

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

In the Matter of Transfer Application                    )     FINAL ORDER APPROVING CHANGE  
T-6863, Grant County, Oregon                         )     IN POINT OF DIVERSION, PLACE OF  
  )     USE, AND CHARACTER 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.

Luce Long Ditch Company  
c/o Gerald Beil  
59877 Screech Alley Loop  
John Day, Oregon 97845

**Findings of Fact**

1. On December 23, 1992, the Luce Long Ditch Company filed a transfer application with the Water Resources Department.
2. The Department assigned the transfer application number T-6863.
3. On September 17, 2004, the applicant amended the maps and application to include a change in place of use and character of use.
4. Application T-6863 proposes to change the authorized point of diversion for the following portions of the water rights:

Certificate	Priority	Rate	Use	Acres
24826	1902	1/40 cfs per acre	Irrigation	NW¼ NE¼ 1.8 ACRES SECTION 30, T13S, R31E, W.M.
24829	1905	1/40 cfs per acre	Irrigation	SW¼ NE¼ 3.8 ACRES SECTION 30, T13S, R31E, W.M.
24879	1866	1/40 cfs per acre	Irrigation	NW¼ NW¼ 0.2 ACRE SECTION 29 NE¼ NE¼ 5.0 ACRES NW¼ NE¼ 4.0 ACRES SECTION 30 T13S, R31E, W.M.

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.

Certificate	Priority	Rate	Use	Acres
25054	1866	1/40 cfs per acre	Irrigation and Stock	NW¼ SW¼ 4.3 ACRES SW¼ SW¼ 18.4 ACRES SE¼ SW¼ 8.0 ACRES SECTION 21, T13S, R31E, W.M.
25078	1881	1/40 cfs per acre	Irrigation	SW¼ NW¼ 6.0 ACRES SE¼ NW¼ 4.0 ACRES SECTION 30, T13S, R31E, W.M.
25771	1901	1/40 cfs per acre	Irrigation and Domestic	SE¼ SW¼ 2.2 ACRES SW¼ SW¼ 7.0 ACRES SECTION 22, T13S, R31E, W.M.
25927	1866	1/40 cfs per acre	Irrigation and Stock	SE¼ SW¼ 6.0 ACRES SW¼ SE¼ 39.5 ACRES SE¼ SE¼ 22.9 ACRES SECTION 20 NW¼ NE¼ 4.0 ACRES SECTION 29, T13S, R31E, W.M.
27922	3/19/1958	0.26 cfs	Supplemental Irrigation	NE¼ SE¼ 9.7 ACRES SE¼ SE¼ 0.7 ACRE SECTION 25, T13S, R30E, W.M.
50137	1866	1/40 cfs per acre	Irrigation	SE¼ SW¼ 0.8 ACRE NW¼ SE¼ 0.8 ACRE SW¼ SE¼ 4.9 ACRES SE¼ SE¼ 3.1 ACRES SECTION 21, T13S, R 31E, W.M.
68540	1866	1/40 cfs per acre	Irrigation and Stock	SW¼ SW¼ 30.9 ACRES SE¼ SW¼ 32.2 ACRES SECTION 20, T13S, R31E, W.M. NE¼ NW¼ 8.0 ACRES NW¼ NW¼ 22.2 ACRES SECTION 29, T13S, R31E, W.M.
80527	1866	0.008 cfs	Industrial Use (Road Watering and dust abatement)	SW¼ SE¼ SECTION 21, T13S, R31E, W.M.

5. Application T-6863 proposes to change the authorized point of diversion and place of use for the following portions of the water rights:

Certificate	Priority	Rate	Use	Acres
50137	1866	1/40 cfs per acre	Irrigation	SE¼ SE¼ 0.5 ACRE SECTION 21, T13S, R31E, W.M.

6. The source of the rights described in Findings of Fact 4 and 5 is the John Day River, tributary to the Columbia River. The location of the authorized point of diversion for the rights is:

Township	Range	Meridian	Sec	¼ ¼	Lot	DLC	Survey Coordinates
13	S	31 E	W.M.	22	SE SE		Not specified.

