

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

In the Matter of Transfer Application) FINAL ORDER APPROVING AN
T-9789, Wasco County) ADDITIONAL POINT OF DIVERSION

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.

Applicants

CHARLES J. and GOLDIE SANDOZ
5810 MILL CREEK RD.
THE DALLES, OR 97058

Agent

DARRIN ECKMAN
C/O TENNESON ENGINEERING CORP.
409 LINCOLN ST.
THE DALLES, OR 97058

Findings of Fact

Background

1. On September 20, 2004, Charles J. and Goldie Sandoz filed an application to add an additional point of diversion under Certificates 67384 and 67254 on behalf of another land owner. The landowners share and receive water from the existing, authorized points of diversion which are adjacent to their properties. The other landowner is:

T1N, R12E, Sec. 13 & 14 - TL 800, 900, and 1100 Daniel T. Sandoz
5935 Mill Creek Rd.
The Dalles, OR 97058
2. Certificates 67384 and 67254 were superseded by Certificates 83445 and 83446, respectively.
3. The Department assigned the application number T-9789.
4. The transfer application contains notarized affidavits from the landowners identified in the lot book report, consistent with OAR 690-380-4010 (5)(c). Since the filing of the transfer application, one of the affiants/landowners, Bernard J. Sandoz, has passed away and his

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may 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.

portion was bought out by Daniel Sandoz. The affidavits contained the necessary information to authorize the applicants to pursue the changes as proposed in Transfer Application T-9789.

5. The entirety of the first right to be transferred is as follows:

Certificate: 83445 in the name of CHARLES SANDOZ (confirmed by the Mill Creek, Wasco County Decree)

Use: IRRIGATION of 15.1 ACRES

Priority Date: 1855

Limit: ONE-SIXTIETH of one cubic foot per second (cfs) per acre during the irrigation season from April 1 to October 1, if available at the original points of diversion:

Twp	Rng	Mer	Sec	Q - Q	DLC	Ditch	Survey Coordinates
1 N	12 E	WM	13	NW SW	39	SOUTH	1550 Feet North and 1090 Feet East from the SW Corner of Section 13
1 N	12 E	WM	23	NE NW	39	SANDOZ	132 Feet South and 60 Feet West from the N¼ Corner of Section 23

Source: MILL CREEK, tributary to the COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q - Q	DLC	POD	Survey Coordinates
1 N	12 E	WM	13	NE SW	39	OLD	1600 Feet North and 1600 Feet East from the SW Corner of Section 13
1 N	12 E	WM	14	SE SE	39	NEW 1	210 Feet North and 1280 Feet West from the SE Corner of Section 14
1 N	12 E	WM	23	NE NW	39	NEW 2	140 Feet South and 2640 Feet West from the NE Corner of Section 23

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q - Q	DLC	Acres
1 N	12 E	WM	13	NW SW	39	3.8
1 N	12 E	WM	13	SW SW	39	5.2
1 N	12 E	WM	14	SE SE	39	6.1

6. Transfer Application T-9789 proposes to add an additional point of diversion to the above described right located:

Proposed Additional Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	DLC	Survey Coordinates
1 N	12 E	WM	13	SW SW	39	1231 Feet North and 798 Feet East from the SW Corner of Section 13

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

Certificate: 83446 in the name of CHARLES SANDOZ (confirmed by the Mill Creek, Wasco County Decree)

Use: IRRIGATION of 11.9 ACRES

Priority Date: 1855

Limit: ONE-SIXTIETH of one cfs per acre during the irrigation season from April 1 to October 1, if available at the original point of diversion:

Twp	Rng	Mer	Sec	Q - Q	DLC	Ditch	Survey Coordinates
1 N	12 E	WM	14	SE SE	39	L A SANDOZ	198 Feet North and 1320 Feet West from the SW Corner of Section 13

Source: MILL CREEK, tributary to the COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q - Q	DLC	POD	Survey Coordinates
1 N	12 E	WM	13	NE SW	39	OLD	1600 Feet North and 1600 Feet East from the SW Corner of Section 13
1 N	12 E	WM	14	SE SE	39	NEW 1	210 Feet North and 1280 Feet West from the SE Corner of Section 14
1 N	12 E	WM	23	NE NW	39	NEW 2	140 Feet South and 2640 Feet West from the NE Corner of Section 23

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q - Q	DLC	Acres
1 N	12 E	WM	13	SW SW	39	9.0
1 N	12 E	WM	14	SE SE	39	2.9

8. Transfer Application T-9789 also proposes to add an additional point of diversion to the above described right located:

Proposed Additional Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	DLC	Survey Coordinates
1 N	12 E	WM	13	SW SW	39	1231 Feet North and 798 Feet East from the SW Corner of Section 13

9. Notice of the application for transfer was published on October 12, 2004, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

10. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the additional 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 currently equipped with an appropriate fish screening and/or by-pass device.

11. On July 7, 2008, the Department mailed a copy of the *draft* Preliminary Determination proposing to approve Transfer Application T-9789 to the applicants. The cover letter that accompanied the *draft* Preliminary Determination set forth a deadline of August 6, 2008, for

the applicants to respond. On July 9, 2008, the agent, Larry Toll, CWRE, directed by Darrin O. Eckman, the Agent, responded in writing that the applicants have requested that the Department proceed with issuance of a Preliminary Determination.

12. On August 5, 2008, the Department issued a Preliminary Determination proposing to approve Transfer Application T-9789 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 August 12, 2008 and in The Dalles Chronicle newspaper on August 15, 22, and 29, 2008, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

13. 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 records that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
14. A diversion structure and ditches sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Application T-9789.
15. The proposed change would not result in enlargement of the rights.
16. The proposed change would not result in injury to other water rights.

Conclusions of Law

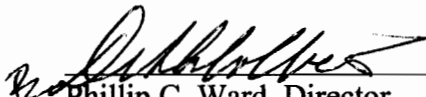
The change to add an additional point of diversion proposed in Transfer Application T-9789 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore it is ORDERED

1. The change to add an additional point of diversion proposed in Transfer Application T-9789 is approved.
2. Water right certificates 83445 and 83446 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 83445, 83446 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 water user shall maintain and operate a fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.
6. 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.
7. The approved changes shall be completed and full beneficial use of the water shall be made on or before October 1, 2010. 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.
8. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 8th day of October, 2008.


Phillip C. Ward, Director

Date Mailed

OCT 09 2008