

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

In the Matter of Transfer Application)	FINAL ORDER
T-12217, Crook County)	APPROVING AN ADDITIONAL POINT
)	OF DIVERSION, CHANGES IN
)	POINTS OF DIVERSION, A CHANGE
)	IN PLACE OF USE, PARTIAL
)	CANCELLATION OF A WATER
)	RIGHT AND A CORRECTION OF A
)	SCRIVENER'S ERROR IN A WATER
)	RIGHT

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement 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

WAIBEL RANCHES LLC
3672 SW JUNIPER CANYON RD
PRINEVILLE, OR 97754

Findings of Fact

1. On December 14, 2015, WAIBEL RANCHES LLC filed an application for an additional point of diversion, to change the points of diversion, to change the place of use, and cancellation of a portion of a water right under Certificates 606 and 51366. The Department assigned the application number T-12217.
2. Notice of the application for transfer was published on December 22, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 22, 2016, the agent for the applicant submitted a revised application and map and an affidavit for partial cancellation of water right certificate 606.

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.

4. On April 7, 2016, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12217 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of May 9, 2016, for the applicant to respond. The applicant requested that 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.
5. On May 3, 2016, the Department issued a Preliminary Determination proposing to approve Transfer Application T-12217 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on May 10, 2016, and in the Central Oregonian newspaper on May 10 and May 17, 2016, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.
6. The first right to be transferred is as follows:

Certificate: 606 in the name of JOSEPH LISTER (confirmed by Crooked River Decree)

Use: IRRIGATION OF 111.0 ACRES, AND STOCK AND DOMESTIC USE

Priority Dates: 1882 FOR 40.0 ACRES, 1895 FOR 30.0 ACRES, 1898 FOR 41.0 ACRES

Rate: 1.4 CUBIC FEET PER SECOND

Limit/Duty: The amount of water to which such right is entitled and hereby confirmed for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed a reasonable amount for domestic and stock use, and 1.4 cubic feet per second for irrigation from February 1st to December 1st of each year.

Source: NORTH FORK CROOKED RIVER, tributary to the CROOKED RIVER

Authorized Point of Diversion:

Ditch Name
BINO COMMITTEE DITCH

Authorized Place of Use:

IRRIGATION, LIVESTOCK AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	21 E	WM	22	NE SW	38.0
16 S	21 E	WM	22	SE SW	20.0
16 S	21 E	WM	28	NE NE	20.0
16 S	21 E	WM	28	NE SE	33.0
Total					111.0

7. The proposed points of diversion are described in the table below with the approximate measured distances from the authorized point of diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from Authorized Point of Diversion (miles)
16 S	21 E	WM	22	SW SW	480 FEET NORTH AND 250 FEET EAST FROM THE SW CORNER OF SECTION 22	0.79
16 S	21 E	WM	27	SW NW	1900 FEET SOUTH AND 280 FEET EAST FROM THE SW CORNER OF SECTION 22	1.05
17 S	21 E	WM	5	NW NE	10 FEET SOUTH AND 260 FEET EAST FROM THE N¼ CORNER OF SECTION 5	3.30

8. Transfer Application T-12217 also proposes to change the place of use of the right to:

IRRIGATION, LIVESTOCK AND DOMESTIC						
Twp	Rng	Mer	Sec	Q-Q	Acres	Priority Date
16 S	21 E	WM	21	SW SE	0.1	1895
16 S	21 E	WM	21	SE SE	5.5	1895
16 S	21 E	WM	22	NW SW	0.4	1895
16 S	21 E	WM	22	SW SW	9.2	1895
16 S	21 E	WM	28	NE NE	13.2	1895
16 S	21 E	WM	28	NW NE	1.6	1895
16 S	21 E	WM	28	SW NE	0.1	1898
16 S	21 E	WM	28	SE NE	3.8	1898
16 S	21 E	WM	28	NE SE	10.9	1898
16 S	21 E	WM	28	NE SE	5.8	1882
16 S	21 E	WM	28	NW SE	19.8	1882
16 S	21 E	WM	28	NW SE	10.0	1898
16 S	21 E	WM	28	SW SE	8.8	1898
16 S	21 E	WM	28	SW SE	13.0	1882
16 S	21 E	WM	28	SE SE	1.4	1882
17 S	21 E	WM	4	SE SW	7.4	1898
Total					111.0	

9. A scrivener's error was found in Certificate 606. The irrigation season was described from July 1st to September 15th, however information is available in the Crooked River Decree that states the irrigation season is in fact from February 1st until December 1st of each year.
10. The portion of the second right to be transferred is as follows:

Certificate: 51366 in the name of LES SCHWAB TIRE CENTERS OF OREGON INC. (perfected under Permit S-26731)

Use: IRRIGATION OF 51.8 ACRES

Priority Date: JANUARY 29, 1960

Rates: 1.30 CUBIC FEET PER SECOND (CFS); BEING 1.19 CFS FROM THE NORTH FORK CROOKED RIVER AND 0.11 CFS FROM COMMITTEE CREEK