7. Application T-6863 proposes to change the authorized point of diversion for the following portions of the water rights:

Certificate	Priority	Rate	Use	Acres
39647	6/11/1965	0.006 cfs	Irrigation	SW¼ SW¼ 0.23 ACRES SECTION 22, T13S, R31E, W.M.
39991	4/9/1968	0.03 cfs	Irrigation	SW¼ SW¼ 1.1 ACRES SECTION 22, T13S, R31E, W.M.
39992	7/28/1969	0.05 cfs	Supplemental Irrigation	SE¼ SW¼ 1.8 ACRES SECTION 21, T13S, R31E, W.M.
47507	11/26/1971	0.01 cfs	Irrigation	SW¼ SW¼ 0.2 ACRE SECTION 22, T13S, R31E, W.M.
61602	7/9/1979	0.01 cfs	Irrigation	NW¼ NE¼ 0.4 ACRE SECTION 30, T13S, R31E, W.M.

8. The source of the rights described in Finding of Fact 7 is the John Day River, tributary to the Columbia River. The location of the authorized point of diversion for the rights is:

Township	Range	Meridian	Sec	¼ ¼	Lot	DLC	Survey Coordinates
13	S	31	E	W.M.	22	SW SE	1070 feet North and 200 feet East from S¼ corner, Sec. 22

9. Application T-6863 proposes to change the authorized place of use for the following portions of the water rights:

Certificate	Priority	Rate	Use	Acres
43642	4/4/1969	0.007 cfs	Irrigation	NE¼ NE¼ 0.4 ACRE SECTION 30, T13S, R31E, W.M.

10. Application T-6863 proposes to change the character of use for the following portions of the water rights:

Certificate	Priority	Rate	Use	Acres
43646	11/23/1971	0.01 cfs	Restroom	SW¼ SE¼ SECTION 21, T13S, R31E, W.M.

11. The source of the rights described in Findings of Fact 9 and 10 is the John Day River, tributary to the Columbia River. The location of the authorized point of diversion for the rights is:

Township	Range	Meridian	Sec	¼ ¼	Lot	DLC	Survey Coordinates
13	S	31	E	W.M.	22	SW SE	1000 feet North and 10 feet East from S¼ corner, Sec. 22

12. Water right certificate 50137 contains a scrivener's error. Water right certificate 50137 is a remaining right certificate from water right certificate 25694. Water right certificate 25694 listed Luce Ditch as the authorized point of diversion. Water right certificate 50137 listed NE¼ NE¼, Section 25, T13S, R31E, W.M.; Trowbridge Ditch – 2150 feet North and 920 feet West from E¼ corner, Section 25 as the authorized point of diversion. The correct location is Luce Ditch.

13. On September 17, 2004, all the consent letters from all landowners involved in this transfer application were received.

14. The changes proposed to water right certificates 24826, 24829, 24879, 25054, 25078, 25771, 25927, 27922, 50137, 68540 and 80527 involves moving the authorized point of diversion downstream in the John Day River a distance of more than  $\frac{1}{4}$  mile.
15. The changes proposed to water right certificates 39647, 39991, 39992, 47507, and 61602 involves moving the authorized point of diversion downstream in the John Day River a distance of less than a 100 feet.
16. The amount of water to which the rights are entitled is limited to an amount actually beneficially used and shall not exceed the rates described Findings of Fact 4, 5, 7, 9, and 10, if available at the original points of diversion, or its equivalent in case of rotation, measured at the points of diversion from the source.
17. Certificates 24826, 24829, 24879, 25054, 25078, 25771, 25927, 50137, and 68540, are further limited as follows, "The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-FORTIETH cubic foot per second per acre irrigated from April 1 to September 30; further limited to one acre-foot per acre per calendar month to July 1 and  $\frac{3}{4}$  acre-foot per acre thereafter; total five acre-feet per acre irrigated during the irrigation season of each year. The use shall conform to any reasonable rotation system ordered by the proper state officer."
18. Certificate 80527 is further limited as follows, "The amount of water used for industrial use (road watering), is limited to an amount actually beneficially used and shall not exceed 0.008 cubic foot per second , or its equivalent in case of rotation, measured at the point of diversion from the source. This right shall be further limited to 0.3 acre-foot per calendar month to July 1, and 0.225 acre-foot per calendar month thereafter, for a total of 1.5 acre-feet of water during the season from April 1 to September 30 of each year."
19. Certificate 80527 allows water to be taken from the ditch within the SW1/4 SE1/4 Section 21, Township 13 S, Range 31 E to be used for road sprinkling, including construction and dust abatement within the Road Department's service area in Grant County.
20. Certificates 27922, 39647, 39991, 43642, 47507, and 61602 are further limited as follows, "The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-FORTIETH cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 5 acre feet per acre for each acre irrigated during the irrigation season of each year. The use shall conform to any reasonable rotation system ordered by the proper state officer."
21. Certificate 39992 is further limited as follows, "The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-FORTIETH cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 5 acre feet per acre for each acre irrigated during the irrigation season of each year provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right

existing for the same land and shall not exceed the limitation allowed. The use shall conform to any reasonable rotation system ordered by the proper state officer.”

