

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING AN
T-7326, Washington County)	ADDITIONAL POINT OF DIVERSION
)	AND A CHANGE IN 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

GARY P. VANDEHEY
 CONNIE S. VANDEHEY
 7075 NW ROY ROAD
 CORNELIUS, OR 97113

Findings of Fact

Background

1. On March 13, 1995, Gary P. and Connie S. Vandehey filed an application to change the point of diversion and place of use under Certificates 12086, 26399 and 39009. The Department assigned the application number T-7326.
2. On January 29, 2007, the Department received a revised application and map for Transfer T-7326. The revision proposes to add a point of diversion and to change the place of use under Certificate 12086 and to add a point of diversion under Certificate 81181. All proposed changes to Certificates 26399 and 39009 were removed from the transfer application.

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.

3. The applicant submitted a copy of the deed on March 5, 2007, and a dated aerial photograph on March 15, 2007, in order to complete the revised transfer application.

4. The FIRST right to be transferred is as follows:

Certificate: 12086 in the name of HUGO C. SAHNOW (perfected under Permit S-10455)
Use: IRRIGATION of 13.3 ACRES
Priority Date: OCTOBER 23, 1931
Rate: 0.17 CUBIC FOOT PER SECOND (CFS)
Limit/Duty: ONE-EIGHTIETH cfs per acre
Source: EAST FORK DAIRY CREEK, tributary to DAIRY CREEK within the Tualatin River Basin

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	GLot
1 N	3 W	WM	16	3

Authorized Place of Use:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres	Type of Change Proposed
1 N	3 W	WM	16	SW NW		43	1.4	APOD & POU
1 N	3 W	WM	16	SW NW	3		2.9	APOD
1 N	3 W	WM	16	SE NW	4		3.0	APOD
1 N	3 W	WM	16	NE SW	5		0.1	APOD
1 N	3 W	WM	16	NW SW			2.3	APOD & POU
1 N	3 W	WM	16	NW SW			3.6	APOD
TOTAL:							13.3	

5. The Department received information that better describes the location of the authorized point of diversion for Certificate 12086 as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot
1 N	3 W	WM	16	SW NW	3

6. Application T-7326 proposes to add a point of diversion approximately 0.46 mile downstream from the authorized point of diversion, at the following location:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
1 N	3 W	WM	16	NESW	5	3220 FEET SOUTH AND 1290 FEET WEST FROM THE NORTH ¼ CORNER OF SECTION 16

7. Application T-7326 also proposes to change the place of use for a portion of the right referenced in Finding of Fact #4 to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
1 N	3 W	WM	16	NE SW	5	3.7
TOTAL:						3.7

8. The SECOND right to be transferred is as follows:

Certificate: 81181 in the name of GARY P. VANDEHEY AND CONNIE S. VANDEHEY LIVING TRUST (perfected under Permit S-18156)
Use: IRRIGATION of 4.5 ACRES and SUPPLEMENTAL IRRIGATION of 12.5 ACRES
Priority Date: FEBRUARY 24, 1948
Rate: 0.2 CUBIC FOOT PER SECOND (CFS), BEING 0.05 CFS FOR IRRIGATION AND 0.15 CFS FOR SUPPLEMENTAL IRRIGATION
Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year
Source: EAST FORK DAIRY CREEK, tributary to DAIRY CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot
1 N	3 W	WM	16	NE SW	5

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
1 N	3 W	WM	16	SE NW	4	1.8
1 N	3 W	WM	16	NE SW	5	2.7
TOTAL:						4.5

SUPPLEMENTAL IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
1 N	3 W	WM	16	SE NW		44	1.0
1 N	3 W	WM	16	SE NW	4		1.7
1 N	3 W	WM	16	NE SW		44	5.5
1 N	3 W	WM	16	NE SW	5		4.3
TOTAL:							12.5

9. Application T-7326 proposes to add a point of diversion approximately 300 feet downstream from the authorized point of diversion, at the following location:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
1 N	3 W	WM	16	NE SW	5	3220 FEET SOUTH AND 1290 FEET WEST FROM THE NORTH ¼ CORNER OF SECTION 16

10. Notice of the application for transfer was published on March 22, 1995, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

11. On April 4, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-7326 to the applicants. The draft Preliminary Determination set forth a deadline of May 4, 2007, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination.

12. On April 27, 2007, the Department issued a preliminary determination proposing to approve Transfer Application T-7326 and mailed a copy to the applicants. Additionally, notice of the preliminary determination for the transfer application was published on the Department's weekly notice on May 1, 2007, and in a local newspaper on May 4, 11 and 18, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the Department's weekly notice or to the newspaper notice.
13. 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.

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

14. Water has been used within the last five years 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.
15. 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-7326.
16. The proposed change, as conditioned, would not result in enlargement of the rights.
17. The proposed change, as conditioned, would not result in injury to other water rights.

Conclusions of Law


The additional point of diversion and change in place of use proposed in Transfer Application T-7326 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The additional point of diversion and change in place of use proposed in application T-7326 are approved.
2. Water right certificates 12086 and 81181 are 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 Certificates 12086 and 81181 and any related decree.

4. 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.
5. The former place of use from which the right has been transferred shall no longer receive water under the right.
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 19th day of June 2007.


Phillip C. Ward, Director

JUN 21 2007

Mailing date: _____

