

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-9874, Josephine County) CHANGE IN POINT OF DIVERSION

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

RICHARD B. & KATHY H. ETHIER
PO BOX 225
OBRIEN OR 97534

Findings of Fact

1. On February 28 2005, Richard B. & Kathy H. Ethier filed a transfer application to change the point of diversion under Certificate 13862. The Department assigned the application number T-9874.

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

Certificate: 13862 in the name of R. P. GEORGE (confirmed by Illinois River (F) decree)
Use: IRRIGATION of 24 ACRES
Priority Date: 1871
Rate: 0.48 CUBIC FEET PER SECOND
Limit: ONE-FIFTIETH cfs per acre
Source: WOOD CREEK, tributary to WEST FORK ILLINOIS RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
40 S	8 W	WM	29	SE SW	220 FEET WEST AND 1190 FEET NORTH OF THE S 1/4 CORNER, SECTION 29
40 S	8 W	WM	32	NE NW	230 FEET WEST AND 500 FEET SOUTH OF THE N 1/4 CORNER, SECTION 32

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.

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	8 W	WM	29	NE SW	12.7
40 S	8 W	WM	29	SE SW	11.3

3. Application T-9874 proposes to move the authorized point of diversion approximately 1/2 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
40 S	8 W	WM	29	NE SW	1560 FEET NORTH AND 660 FEET WEST OF THE S 1/4 CORNER, SECTION 29
40 S	8 W	WM	29	NE SW	2320 FEET NORTH AND 990 FEET WEST OF THE S 1/4 CORNER, SECTION 29
40 S	8 W	WM	29	NE SW	1450 FEET NORTH AND 200 FEET WEST OF THE S 1/4 CORNER, SECTION 29
40 S	8 W	WM	29	NE SW	2390 FEET NORTH AND 1160 FEET WEST OF THE S 1/4 CORNER, SECTION 29
40 S	8 W	WM	29	SE SW	570 FEET NORTH AND 220 FEET WEST OF THE S 1/4 CORNER, SECTION 29
40 S	8 W	WM	29	SE SW	200 FEET NORTH AND 240 FEET WEST OF THE S 1/4 CORNER, SECTION 29

4. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice. However, the Oregon Department of Fish and Wildlife did request inclusion of a condition requiring installation of proper fish screens.
5. 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.
6. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
7. The proposed change would not result in enlargement of the right.
8. The proposed change would not result in injury to other water rights.
9. No comments were received in response to notice of the Preliminary Determination.

Conclusions of Law

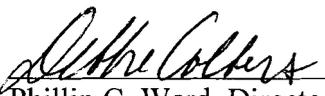
The changes in point of diversion proposed in application T-9874 appear to be consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore, it is ORDERED:

The changes proposed in T-9874 are approved; subsequent use of water shall be subject to the following conditions:

1. 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 13862 and any related decree.
2. The proposed change shall be completed on or before October 1, 2006.
3. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department by October 1, 2007.
4. The quantity of water diverted at the new points of diversion shall not exceed the quantity of water lawfully available to the transferred rights at the original point of diversion.
5. Prior to diverting water, the water user shall install and maintain a headgate, 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 headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
6. The water user shall install and maintain a fish screen or fish by-pass device, as appropriate, at the new point of diversion. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning of construction, and shall be installed under the supervision of the Department of Fish and Wildlife.
7. Certificate 13862 is cancelled; Certificate 81512 shall be issued to describe the remaining rights unaffected by T-9874.

Dated at Salem, Oregon this 13th day of September 2005.

FOR 
Phillip C. Ward, Director

Mailing date: SEP 14 2005