

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

In the Matter of Clarification of a Right and )  
Change in Point of Diversion under ) **FINAL ORDER APPROVING A**  
Transfer Application T-8337, Umatilla ) **TRANSFER AND CLARIFYING A**  
County ) **RIGHT**

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 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**

Patricia C. Sargent	John S. Ehart	William Phinney
78874 S Fk Walla Walla River Rd.	108 DeHaven	50 N.W. Davis
Milton-Freewater, Oregon 97862	Milton-Freewater, Or. 97862	Walla Walla, WA 99362

**Findings of Fact**

1. Donald J. Sargent and John S. Ehart, of Milton-Freewater, Oregon, filed an application to transfer the point of diversion for lands described in Water Right Certificates 80549 and 13092. The Department received the application on September 23, 1999, and assigned the application number T-8337. May 4, 2004 the application was amended to include William Phinney, of Walla Walla, Washington, and Patricia C. Sargent (heir of Donald J. Sargent's estate).

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

**Certificate:** 80549 in the name of Lucie M. Maling  
**Use:** Irrigation  
**Priority Date:** 1888  
**Quantity:** ONE and ONE-HALF MINER'S INCHES per acre  
**Acres:** 2.29  
**Source:** South Fork Walla Walla River, tributary to Walla Walla River

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.

**Authorized Point of Diversion:**

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Name of Ditch
4	N	37	E	W.M.	10	NE SW	—	—	LEE ROBERTS DITCH

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

**Certificate:** 13092 in the name of Rufo H. Munsil  
**Use:** Irrigation  
**Priority Date:** 1888  
**Quantity:** ONE and ONE-HALF MINER’S INCHES per acre  
**Acres:** 2.0  
**Source:** South Fork Walla Walla River, tributary to Walla Walla River

**Authorized Point of Diversion:**

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Name of Ditch
4	N	37	E	W.M.	10	NE SW	—	—	LEE ROBERTS DITCH

The maps depicting the place of use described by water right certificates 80549 (old C#12894) and 13092, are of sufficient quality but perhaps skewed in its relationship to established survey monuments of the day. In 1927, the State Engineer performed a survey of this water use for use in the adjudication of claims in the Walla Walla River Basin. The results of the 1927 survey described the place of use in relation to Township, Range, Section and Quarter-Quarter lines. A new survey was performed by a Certified Water Rights Examiner in the summer of 1999 for Transfer Application 8337. The 1999 CWRE survey superimposed the township, range, section and quarter-quarter lines on the place of use differently from the 1927 State Engineer survey. The discrepancy between the two surveys is described in Tables 1 and 2.

<b>Certificate Number</b>	<b>Priority Date</b>	<b>Place of Use</b>
80549* (12894)  (*remaining right from T-8474, T-8479 & T-8509)	1888	NE¼ SW¼ 0.03 ACRES (portion of C#12894) NW¼ SW¼ 2.26 ACRES (portion of C#12894) Section 10 Township 4 North, Range 37 East, W.M.
13092	1888	NW¼ SW¼ 2.00 ACRES Section 10 Township 4 North, Range 37 East, W.M.
		<b>TOTAL = 4.29 acres</b>

The 1999 survey of the area of present water use closely corresponds in shape and size to the lands mapped in the 1927 survey, but located generally to the north and east of the place of use mapped by that survey. Table 2 describes the present surveyed place of use for this right.

Table 2. (Sargent, Ehart, and Phinney) Water Right Certificate - 1999 Surveyed Place of Use		
Certificate Number	Priority Date	Place of Use
80549 (12894)	1888	SW $\frac{1}{4}$ NW $\frac{1}{4}$ 0.02 ACRES (Ehart) NE $\frac{1}{4}$ SW $\frac{1}{4}$ 0.03 ACRES (Ehart) NW $\frac{1}{4}$ SW $\frac{1}{4}$ 2.24 ACRES (Ehart) Section 10 Township 4 North, Range 37 East, W.M.
13092	1888	SW $\frac{1}{4}$ NW $\frac{1}{4}$ 0.82 ACRES (Sargent & Phinney) NW $\frac{1}{4}$ SW $\frac{1}{4}$ 1.18 ACRES (Sargent) Section 10 Township 4 North, Range 37 East, W.M.
		<b>TOTAL</b> = 4.29 acres (1.93 acres = remaining right under Certificate 80549)

