

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING
T-10339, Baker County)	A CHANGE IN POINT OF DIVERSION
)	TO REFLECT HISTORIC 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.

Applicants

Elms Family Trust
c/o Edward and Patricia Elms
42543 Pocahontas Road
Baker City, OR 97814

J & S Management, LLC
c/o John Kirkpatrick
2321 Rolling Hills Drive
Clarkston, WA 99403

Garnet Kaleli, Milo Goss,
Susan Hughes and Mark Goss
P.O. Box 519
La Grande, OR 97850

Anne Kirkpatrick
3140 North 2nd Street
Baker City, OR 97814

Findings of Fact

1. On March 19, 2007, Edward and Patricia Elms, John Kirkpatrick, Anne Kirkpatrick, Garnet Kaleli, Milo Goss, Mark Goss, and Susan Hughes filed a complete transfer application to change the point of diversion under Certificate 4649. The Department assigned the application number T-10339.
2. The portion of the right to be transferred is as follows:
Certificate: 4649 in the name of GEORGE W. EVANS (confirmed by Powder River decree, and not previously canceled by an order recorded in Volume 51, Pages 423-428.)
Use: IRRIGATION of 1.0 ACRE
Priority Date: 1881
Limit/Duty: ONE-FORTIETH cfs per acre and shall be subject to all other conditions and limitations contained in said decree
Source: EAGLE 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.

3. Certificate 4649 does not describe the location of the authorized point of diversion, however the decree tabulation indicates the point of diversion as Kay Young Ditch and the Department received information that better describes the point of diversion location as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
9 S	45 E	WM	10	SE NW	KAY YOUNG DITCH - 1700 FEET SOUTH AND 2450 FEET EAST FROM THE NW CORNER OF SECTION 10

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	46 E	WM	30	SW NE	1.0

4. Application T-10339 proposes to move the authorized point of diversion to reflect historic use approximately 7.5 miles upstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
8 S	45 E	WM	33	SE NW	NEWT YOUNG DITCH - 1950 FEET SOUTH AND 1400 FEET EAST FROM THE NW CORNER OF SECTION 33

5. Notice of the application for transfer was published on March 27, 2007 pursuant to ORS 540.520 and OAR 690-380-4000. Comments were received in response to the notice, however no protests were filed.
6. The Oregon Department of Fish and Wildlife has determined that a fish screening and/or by-pass device may be required in the future 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.
7. Pursuant to OAR 690-380-2120(2)(a), evidence has been submitted that the actual, current point of diversion for the water right in question, as described in Finding #4, has been in use for more than 10 years.
8. Pursuant to OAR 690-380-2120(2)(c), the Watermaster provided a statement that to his knowledge there has been no complaint of injury due to the use of water at the actual, current point of diversion, prior to the transfer request.
9. Notice of the proposed transfer on all affected water right holders was mailed on August 15, 2007, pursuant to 690-380-2120(4).
10. Water has been used within the last five years according to the terms and conditions of the right, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
11. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present.
12. The proposed change would not result in enlargement of the right.

13. The proposed change would not result in injury to other water rights.

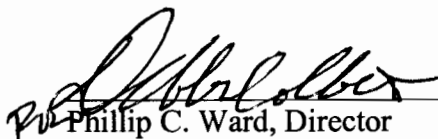
Conclusions of Law

The change in point of diversion to reflect historic use proposed in application T-10339 appears to be 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 point of diversion to reflect historic use proposed in T-10339 is approved.
2. 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 4649 and any related decree.
3. Water Right Certificate 4649 is cancelled. A new water right certificate will be issued confirming the change in point of diversion for the portion of the right affected by the transfer, and a new certificate will be issued to describe the remaining portion of the right not affected by the transfer.
4. The proposed change shall be effective immediately upon issuance of this final order approving T-10339.
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 water user shall maintain the existing headgate and shall make such improvements as may be required by the Department.
7. Within one year after receiving written notification from the Oregon Department of Fish and Wildlife (ODFW) that a fish screening and/or by-pass device is required, the water user shall install a screening and/or by-pass device, as appropriate, at the new point of diversion. The fish screening and/or by-pass device must meet ODFW's design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screening and/or by-pass device meets ODFW's criteria. Once installed the water user shall maintain and operate the fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.

Dated at Salem, Oregon this 8 day of November 2007.


Phillip C. Ward, Director

Mailing Date NOV 13 2007