BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application)	FINAL ORDER APPROVING
T-8644, Hood River County, Oregon)	ADDITIONAL POINT OF DIVERSION
· · · · ·)	AND CHANGE IN PLACE OF 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

Elizabeth Brady and John H. Jacobson 7130 Smullin Road Mt. Hood, Oregon 97041

Findings of Fact

- 1. Elizabeth Brady and John H. Jacobson filed an application to transfer the place of use and additional point of diversion under Certificates 459, 24395, 24396, 38235 and 74209. The Department assigned the application number T-8644.
- 2. The portion of the first right to be transferred is as follows:

Certificate: 459 in the name of J.E. Hall, Jr. and William C. Smullin

Use: Irrigation and domestic use

Priority Date: September 10, 1909

Quantity: Irrigation for 0.08 cfs and domestic for 0.005 cfs

Acres: 4.68 acres and domestic use

Source: Alder Creek, tributary to Hood River

Authorized Point of Diversion:

Tow	nship	Rai	nge	Meridian	Sec	1/4	1/4	Location
1	S	10	Е	W.M.	9	NE	NW	120 rods (1,980') E and 70 rods (1,155') S of NW corner of Sec. 9

Authorized Place of Use:

Tow	nship	Rai	nge	Meridian	Sec	1/4	1/4	Acres
1	S	10	Е	W.M.	4	SW	SW	1.7 acres

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.

Tow	nship	Range		Range Merio		Meridian	Sec	1/4	1/4	Acres
1	S	10	Е	W.M.	4	SE	SW	2.58 acres and domestic use		
1	S	10	Е	W.M.	9	NW	NW	0.4 acre		

3. Application T-8644 proposes to change the place of use for the portion of the right described in Finding of Fact 2 to:

Tow	nship	Range		Range		Range M		Meridian	Sec	1/4	1/4	Acres
1	S	10	Е	W.M.	4	SW	SE	3.21 acres and domestic use				
1	S	10	Е	W.M.	9	NW	NE	1.47 acres				

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

Certificate: 24395 in the name of Berta Klaussner Goetz and Edward Goetz Use: Irrigation of 2.6 acres and supplemental irrigation of 2.1 acres

Priority Date: February 21, 1945

Quantity: 0.06 cfs

Rate/Duty: 1/80 cfs per acre, not to exceed 3.0 acre-feet per acre **Source:** East Fork of Hood River, tributary to Hood River

Authorized Point of Diversion:

Tow	nship	Rai	nge	Meridian	Sec	1/4	1/4	Location
1	S	10	Е	W.M.	9	NW	NW	150' S and 480' E of NW corner of Sec. 9

Authorized Place of Use:

Town	nship	Rai	nge	Meridian	Sec	1/4	1/4	Acres
1	S	10	Е	W.M.	4	SW	SW	0.3 acre – Primary
1	S	10	Е	W.M.	4	SE	SW	2.3 acres – Primary
1	S	10	Е	W.M.	4	SW	SW	1.7 acres – Supplemental
1	S	10	Е	W.M.	4	SE	SW	0.2 acre - Supplemental
1	S	10	Е	W.M.	9	NW	NW	0.2 acre - Supplemental

5. Application T-8644 proposes to add a point of diversion for the portion of the right described in Finding of Fact 4, to a location approximately 1600 feet North from the existing authorized point of diversion located at:

Town	nship	Rai	nge	Meridian	Sec	1/4	1/4	Location
1	S	10	Е	W.M.	4	NW	SW	1,020' S and 2,180'W of center corner of Sec. 4

6. Application T-8644 also proposes to change the place of use for the portion of the right described in Finding of Fact 4 to:

Tov	vnship	Range		Range Meridian		Sec	1/4	1/4	Acres
1	S	10	Е	W.M.	4	NE	SE	2.6 acres – Primary	
1	S	10	Е	W.M.	4	SW	SE	2.1 acres – Supplemental	

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

Certificate: 24396 in the name of Berta Klaussner Goetz and Edward Goetz

Use: Irrigation and supplemental irrigation

Priority Date: May 21, 1951

Quantity: 0.25 cfs being 0.12 cfs from East Fork Hood River and 0.13 cfs from Alder

Creek

Rate/Duty: 1/80 cfs per acre, not to exceed 4.0 acre-feet per acre

Acres: Irrigation of 15.62 acres from Alder Creek and East Fork Hood River and

supplemental irrigation of 2.3 acres from Alder Creek and 2.38 acres from

East Fork Hood River

Source: Alder Creek and East Fork Hood River, tributary to Hood River

Authorized Points of Diversion:

Tow	nship	Range		Range		Meridian Sec 1/4 1/4		1/4	Location
1	S	10	Е	W.M.	9	NW	NW	Alder Creek165' S & 455' E from NW corner, Sec. 9	
1	S	10	Е	W.M.	9	SW	NE	E. Fk. Hood River780' N & 1865' W from E1/4 corner, Sec. 9	

Authorized Place of Use:

Tow	nship	Rai	nge	Meridian	Sec	1/4	1/4	Acres
1	S	10	Е	W.M.	4	SE	SW	8.63 acres – Primary
1	S	10	Е	W.M.	9	NE	NW	6.99 acres - Primary
1	S	10	Е	W.M.	4	SE	SW	2.3 acres – Supplemental (Alder Cr)
1	S	10	Е	W.M.	4	SE	SW	2.38 acres – Supplemental (E.F. Hood R.)