There are similar discrepancies between the two surveys for the location of the authorized point of diversion. The authorized point of diversion as surveyed by the State Engineer in 1927 is described as follows:

Township		Range		Meridian	Sec	$\frac{1}{4}$ $\frac{1}{4}$		Lot	Survey Coordinates
4	N	37	E	W.M.	10	NE	SW	—	Lee Roberts Ditch – 1130' South & 435' West from the Center of Section 10

The authorized point of diversion based on the 1999 survey by the CWRE is described as follows:

Township		Range		Meridian	Sec	$\frac{1}{4}$ $\frac{1}{4}$		Lot	Survey Coordinates
4	N	37	E	W.M.	10	NE	SW	—	1060' South & 2260' East from the W $\frac{1}{4}$ Corner of Section 10

The Department has carefully examined the place of use, points of diversion, decree and file information. Based on all available information, both surveys are found to be true and accurate. The discrepancies between the two surveys result from different bases of bearing and reference points used in the surveys. A review of the information leads the Department to conclude the CWRE based his retracement on reference points established or re-established by government land surveyors instead of a retracement of the original survey made by the State Engineer upon which the water right certificate was based. The actual location of the place of use and the point of diversion as they are found on the ground remains the same as the State Engineer found them

in 1927. The only material difference between the two is the manner in which they have been referenced to the government land survey system.

The Department cannot accurately identify the water right subject to transfer without clarifying the record. The Department proposes to clarify the record in conjunction with consideration of Transfer Application 8337 with a statement herein confirming the relationship between the original water right survey performed in 1927 and the CWRE survey performed in the summer of 1999. Both surveys describe the same irrigated land.

4. Application T-8337 proposes to change the POINT OF DIVERSION for the place of use of 4.29 acres as described by Certificates 80549 and 13092, shown in Table 2, approximately 1500 feet downstream in the source to:

Township		Range		Meridian	Sec	¼ ¼		Lot	Survey Coordinates
4	N	37	E	W.M.	10	NW	SW	—	390' South & 800' East from the W1/4 Corner of Section 10

5. The original surveys used to locate the rights evidenced by Water Right Certificates 80549 and 13092 established the place of use and point of diversion. This information was verified by court decree, Umatilla County, at Volume 12, at page 9.
6. A new survey, performed in the summer of 1999 for Transfer Application 8337, shows the water right corresponded in shape and size to that of the original survey, but in a slightly different location than the authorized place of use and point of diversion. This survey was not a retracement of the original water right survey, but based on references established by the government land survey.
7. Both the 1927 survey and the 1999 survey are true and accurate, and both describe the water rights listed in Water Right Certificates 80549 and 13092. The 1999 survey provides an accurate accounting of the land area under irrigation at the time of survey.
8. After examining all available information, the Department concludes the contemporary survey performed in 1999 best describes the place of use and point of diversion for the water right evidenced by Certificates 80549 and 13092. The Department shall rely on the 1999 survey information to clarify the record and determine the water rights subject to transfer.
9. Based on the Land Use Information Form sent in subsequent to the original filing of the application, the proposed transfer is consistent with local comprehensive lands use plans.
10. 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.

11. 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.
12. A diversion structure, ditch and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
13. The proposed changes would not result in enlargement of the rights.
14. The proposed changes would not result in injury to other water rights.

### **Conclusions of Law**

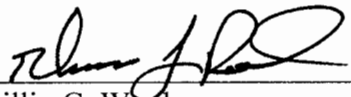
The changes in point of diversion and clarification of the rights proposed in application T-8337 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

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

1. The changes in point of diversion proposed in application T-7338 are approved.
2. Water right certificates 80549 and 13092 are cancelled. A new certificate will be issued describing that portion of water right certificate 80549 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 80549 and 13092 and any related decree.
4. The proposed change shall be completed on or before October 1, 2006.
5. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department by October 1, 2007.
6. 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.
7. When required by the Department, 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.

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

Dated at Salem, Oregon this 29<sup>th</sup> day of MARCH, 2005.

  
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For Phillip C. Ward  
Director