

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-10381, Umatilla County)	CHANGE IN POINT OF DIVERSION
)	TO A HYDRAULICALLY
)	CONNECTED WELL TO REFLECT
)	HISTORICAL 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

A. J. Wentland
52864 Stateline Road
Milton-Freewater, OR 97862

Findings of Fact

Background

1. On May 4, 2007, Mr. A.J. Wentland filed an application for a change the point of diversion to a shallow, hydraulically connected well to reflect historical use under Certificate 1771. The Department assigned the application number T-10381.
2. The portion of the right to be transferred is as follows:
 - Certificate:** 1771, in the name of Mrs. Etta Metsker
 - Use:** Stock, Domestic and Irrigation of 19.0 acres
 - Priority Date:** 1890
 - Rate:** 0.49 cubic foot per second
 - Source:** West Prong of the Little Walla Walla River, tributary to the Walla Walla River

This is a final 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 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: The Walla Walla River Decree, the associated adjudication map, and the tabulation describing the right recognize and identify a ditch and dam located at:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
6 N	35 E	WM	15	SW SE	Metsker Lateral (Ditch)

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	15	SE NW	17.7
6 N	35 E	WM	15	NE SW	1.3

- Application T-10381 proposes to change the point of diversion approximately 2,350 feet downstream from the authorized point of diversion to a shallow hydraulically connected well located at:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
6 N	35 E	WM	15	NE SW	50 feet South and 500 feet West from the Center of Section 15

- Notice of the application for transfer was published on May 22, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- Pursuant to 690-380-2120(3), the Department determined that water right certificates 1779, 1783, 1784, 1776, and 1780 are affected water rights. A list of the affected water rights was provided to the applicant.
- On May 2, 2008, the applicant provided proof of service of delivery of notice to each of the holders of affected water rights. No comments were filed in response to the notice.

Transfer Review Criteria [OAR 690-380-4010(2)]

- Evidence was submitted with the application indicating that water has been used within the last five years according to the terms and conditions of the right. Water has been taken from a hydraulically connected well for at least 10 years and also was used from the Metsker Ditch during the last five years. The condition of the diversion facilities at the authorized point of diversion suggests that the facility may not have been regularly used. However, the information in the record is not sufficient to initiate cancellation proceedings under ORS 540.631.
- The application was filed under ORS 540.531, which allows the transfer of a surface water point of diversion to groundwater (a hydraulically connected shallow well), provided certain criteria are met. The application was accompanied by a groundwater hydrologist's report asserting the well is constructed in an unconfined aquifer that is hydraulically connected to the West Prong of the Little Walla Walla River and that use of the well will affect the surface water source "similarly" to use of the surface water point of diversion. The report was needed because the location of the well exceeded the statutory requirements of being

within 500 feet of the surface water source and within 1,000 feet upstream or downstream of the authorized POD.

9. Department staff hydrogeologists concluded that the proposed well meets all the requirements of ORS 540.531, and estimated that pumping of the well will cause a greater than 50 percent stream depletion in less than 10 days, in accordance with OAR 690-380-2130(2)(c) and (11)(b).
10. 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 #3, has been in use for more than 10 years.
11. 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.
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

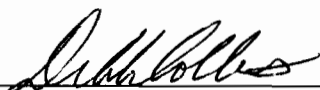
The change in point of diversion from a surface water point of diversion to a ground water point of appropriation to reflect use of a historical point of appropriation proposed in application T-10381 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in point of diversion to reflect historical use proposed in application T-10381 is approved and shall be effective immediately upon issuance of this order.
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 1771 and any related decree.
3. Water right certificate 1771 is cancelled.
4. The quantity of water diverted at the new point of diversion (shallow well) shall not exceed the quantity of water lawfully available at the original point of diversion.
5. The well from which water is taken under the right shall be constructed and maintained so that the effect on the surface water source of the use of water from the well will be similar to the use of the original authorized point of diversion.
6. The use of water under this right shall be subject to regulation consistent with other water rights from the surface water source and to all other applicable conditions and restrictions that existed at the original point of diversion.

7. If, within five years after approval of the transfer, the Department finds that the transfer results in substantial or undue interference with an existing ground water right due to use of the pump, that would not have occurred in the absence of the transfer, the new point of appropriation shall be subordinate to the existing right injured by the transfer.
8. The original point of diversion of surface water shall not be retained as an additional or supplemental point of diversion under the transferred portion of the right. However, if within five years after approval of the transfer, the Department receives a transfer application to return to the last authorized surface water point of diversion, the application shall be approved.
9. When required by the Department, the water user shall install, maintain and operate an in-line flow meter or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
10. A new certificate will be issued to confirm the change for the portion of the right included in T-10381. A new certificate will be issued to describe that portion of the right not modified by this order. Together, the new certificates shall supersede Certificate 1771.

Dated at Salem, Oregon this 12th day of June 2008.


Phillip C. Ward, Director

Mailing Date JUN 20 2008