

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

In the Matter of Transfer Application) FINAL ORDER APPROVING
T-8053, Clackamas County) CHANGES IN POINT OF DIVERSION
) AND PLACE OF USE

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.

Applicant

WADE NEWBEGIN
PO BOX 328
LINCOLN CITY, OR 97367

Receiving Landowner

JIM CALCAGNO
17031 S. CLACKAMAS RIVER DR.
OREGON CITY, OR 97045

Findings of Fact

Background

1. On July 29, 1998, Wade Newbegin filed an application to change the place of use and point of diversion under Certificates 40753 and 67377. The Department assigned the application number T-8053.
2. On behalf of the applicant, Bruce Estes (Certified Water Rights Examiner), submitted several revised applications and maps on October 27, 2004, February 25, 2005, June 2, 2006 and July 10, 2006, which ultimately identified 12.4 acres for transfer under Certificate 40753 and 29.8 acres for transfer under Certificate 67377.
3. The portion of the FIRST right to be transferred is as follows:
Certificate: 40753 in the name of WADE NEWBEGIN (perfected under Permit S-34997)
Use: IRRIGATION of 12.4 ACRES

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order 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 137-004-080 and OAR 690-01-005, 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.

Priority Date: OCTOBER 28, 1970

Rate: 0.15 CUBIC FOOT PER SECOND (cfs)

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

Source: CLACKAMAS RIVER, tributary to WILLAMETTE RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | GLot | Survey Coordinates |
|-----|-----|-----|-----|-------|------|--|
| 2 S | 3 E | WM | 17 | SW SW | 3 | 1110 FEET NORTH AND 1400 FEET WEST FROM THE SOUTH 1/4 CORNER OF SECTION 17 |

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|-----|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 2 S | 3 E | WM | 17 | SW SE | 12.4 |

4. Transfer Application T-8053 proposes to move the authorized point of diversion approximately 600 feet downstream to:

| Twp | Rng | Mer | Sec | Q-Q | Survey Coordinates |
|-----|-----|-----|-----|-------|---|
| 2 S | 3 E | WM | 17 | NW SW | 980 FEET SOUTH AND 880 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 17 |

5. Transfer Application T-8053 also proposes to change the place of use of the right to:

| IRRIGATION | | | | | |
|------------|-----|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 2 S | 3 E | WM | 17 | SE NW | 0.1 |
| 2 S | 3 E | WM | 17 | NE SW | 11.7 |
| 2 S | 3 E | WM | 17 | NW SW | 0.6 |

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

Certificate: 67377 in the name of WADE NEWBEGIN, JR. (perfected under Permit S-15758)

Use: IRRIGATION of 29.8 ACRES

Priority Date: APRIL 17, 1944

Rate: 0.38 CUBIC FOOT PER SECOND (cfs)

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

Source: CLACKAMAS RIVER, tributary to WILLAMETTE RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | GLot |
|-----|-----|-----|-----|-------|------|
| 2 S | 3 E | WM | 17 | SE SW | 3 |

Authorized Place of Use:

| Twp | Rng | Mer | Sec | Q-Q | GLot | Acres | Type of Change |
|-----|-----|-----|-----|-------|------|-------|-----------------------------------|
| 2 S | 3 E | WM | 17 | NE SW | 2 | 5.8 | Point of Diversion |
| 2 S | 3 E | WM | 17 | SE SW | 3 | 11.0 | Point of Diversion |
| 2 S | 3 E | WM | 17 | NW SE | | 3.5 | Point of Diversion |
| 2 S | 3 E | WM | 17 | SW SE | | 5.9 | Point of Diversion |
| 2 S | 3 E | WM | 17 | SW SE | | 3.6 | Place of Use & Point of Diversion |

7. Transfer Application T-8053 proposes to move the authorized point of diversion for all the lands identified in Finding #6 approximately 800 feet downstream to:

| Twp | Rng | Mer | Sec | Q-Q | Survey Coordinates |
|-----|-----|-----|-----|-------|---|
| 2 S | 3 E | WM | 17 | NW SW | 980 FEET SOUTH AND 880 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 17 |

8. Transfer Application T-8053 also proposes to change the place of use of the right for 3.6 acres in the SW ¼ SE ¼ of Section 17, Township 2 South, Range 3 East, W.M., to:

| IRRIGATION | | | | | |
|------------|-----|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 2 S | 3 E | WM | 17 | NW SW | 3.6 |