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Sources: NORTH FORK CROOKED RIVER AND COMMITTEE CREEK, tributary to the CROOKED RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
16 S	21 E	WM	14	NE SW	DIVERSION 1 - 1820 FEET NORTH AND 2670 FEET EAST FROM THE NW CORNER OF SECTION 23
16 S	21 E	WM	23	NW NW	DIVERSION 2 - 880 FEET SOUTH AND 30 FEET EAST FROM THE NW CORNER OF SECTION 23
16 S	21 E	WM	22	SE NE	DIVERSION 3 - 2310 FEET SOUTH AND 590 FEET WEST FROM THE NW CORNER OF SECTION 23

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	21 E	WM	21	SW SE	0.4
16 S	21 E	WM	21	SE SE	2.8
16 S	21 E	WM	22	SW SW	3.2
16 S	21 E	WM	28	NW NE	0.6
16 S	21 E	WM	28	SW NE	0.1
16 S	21 E	WM	28	SE NE	1.6
16 S	21 E	WM	28	SE SW	1.2
16 S	21 E	WM	28	NW SE	28.3
16 S	21 E	WM	28	SW SE	13.4
16 S	21 E	WM	33	NE NW	0.2
Total					51.8

11. Certificate 51366 describes the location of the points of diversion as listed above, however information is available from the CWRE on site survey indicating that the points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
16 S	21 E	WM	14	NW SE	DIVERSION 1 - 1820 FEET NORTH AND 2670 FEET EAST FROM THE SW CORNER OF SECTION 14
16 S	21 E	WM	23	NW NW	DIVERSION 2 - 850 FEET SOUTH AND 130 FEET EAST FROM THE NW CORNER OF SECTION 23
16 S	21 E	WM	22	SE NE	DIVERSION 3 - 2310 FEET SOUTH AND 590 FEET WEST FROM THE NW CORNER OF SECTION 23

12. The proposed additional point of diversion is described in the table below with the approximate measured distances from the authorized points of diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from authorized points of diversion miles (mi)		
						Div. 1	Div. 2	Div. 3
16 S	21 E	WM	22	SE NE	2540 FEET NORTH AND 2640 FEET EAST FROM THE SW CORNER OF SECTION 22	1.35 mi	0.66 mi	0.40 mi

13. Transfer Application T-12217 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	21 E	WM	22	SW NE	4.1
16 S	21 E	WM	22	SE NE	7.9
16 S	21 E	WM	22	SE NW	14.6
16 S	21 E	WM	22	NE SW	23.0
16 S	21 E	WM	22	SE SW	2.2
Total					51.8

14. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

Transfer Review Criteria [OAR 690-380-4010(2)]

15. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
16. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-12217.
17. The proposed changes would not result in enlargement of the rights.
18. The proposed changes would not result in injury to other water rights.

Partial Cancellation of a Water Right

1. On February 22, 2016 an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Brad Waibel. The right to be cancelled is as follows:

Certificate: 606 in the name of JOSEPH LISTER (confirmed by Crooked River decree)
Use: IRRIGATION of 9.0 ACRES of LAND, AND STOCK AND DOMESTIC USE
Priority Date: 1898
Rate: 0.11 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water to which such right is entitled and hereby confirmed for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed a reasonable amount for domestic and stock use, and 0.11 cubic feet per second for irrigation from February 1st until December 1st of each year.
Source: NORTH FORK CROOKED RIVER, tributary to the CROOKED RIVER

Authorized Point of Diversion:

Ditch Name
BINO COMMITTEE DITCH

Authorized Place of Use to be Cancelled:

IRRIGATION, LIVESTOCK AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	21 E	WM	22	NE SW	2.0
16 S	21 E	WM	28	NE SE	7.0
Total					9.0

Conclusions of Law

The additional point of diversion, change in points of diversion, change in place of use, and partial cancellation of a water right proposed in Transfer Application T-12217 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the requested portion of the abandoned right should be cancelled.

Now, therefore, it is ORDERED:

1. The additional point of diversion, change in points of diversion, and change in place of use proposed in Transfer Application T-12217 are approved. The portion of the right that has been abandoned is cancelled.
2. 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 606 and 51366 and any related decree.
3. Water right Certificate 606 is cancelled.

4. Water right Certificate 51366 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation.
5. The quantity of water diverted at the additional point of diversion, together with that diverted at the original points of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.
6. The quantity of water diverted at the new points of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.
7. 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 new 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.
8. The water user shall operate and maintain an approved fish screen at the new point of diversion. If Oregon Department of Fish and Wildlife (ODFW) determined the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.
9. The former place of use of the transferred rights shall no longer receive water under the rights.
10. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2017**. A Claim of Beneficial Use prepared by a Certified Water Right 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.
11. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 27 day of June, 2016.



 Dwight French, Water Right Services Administrator, for
 Thomas M. Byler, Director
 Oregon Water Resources Department

Mailing date: JUN 29 2016