8. Application T-8644 proposes to add a point of diversion for the portion of the right described in Finding of Fact 7, approximately 1600 feet North from the existing authorized point of diversion on the E. Fk. Hood River to:

Town	nship	Rai	nge	Meridian	Sec	1/4	1/4	Location
1	S	10	Е	W.M.	4	NW	SW	1,020' S and 2,180' W of center corner of Sec. 4

9. Application T-8644 also proposes to change the place of use for the portion of the right described in Finding of Fact 7 to:

Tow	nship	Rai	nge	Meridian	Sec	1/4	1/4	Acres
1	S	10	Е	W.M.	4	NE	SE	2.29 acres
1	S	10	Е	W.M.	4	SW	SE	3.5 acres
1	S	10	Е	W.M.	4	SE	SE	5.6 acres
1	S	10	Е	W.M.	9	NE	NE	0.5 acre
1	S	10	Е	W.M.	9	NW	NE	3.73 acres
1	S	10	Е	W.M.	4	NE	SE	2.3 acres – Supplemental (Alder Cr)
1	S	10	Е	W.M.	4	SW	SE	1.11 acres – Supplemental (E.Fk.Hood R.)
1	S	10	Е	W.M.	9	NW	NE	1.27 acres – Supplemental (E.Fk.Hood R.)

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

Certificate: 74209 in the name of John Harry Jacobson

Use: Irrigation
Priority Date: July 12, 1982

Quantity: 0.01 cfs

Rate/Duty: 1/80 cfs per acre, not to exceed 3.0 acre-feet per acre

Acres: 0.8

Source: Yellow Jacket Creek, w/any deficiency to be made up from East Fork Hood

River and Reservoir 1, tributaries to Hood River

Authorized Points of Diversion:

Town	Township I		nge	Meridian	Sec	1/4	1/4	Location
1	S	10	Е	W.M.	9	SW	NE	POD #1 – (Yellow Jacket Creek) 780' N & 1865' W from E ¹ / ₄ corner, Section 9
1	S	10	Е	W.M.	9	NE	NW	POD#2 – (Reservoir 1) 450' S & 850' W from the N ¹ / ₄ corner, Section 9
1	S	10	Е	W.M.	9	NW	NW	POD#3 – (East Fork Hood River) 165' S & 455' E from NW corner, Section 9
1	S	10	Е	W.M.	4	NW	SW	POD#4 – (East Fork Hood River) 1020' S & 2140' W from center corner, Section 4

Authorized Place of Use:

1	vnship	1	nge	Meridian	Sec	1/4	1/4	Acres
1	S	10	E	W.M.	4	SW	SW	0.2 acre
1	S	10	E	W.M.	4	SE	SW	0.6 acre

11. Application T-8644 proposes to change the place of use for the portion of the right described in Finding of Fact 10 to:

Tow	nship	Range		Meridian	Sec	1/4	1/4	Acres
1	S	10	Е	W.M.	4	SE	SE	0.8

12. The fifth right to be transferred is as follows:

Certificate: 38235, in the name of Keith W. and Victoria A. Adams
Use: Domestic use of two families and a nine family labor camp

Priority Date: April 24, 1968

Quantity: 0.01 cfs

Source: a spring, tributary to East Fork Hood River

Authorized Point of Diversion:

То	owr	iship	Range		Range Meridian Sec		1/4	1/4	Location
1		S	10	Е	W.M.	4	SW	SE	820' N & 680' E from S1/4 corner, Section 4

Authorized Place of Use:

T-8644.VLC

То	wnsl	hip	Range		Range		Range		Range Meridian		Meridian	Sec	1/4	1/4	Acres
1		S	10	E	W.M.	4	SW	SW	one domestic						
1		S	10	Е	W.M.	4	SE	SW	one domestic and nine family labor camp						

13. Application T-8644 proposes to consolidate the entire use of the right described in Finding of Fact 12 under a single domestic use and to change the place of use of the right to:

	nship	Range				Meridian	Sec	1/4	1/4	Acres
1	S	10	E	W.M.	9	NW	NE	one domestic		

14. On June 18, 2004, an affidavit to diminish certificate 74209 by abandoning an authorized point of diversion for a portion of the right was received from Mr. Jacobson. Mr. Jacobson requested that the authorization to use point of diversion #4, which is located 1220'South and 2180'W from the center corner, Section 4, Township 1 South, Range 10 East, W.M., under this right be cancelled for the following lands:

	Township		nge	Meridian	Sec	1/4	1/4	Acres
1	S	10	Е	W.M.	4	SW	SW	0.6
1	S	10	Е	W.M.	4	SE	SW	6.5

- 15. 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.
- 16. 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.
- 17. The proposed changes would not result in enlargement of the rights.
- 18. The proposed changes would not result in injury to other water rights.

Conclusions of Law

The changes in place of use and addition of a point of diversion proposed in application T-8644 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 point of diversion and place of use proposed in application T-8644 are approved.
- 2. Water right certificates 459, 24395, 24396, 38235 and 74209 are cancelled. New certificates will be issued describing those portions of the rights not involved in this transfer.
- 3. POD #4 shall no longer be used for the remaining 7.1 acres in the SW ¼ of Section 4, T1S, R10E, W.M. under the right evidenced by Certificate 74209.
- 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 459, 24395, 24396, 38235, and 74209.
- 5. The proposed changes 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 additional point of diversion, together with that diverted at the existing authorized points of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.
- 8. The former place of use and character of use shall no longer receive water under the original authorized use of these water rights.
- 9. When required by the Department, 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.
- 10. The water user shall install and maintain a fish screen or fish by-pass device, as appropriate, at the new additional 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.
- 11. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, C	regon this <u>16</u> day of <u>M</u>	, 2005.
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Phillip C. Ward		
Director		
Mailing date:	MAY 2 0 2005	