

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

In the Matter of Transfer Application            )    FINAL ORDER APPROVING A  
T-10459, Umatilla County                    )    CHANGE IN POINT OF DIVERSION  
  )    AND CHANGE IN PLACE OF USE

**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.

**Applicant**

SCOTT MADISON  
75512 HIGHWAY 207  
ECHO OR 97826

**Agent**

WILLIAM I. PORFILY  
PO BOX 643  
STANFIELD, OR 97875

**Findings of Fact**

**Background**

1. On February 14, 2007, Scott Madison filed an application to change the place of use under Certificate 60455 and Permit 46499. The Department assigned the application number T-10459.

2. The first right to be transferred is as follows:

**Certificate:** 60455 in the name of GLENN M. COCHRAN (confirmed by the Butter Creek Decree)

**Use:** IRRIGATION OF 58.0 ACRES

**Priority Date:** 1896

**Rate:** 1.16 CUBIC FEET PER SECOND (cfs)

**Limit/Duty:** Not to exceed 4.0 acre-feet per acre during the irrigation season of each year

**Source:** BUTTER CREEK, a tributary to the UMATILLA RIVER

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.

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
2N	27 E	WM	11	SE SW	910 FEET NORTH AND 2200 FEET EAST FROM THE SW CORNER OF SECTION 11
2N	27E	WM	11	SE NW	40 FEET NORTH AND 240 FEET WEST FROM THE CENTER ¼ CORNER OF SECTION 11

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	27 E	WM	11	NE NW	18.0
2 N	27 E	WM	11	SW NW	1.0
2 N	27 E	WM	11	SE NW	39.0

3. Application T-10459 proposes to replace the authorized points of diversion with a point approximately 5.0 miles downstream from the authorized points of diversion, located:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
3N	28 E	WM	19	NW SW	10 FEET SOUTH AND 1800 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 19

4. Application T-10459 also proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
3N	28E	WM	17	NE SW	0.4
3N	28E	WM	17	NW SW	19.8
3N	28E	WM	17	SW SW	29.0
3N	28E	WM	17	SE SW	0.8
3N	28E	WM	18	SE SE	5.2
3N	28E	WM	19	NE NE	0.3
3N	28E	WM	20	NW NW	2.5

5. The portion of the water use permit to be transferred is as follows:

**Permit:** S 46499 in the name of JOHN MADISON, Agent (filed under Application S-57999)

**Use:** SUPPLEMENTAL IRRIGATION of 58 ACRES

**Priority Date:** OCTOBER 16, 1978

**Rate:** 1.16 CUBIC FEET PER SECOND (cfs)

**Limit/Duty:** ONE-FIFTIETH of a cfs per acre, not to exceed 4.0 acre-feet in any one year

**Source:** BUTTER CREEK, tributary to UMATILLA RIVER

**Period of Use:** SEPTEMBER 2 - DECEMBER 30 of each year

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
2 N	27E	WM	11	SE NW	POD JA: 390 FEET NORTH AND 150 FEET WEST FROM THE CENTER ¼ CORNER OF SECTION 11

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
2N	27E	WM	11	NE NW	18.0
2N	27E	WM	11	SW NW	1.0
2N	27E	WM	11	SE NW	39.0

6. Application T-10459 proposes to change the point of diversion for the affected portion of the right approximately 5.5 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
3N	23E	WM	19	NW SW	10 FEET SOUTH AND 2160 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 19

7. Application T-10459 also proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
3N	28E	WM	17	SE SE	0.4
3N	28E	WM	17	NW SW	19.8
3N	28E	WM	17	SW SW	29.0
3N	28E	WM	17	SE SW	0.8
3N	28E	WM	18	SE SE	5.2
3N	28E	WM	19	NE NE	0.3
3N	28E	WM	20	NW NW	2.5

8. Notice of the application for transfer was published on September 25, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
9. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new 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 not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.
10. On December 31, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10459 to the applicant. The draft Preliminary Determination set forth a deadline of February 2, 2008, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
11. On January 28, 2008, the Department issued a Preliminary Determination proposing to approve Transfer T-10459 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on February 2, 2008, and in the East Oregonian newspaper on February 9, 16 and 23, 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)]***

12. Water has not been used during accumulation rotation (approximately February-June) within the last five years, but may have been used during other months according to the terms and conditions of the right and permit. There is not sufficient information in the record that would demonstrate that the water uses are subject to forfeiture under ORS 540.610.
13. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right and permit were present within the five-year period prior to submittal of Application T-10459. Also a pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right and permit were present within the five-year period prior to submittal of Application T-10459.
14. There appears to be some conveyance loss during accumulation rotation in the reach between the authorized and proposed points of diversion. The loss occurs early in the season, but diminishes as the season progresses and would not require conditioning to avoid injury and enlargement.
15. The applicant proposes to restrict irrigation to the place of use described on the transfer map through use of technology to turn off outer sprinkler heads as the center pivot rotates through the portion of the circle with smaller diameter. Provided the water user restricts irrigation to the mapped proposed place of use, the proposed change would not result in enlargement of the right and permit.
16. 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-10459 are consistent with the requirements of ORS 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-10459 are approved.
2. Water right certificate 60455 is cancelled.
3. Permit S-46499 is modified.
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 Certificate 60455 and Permit S-46499 and any related decree.
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 of the transferred rights shall no longer receive water under the affected rights contained in this transfer.
7. The water user shall maintain and operate all existing measurement devices and shall make such improvements as may be required by the Department.
8. When required by the Department, the water user shall install, maintain and operate a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
9. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.
10. The approved changes shall be completed and full beneficial use of the water shall be made on or before October 1, 2009. 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.
11. When satisfactory proof of the completed changes is received, certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 25 day of March, 2008.

  
Phillip C. Ward, Director

Mailing date: MAR 28 2008