

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

In the Matter of Transfer Application                    )     FINAL ORDER APPROVING  
T-9783, Morrow and Umatilla Counties            )     CHANGES IN POINT OF DIVERSION  
  )     AND 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**

A & A Farms, LLC  
Gerald Ashbeck  
71384 Highway 207  
Echo, Oregon 97826

**Findings of Fact**

1. A & A Farms, LLC filed an application to transfer the point of diversion and place of use under Certificates 40397 and 68558. The Department assigned the application number T-9783.
2. On December 3, 2004, the Department issued a Preliminary Determination to approve Transfer Application T-9783. On February 4, 2005, Michael D. McCarty, McCarty Ranch, timely filed a protest of the Department's December 3, 2004 Preliminary Determination. On November 1, 2005, Michael D. McCarty withdrew the protest.

3. The entirety of the first right proposed for a transfer in point of diversion is as follows:

**Certificate:** 40397 in the name of A. H. Sunderman  
**Use:** Irrigation  
**Priority Date:** 1873  
**Quantity:** 0.24 cfs  
**Rate/Duty:** Not stated on certificate  
**Acres:** 14.3  
**Source:** Butter Creek, tributary to Umatilla River

This is a final order 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. 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 Point of Diversion:**

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
2	N	27	E	W.M.	34	SE SW	None Given

**Authorized Place of Use:**

Township		Range		Meridian	Sec	¼ ¼	Acres
2	N	27	E	W.M.	27	NW SW	14.3

4. Application T-9783 proposes to move the authorized point of diversion approximately 2 miles downstream from the existing point of diversion serving Certificate 40397 in Butter Creek to:

**Proposed Point of Diversion:**

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
2	N	27	E	W.M.	27	SW NW	320 FEET NORTH AND 145 FEET EAST FROM THE W ¼ CORNER OF SECTION 27

The proposed point of diversion shall serve the entirety of Certificate 40397 (14.3 acres) as modified by a change in place of use as described below.

5. The portion of Certificate 40397 proposed for a transfer in place of use is as follows:

**Quantity:** 0.007 cfs

**Acres:** 0.4

**Source:** Butter Creek, tributary to Umatilla River

**Authorized Place of Use:**

Township		Range		Meridian	Sec	¼ ¼	Acres
2	N	27	E	W.M.	27	NW SW	0.4

6. The portion of the second right proposed for a transfer in place of use is as follows:

**Certificate:** 68558 in the name of Thomas A. and Jessie L. Ashbeck

**Use:** Supplemental irrigation

**Priority Date:** September 11, 1967

**Quantity:** 0.005 cfs

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

**Acres:** 0.4

**Source:** A well in the Butter Creek basin

**Authorized Point of Appropriation:**

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
2	N	27	E	W.M.	27	NW SW	790 FEET SOUTH AND 330 FEET EAST FROM THE W ¼ CORNER OF SECTION 27

**Authorized Place of Use:**

Township		Range		Meridian	Sec	¼ ¼	Acres
2	N	27	E	W.M.	27	NW SW	0.4

7. Application T-9783 proposes to change the place of use of the above portions of Certificates 40397 and 68558 to:

**Proposed Place of Use:**

Township		Range		Meridian	Sec	¼ ¼	Acres
2	N	27	E	W.M.	28	NE SE	0.4

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. However, the Oregon Department of Fish and Wildlife did request inclusion of a condition requiring installation of proper fish screens.
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 surface water right are present, and a pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing ground water right are present.
11. The proposed change would not result in enlargement of the rights.
12. The proposed change would not result in injury to other water rights.

**Conclusions of Law**

The changes in point of diversion and place of use proposed in application T-9783 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

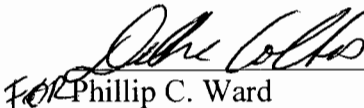
**Now, therefore, it is ORDERED:**

1. The changes in point of diversion and place of use proposed in application T-9783 are approved.
2. Water right certificates 40397 and 68558 are cancelled. A new certificate will be issued describing that portion of the right under Certificate 68558 not involved in this transfer.
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 40397 and 68558 and any related decree.
4. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2007**. 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.

5. The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.
6. The former place of use from which the right has been transferred shall no longer be irrigated as part of this water right.
7. 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.
8. 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.
9. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 4<sup>th</sup> day of November, 2005.

  
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FOR Phillip C. Ward  
Director

Mailing date: NOV 07 2005