304

M. J. Brown
3265 Brush College Rd NW
Salem, OR 97304

August A. Tesch
3860 Brush College Rd NW
Salem, OR 97304

Heather and Angus Webber
3215 Brush College Rd NW
Salem, OR 97304

John and Beverly Adams
3740 Brush College Rd NW
Salem, OR 97304

Paul Shaffer
no return address available

9. The Oregon Department of Fish and Wildlife has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is currently equipped with an appropriate fish screening and/or by-pass device.
10. 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.
11. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
12. The proposed change would not result in enlargement of the rights.
13. The proposed change would not result in injury to other water rights. This finding is made through an abbreviated review recognizing that the transfer may be revoked under ORS 540.523(6) if the Department later finds that the transfer is causing injury to any existing water right.

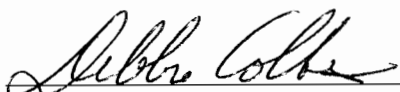
Conclusions of Law

The temporary changes in place of use and point of diversion in application T-10172 are consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

Now, therefore, it is ORDERED:

1. The changes in place of use and point of diversion proposed in application T-10172 are approved.
2. The former place of use **shall not** be irrigated as part of these water rights during the 2006 irrigation season.
3. The use shall revert to the authorized place of use at the end of the 2006 irrigation season. The authorization to use the point of diversion shall be terminated concurrently.
4. The approval of this temporary transfer may be revoked or modified if the Department finds the change causes injury to any existing water right.
5. A subsequent application for permanent transfer of Certificates 45798 and 26068 shall be subject to a full and complete review to determine consistency with the requirements of OAR Chapter 690, Division 380. Approval of this temporary transfer does not establish a precedent for approval of a subsequent application filed for a permanent transfer.
6. The use of water at the temporary place of use authorized by this transfer shall be in accordance with the terms and conditions of Certificates 45798 and 26068.
7. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.
8. The water use shall maintain and operate a fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.
9. Prior to diverting of water at the new point of diversion, the water user shall install an in-line flow meter or other suitable device for measuring and recording the quantity of water used. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department
10. The use of the remaining water rights described by Certificates 45798 and 26068 shall continue to be in accordance with the terms and conditions of Certificates 45798 and 26068.

Dated at Salem, Oregon this 31ST day of July 2006.


Phillip C. Ward, Director

Mailing Date: AUG 02 2006