

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

In the Matter of Transfer Application)
T-9793, Jefferson County)
)
) FINAL ORDER APPROVING A
) CHANGE IN POINT OF DIVERSION
) TO REFLECT HISTORICAL USE

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 IRWIN B. HOLZMAN 3724 SW 50 th PORTLAND OR 97721	Agent DAVID EVANS AND ASSOCIATES 709 NW WALL STREET SUITE 102 BEND OR 97701
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Findings of Fact

1. On September 22 2004, Irwin B. Holzman filed a transfer application to establish an historic point of diversion under Certificate 23706. The Department assigned the application number T-9793.

2. The portion of the right to be transferred is as follows:
Certificate: 23706 in the name of Jerome/Lena Holzman (perfected under Permit S-23211)
Use: DOMESTIC (SWIMMING POOL ONLY)
Priority Date: OCTOBER 27, 1954
Rate: 0.02 CUBIC FEET PER SECOND
Sources: NORTH FORK LAKE CREEK, tributary to METOLIUS RIVER; any deficiency to be made up from a SPRING

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
13 S	9 E	WM			UNSPECIFIED for NORTH FORK LAKE CREEK
13 S	9 E	WM	10	SE SW	SPRING - 150 FEET NORTH AND 300 FEET WEST OF S1/4 CORNER, SECTION 10

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Location
13 S	9 E	WM	10	SE SW	SE ¼

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 137-004-0080 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.

3. Certificate 23706 allows the use of water from two sources, including 0.02 cfs from North Fork Lake Creek for Domestic use, but does not specify a diversion point for that source. The map for corresponding Application 29350 illustrates a point of diversion in SW¼ NE¼ Sec 17, but that point of diversion is listed neither on Certificate 23706 issued in 1958, nor on the Final Proof Survey completed in 1967.
4. The 1967 Final Proof Survey does indicate a point of diversion on North Fork Lake Creek in Section 15, 480 feet south and 30 feet east of the NW corner, Section 15.
5. Given that the point of diversion for the 0.02 cfs right from North Fork Lake Creek is not described by Certificate 23706, the applicant is requesting an historic point of diversion be established pursuant to OAR 690-380-2120. Evidence indicates that the proposed point of diversion has been used by the applicant for at least 38 years.
6. Application T-9793 proposes to formalize the point of diversion used historically for the right to use 0.02 cfs from North Fork Lake Creek. The point of diversion proposed here differs from that shown on the 1967 Final Proof Survey by approximately 20 feet:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
13 S	9 E	WM	15	NW NW	500 FEET SOUTH AND 40 FEET EAST OF THE NW CORNER, SECTION 15

7. There were no affected water rights requiring proof of service by the applicant. Therefore no proof of service was provided.
8. 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.
9. 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.
10. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.

Conclusions of Law

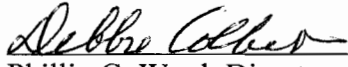
The proposed change in point of diversion in application T-9793 is consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000 and 690-380-2120.

Now, therefore, it is ORDERED:

1. The change in point of diversion to reflect historic use proposed in application T-9793 is approved.

1. Water right certificate 23706 is cancelled. Certificate 81508 is issued to supersede Certificate 23706, and to describe the portion of the right NOT affected by Transfer T-9793.
2. The proposed change shall be effective immediately upon issuance of this special order approving T-9793.
3. Prior to October 1, 2007, 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.
4. Certificate 81722 is issued to supersede Certificate 23706, and to confirm the portion of the right changed by T-9793 under the terms of this order.

Dated at Salem, Oregon this 15th day of November 2005.

FOR 
Phillip C. Ward, Director

Mailing date: NOV 03 2005