9. Notice of the application for transfer was published on August 4, 1998, pursuant to OAR 690-15-080 [rules effective July 11, 1996, to May 15, 2000]. No comments were filed in response to the notice.
10. The Oregon Department of Fish and Wildlife (ODFW) 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 not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.
11. On November 9, 2004, the Department mailed a letter to Wade Newbegin (applicant) requesting submittal of a signed, notarized statement of consent from the owners of record for the lands involved in the proposed transfer located in tax lot 1801, E ½ SW ¼ and W ½ SE ¼ of Section 17, T. 2S, R. 3E, WM, to which Certificate 67377 is appurtenant. The applicant was unable to provide the requested statement of consent.
12. Also on November 9, 2004, the Department mailed a letter to Robert O'Brien (owner of record for the land located in tax lot 1801, E ½ SW ¼ and W ½ SE ¼ of Section 17, T. 2S, R. 3E, WM to which Certificate 67377 is appurtenant) requesting submittal of a signed, notarized statement authorizing the change in point of diversion proposed in Transfer Application T-8053 for the portion of Certificate 67377 appurtenant to tax lot 1801. Mr. O'Brien did not provide a statement of consent.
13. On February 10, 2005, the Department mailed another letter to the Wade Newbegin (applicant) and Jim Calcagno (receiving landowner) requesting submittal of a signed, notarized statement of consent from the owners of record (O'Brien) for the lands involved in the proposed transfer located in tax lot 1801, E ½ SW ¼ and W ½ SE ¼ of Section 17, T 2S, R 3E, WM, to which Certificate 67377 is appurtenant. The applicant and receiving landowner did not provide the requested statement of consent.

14. On July 22, 2005, the Department sent another letter to Robert O'Brien (owner of record for the land located in tax lot 1801, E ½ SW ¼ and W ½ SE ¼ of Section 17, T. 2S, R. 3E, WM to which Certificate 67377 is appurtenant) once again requesting submittal of a signed, notarized statement authorizing the change in point of diversion proposed in Transfer Application T-8053 for the portion of Certificate 67377 appurtenant to tax lot 1801. Mr. O'Brien did not provide a statement of consent.
15. Department staff spoke with Jim Calcagno by telephone on October 30, 2006, and indicated that submittal of a signed, notarized statement of consent from the Robert J. and Gretchen O'Brien was necessary in order to remedy the deficiencies of Transfer Application T-8053 thereby allowing further processing of the application. As of April 4, 2007, Mr. Calcagno had not submitted the required statement of consent.
16. The Department contacted Robert J. O'Brien by telephone on October 30, 2006, and indicated that submittal of a signed, notarized statement of consent from the O'Briens was necessary in order to remedy the deficiencies of Transfer Application T-8053 and move forward with the application. Mr. O'Brien stated that he did not intend to provide consent for the transfer application until easement issues involving Metro are resolved.
17. Due to the application deficiency issue described in Findings #11 through #16 above, the Department mailed a draft preliminary determination proposing to deny Transfer Application T-8053 to the applicant, receiving landowner and other involved parties on April 4, 2007. The draft preliminary determination set forth a deadline of May 4, 2007, in which the applicant could respond.
18. On May 1, 2007, Robert and Gretchen O'Brien submitted the signed, notarized statement of consent authorizing the change in point of diversion proposed in Transfer Application T-8053 for the portion of Certificate 67377 appurtenant to tax lot 1801 in the E ½ SW ¼ and W ½ SE ¼ of Section 17, T. 2S, R. 3E, W.M., thus resolving the application deficiencies for Transfer Application T-8053.
19. On May 10, 2007, the Department issued a preliminary determination proposing to approve Transfer Application T-8053 and mailed copies to the applicant, receiving landowner and other involved parties. Additionally, notice of the preliminary determination for the transfer application was published in the Department's weekly notice on May 15, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the Department's weekly notice.

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

20. Water was used within the five-year period prior to submittal of Transfer Application T-8053 according to the terms and conditions of the rights, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.

21. 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 application T-8053.
22. The proposed change would not result in enlargement of the rights.
23. The proposed change would not result in injury to other water rights.

Conclusions of Law

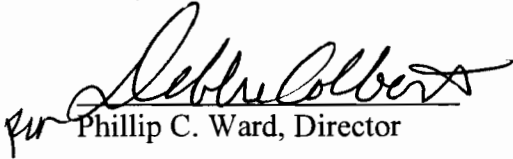
The changes in point of diversion and place of use proposed in Transfer Application T-8053 are consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in place of use and point of diversion proposed in application T-8053 are approved.
2. Water Right Certificates 40753 and 67377 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer.
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 40753 and 67377 and any related decree.
4. The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.
5. The former place of use of the transferred rights shall no longer receive water under the rights.
6. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the 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 device meets 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 device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.
7. When required by the Department, the water user shall install, maintain and operate 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 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 approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2008**. 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, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 15th day of June 2007.


Phillip C. Ward, Director

Mailing date: JUN 20 2007