22. Application T-6863 proposes to move the authorized points of diversion under the portions of water right certificates 24826, 24829, 24879, 25054, 25078, 25771, 25927, 27922, 39647, 39991, 39992, 47507, 50137, 61602, 68540, and 80527 proposed for transfer to:

Township		Range		Meridian	Sec	¼ ¼	Location
13	S	31	E	W.M.	22	SW SE	1040' N & 160' E of S½ Corner, Sec. 22

23. Application T-6863 proposes to change the place of use of the rights described in Findings of Fact 5 and 9 to:

Township	Range	Meridian	Sec	¼ ¼	Lot	Acres	Certificate	
13	S	31	E	W.M.	22	SE SW	0.1	50137
13	S	31	E	W.M.	30	NE NE	0.4	50137
13	S	31	E	W.M.	29	NE NW	0.4	43642
<b>TOTAL</b>						<b>0.9</b>		

24. Application T-6863 proposes to change the character of use for certificate 43646 to:

Township	Range	Meridian	Sec	¼ ¼	Acres		
13	S	31	E	W.M.	21	SW SE	Industrial Use, including rest room use

25. Notice of the application for transfer was published in the Department’s weekly notice. One timely comment was received to the weekly published notice. The comments raised were in the form of general questions and concerns and did not identify specific issues indicating injury or enlargement.
26. Water has been used under Water Right Certificates 24826, 24829, 24879, 25054, 25078, 25771, 25927, 27922, 39647, 39991, 39992, 43642, 43646, 47507, 50137, 61602, 68540, and 80527 within the limits and conditions under each water right certificate. The rights have been used over the past five years prior to filing of the application in according to the terms and conditions of the rights and that the rights are not subject to forfeiture under ORS 540.610.
27. On February 19, 2004 a letter was received from Hilary E. McNary, Planning Director, Grant County Planning Department that transfer application 6863 is consistent with Goal 5 elements of the local comprehensive plan.
28. The application for transfer was re-noticed for publication in the Department’s weekly notice on May 4, 2004. No timely protests or comments were received to the weekly published notice.
29. A fish screen and bypass device are present on the proposed diversion. Oregon Department of Fish and Wildlife (ODFW) staff has confirmed that the fish protection facilities meet

NMFS criteria. ODFW staff have determined the proposed changes in point of diversion to the proposed new point of diversion will provide a benefit for fish.

30. There are no intervening point(s) of diversion between the authorized points of diversion and the proposed point of diversion.
31. An operating headgate and measuring device is in place at the proposed point of diversion.
32. The proposed changes described in T-6863 would not result in enlargement of the rights.
33. The proposed changes described in T-6863 would not result in injury to other water rights.

### **Conclusions of Law**

The changes in point of diversion, place of use, and character of use proposed in application T-6863 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, place of use, and character of use proposed in application T-6863 are approved.
2. Water right certificate 24826, 24829, 24879, 25054, 25078, 25771, 25927, 27922, 39647, 39991, 39992, 43642, 43646, 47507, 50137, 61602, 68540, and 80527 are cancelled. New certificates will be issued describing the portions of the rights not involved in this transfer. The scrivener's error will be corrected in the remaining right for certificate 50137.
3. The right to 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 Water Right Certificates 24826, 24829, 24879, 25054, 25078, 25771, 25927, 27922, 39647, 39991, 39992, 43642, 43646, 47507, 50137, 61602, 68540, and 80527.
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 points of diversions.
6. 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.

7. Water shall be acquired from the same surface water source as the original points of diversion.
8. The former place of use and character of use shall no longer receive water under the original authorized uses of these water rights.
9. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 18<sup>th</sup> day of November, 2005.

FOR Debbie Colbet  
Phillip C. Ward, Director

Mailing date: NOV 23 2005