

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-9776, Umatilla County) TRANSFER
)

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

William F. and Paralee Weinke
Box 797
Pilot Rock, OR 97868

Findings of Fact

1. Mr. and Mrs. Weinke filed an application to transfer the points of diversion under Certificates 2566, 79859, and 80632. The Department assigned the application number T-9776.
2. The portion of the rights to be transferred is as follows:
Certificate: 2566 in the name of Carl Jensen
Use: Irrigation of 69.2 acres of land, domestic, and stock
Priority Date: 1873 for 29.66 acres and 1907 for 39.54 acres
Quantity: 0.86 cfs, being 0.37 cubic feet per second with 1873 priority, and 0.49 cfs with 1907 priority
Rate/Duty: 1/80th cfs per acre, subject to provisions of paragraph 33 of decree of the Circuit Court of the State of Oregon in Volume 3 page 127
Acres: 69.2
Source: Birch Creek, tributary to Umatilla River

Authorized Point of Diversion:

Township	Range	Meridian	Sec	¼ ¼	Lot	DLC	Survey Coordinates
1	S	32	E	W.M.	16	SW NW	None specified

Authorized Place of Use:

Township	Range	Meridian	Sec	¼ ¼	Lot	DLC	Acres
1	S	32	E	W.M.	9	NE NW	16.2
1	S	32	E	W.M.	9	SE NW	32
1	S	32	E	W.M.	9	NE SW	21

This is a final order in other than 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.

Certificate: 79859 in the name of Thos. Jacques
Use: Irrigation of 8.45 acres of land, domestic, and stock
Priority Date: 1904
Quantity: 0.11 cubic feet per second
Rate/Duty: 1/80th cfs per acre, subject to provisions of paragraph 33 of decree of the Circuit Court of the State of Oregon in Volume 3 page 127
Acres: 8.45
Source: Birch Creek, tributary to Umatilla River
Authorized Point of Diversion:

Township	Range	Meridian	Sec	¼ ¼	Lot	DLC	Survey Coordinates
1	S	32	E	W.M.	17	NE NE	None specified

Authorized Place of Use:

Township	Range	Meridian	Sec	¼ ¼	Lot	DLC	Acres
1	S	32	E	W.M.	9	NW NE	8.45

Certificate: 80632 in the name of William Ellenberger
Use: Irrigation of 8.86 acres of land
Priority Date: May 27, 1937
Quantity: 0.15 cubic feet per second
Rate/Duty: 1/40th cfs per acre, not to exceed 4.5 acre-feet per acre for each acre irrigated during irrigation season of the year
Acres: 8.86
Source: Birch Creek, tributary to Umatilla River
Authorized Point of Diversion:

Township	Range	Meridian	Sec	¼ ¼	Lot	DLC	Survey Coordinates
1	S	32	E	W.M.	17	NE NE	None specified

Authorized Place of Use:

Township	Range	Meridian	Sec	¼ ¼	Lot	DLC	Acres
1	S	32	E	W.M.	9	NE NE	1.94
1	S	32	E	W.M.	9	NW NE	6.92

3. Application T-9776 proposes to move the authorized points of diversion for Certificate 79859 and 80632 approximately 0.9 mile downstream from the existing points of diversion in Birch Creek, and for Certificate 2566 approximately 1.5 miles downstream from the existing point of diversion in Birch Creek to:

Township	Range	Meridian	Sec	¼ ¼	Survey Coordinates		
1	S	32	E	W.M.	9	SE NW	POD 1--2,290 feet south and 1,380 feet east of the NW corner of Section 9
1	S	32	E	W.M.	9	SE NW	POD 2--1,775 feet south and 1,340 feet east of the NW corner of Section 9
1	S	32	E	W.M.	9	NE NW	POD 3--580 feet south and 1,850 feet east of the NW corner of Section 9

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 or by-pass device.
5. Water has been used within the last five years according to the terms and conditions of the right and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
6. A diversion structure and ditch 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.

Conclusions of Law

The changes in points of diversion proposed in application T-9776 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

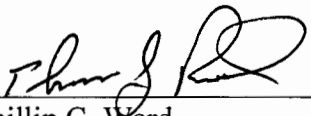
1. The changes in points of diversion proposed in application T-9776 are approved.
2. Water right certificates 2566, 79859, and 80632 are cancelled. New certificates will be issued describing those portions of the rights not involved in this transfer.
3. For each point of diversion, the number of acres to be served and priority dates shall correspond with the following:

Township	Range	Meridian	Sec	¼ ¼	POD	Certificate of Record	Priority Date	Rate (cfs)	Acres
1 S	32 E	W.M.	9	SE NW	1	2566	1873	0.11	8.66
				NE SW		2566	1873	0.26	21.00
1 S	32 E	W.M.	9	SE NW	2	2566	1907	0.29	23.34
1 S	32 E	W.M.	9	NE NW	3	2566	1907	0.20	16.20
				NW NE		79859	1904	0.11	8.45
				NW NE		80632	May 27, 1937	0.12	6.92
				NE NE		80632	May 27, 1937	0.03	1.94

4. 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 2566, 79859, 80632 and any related decree.
5. The proposed change shall be completed on or before October 1, 2006.

6. 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.
7. 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.
8. 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.
9. 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. The water user may participate in the Department of Fish and Wildlife's cost-sharing program for installation of screening and by-pass devices in accordance with ORS 540.525.
10. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 29th day of DECEMBER, 2004.



Phillip C. Ward
Director

Mailing date: JAN 07 2005