

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-9904, Baker County, Oregon) 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

ADELINE MILLER
45008 HOUGHTON CREEK ROAD
BAKER CITY, OR 97814

Findings of Fact

1. On April 5, 2005, Adeline Miller filed a transfer application to change the place of use under Certificates 12005, 32251 and 32505. The Department assigned the application number T-9904.

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

- Certificate:** 12005 in the name of BIG CREEK DITCH COMPANY (confirmed by the Powder River decree)
- Use:** IRRIGATION of 45.1 ACRES
- Priority Date:** AUGUST 28, 1908
- Rate:** 2.25 CUBIC FEET PER SECOND (CFS)
- Limit/Duty:** ONE-TWENTIETH of one cfs per acre
- Source:** BIG CREEK, tributary to POWDER RIVER

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order in other than a 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.

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 7 S | 41 E | WM | 23 | SW NE | 3.8 |
| 7 S | 41 E | WM | 23 | SE NE | 0.3 |
| 7 S | 41 E | WM | 23 | NE SW | 4.3 |
| 7 S | 41 E | WM | 23 | NE SE | 3.7 |
| 7 S | 41 E | WM | 23 | NW SE | 15.2 |
| 7 S | 41 E | WM | 23 | NW SE | 17.8 |

3. The department has received documentation that describes that the point of diversion is located as follows:

| Twp | Rng | Mer | Sec | Q-Q | Survey Coordinates |
|-----|------|-----|-----|-------|---|
| 6 S | 42 E | WM | 28 | NE NE | BIG CREEK DITCH; 1080 FEET SOUTH AND 150 FEET WEST FROM THE NE CORNER OF SECTION 28 |

4. Application T-9904 proposes to change the place of use of the right to:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 7 S | 41 E | WM | 23 | NE SE | 2.3 |
| 7 S | 41 E | WM | 24 | NW SW | 9.8 |
| 7 S | 41 E | WM | 24 | SW SW | 12.8 |
| 7 S | 42 E | WM | 30 | NW SW | 16.7 |
| 7 S | 42 E | WM | 30 | SW SW | 3.5 |

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

Certificate: 32251 in the name of BIG CREEK DITCH COMPANY (perfected under Permit S-3852)

Use: SUPPLEMENTAL IRRIGATION of 29.6 ACRES

Priority Date: JULY 1, 1918

Rate: 0.37 CUBIC FOOT PER SECOND

Limit/Duty: ONE-EIGHTIETH of one cfs per acre

Source: CATHERINE CREEK, tributary to GRANDE RONDE RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q |
|-----|------|-----|-----|-------|
| 5 S | 42 E | WM | 24 | NE SE |

Authorized Place of Use:

| SUPPLEMENTAL IRRIGATION | | | | | |
|-------------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 7 S | 41 E | WM | 23 | SW NE | 3.8 |
| 7 S | 41 E | WM | 23 | NE SW | 4.3 |
| 7 S | 41 E | WM | 23 | NE SE | 3.7 |
| 7 S | 41 E | WM | 23 | NW SE | 17.8 |

6. The department has received documentation that describes that the point of diversion is located as follows:

| Twp | Rng | Mer | Sec | Q-Q | Survey Coordinates |
|-----|------|-----|-----|-------|---|
| 5 S | 42 E | WM | 24 | SE NE | 90 FEET NORTH AND 1150 FEET WEST FROM THE E1/4 CORNER OF SECTION 24 |

7. Application T-9904 proposes to change the place of use of the right to:

| SUPPLEMENTAL IRRIGATION | | | | | |
|-------------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 7 S | 41 E | WM | 24 | NW SW | 7.8 |
| 7 S | 41 E | WM | 24 | SW SW | 1.6 |
| 7 S | 42 E | WM | 30 | NW SW | 16.7 |
| 7 S | 42 E | WM | 30 | SW SW | 3.5 |

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

Certificate: 32505 in the name of BIG CREEK DITCH COMPANY (perfected under Permit S-4082)

Use: SUPPLEMENTAL IRRIGATION of 29.6 ACRES

Priority Date: MAY 8, 1919

Rate: 0.37 CUBIC FOOT PER SECOND

Limit/Duty: ONE-EIGHTIETH of one cfs per acre

Source: CATHERINE CREEK, tributary to GRANDE RONDE RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q |
|-----|------|-----|-----|-------|
| 5 S | 42 E | WM | 24 | NE SE |

Authorized Place of Use:

| SUPPLEMENTAL IRRIGATION | | | | | |
|-------------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 7 S | 41 E | WM | 23 | SW NE | 3.8 |
| 7 S | 41 E | WM | 23 | NE SW | 4.3 |
| 7 S | 41 E | WM | 23 | NE SE | 3.7 |
| 7 S | 41 E | WM | 23 | NW SE | 17.8 |

9. The department has received documentation that describes that the point of diversion is located as follows:

| Twp | Rng | Mer | Sec | Q-Q | Survey Coordinates |
|-----|------|-----|-----|-------|---|
| 5 S | 42 E | WM | 24 | SE NE | 90 FEET NORTH AND 1150 FEET WEST FROM THE E1/4 CORNER OF SECTION 24 |

10. Application T-9904 proposes to change the place of use of the right to:

| SUPPLEMENTAL IRRIGATION | | | | | |
|-------------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 7 S | 41 E | WM | 24 | NW SW | 7.8 |
| 7 S | 41 E | WM | 24 | SW SW | 1.6 |
| 7 S | 42 E | WM | 30 | NW SW | 16.7 |
| 7 S | 42 E | WM | 30 | SW SW | 3.5 |

11. Notice of the application for transfer was published on April 12, 2005, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
12. 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.
13. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights are present.
14. The proposed change would not result in enlargement of the rights.
15. The proposed change would not result in injury to other water rights.
16. On May 31, 2006, the Department issued a preliminary determination proposing to approve Transfer T-9904 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 June 6, 2006 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

Conclusions of Law

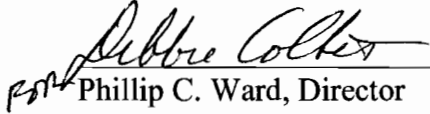
The proposed change in place of use in application T-9904 is consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in place of use proposed in application T-9904 is approved.
2. Water right certificates 12005, 32251 and 32505 are cancelled. New certificates will be issued describing those portions of the rights 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 12005, 32251 and 32505 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 former place of use of the transferred water shall no longer receive water as part of these rights.
6. 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.

7. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 11th day of July 2006.


Phillip C. Ward, Director

Mailing date: JUL 13 2006