

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-9979 and T-9980, Baker County) CHANGE IN POINT OF DIVERSION
) AND PARTIAL CANCELLATION OF
) WATER RIGHTS

Authority

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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. ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant T-9979

BOB and VINA MORRISON
P.O. BOX 234
RICHLAND OR 97870

Applicant T-9980

WADEAN HOLCOMB, TRUSTEE
41997 HOLCOMB
RICHLAND OR 97870

Agent

Floyd C. Vaughn
P.O. Box 965
Baker City, OR 97814

Findings of Fact

Background

1. On July 25, 2005, Bob and Vina Morrison and Wadean Holcomb filed transfer applications to change the point of diversion under Certificates 4590, 4623, 49435 and 75354. The Department assigned the application numbers T-9979 and T-9980.
2. On March 12, 2007, the applicants submitted revised applications reflecting the revised map that was received on March 23, 2007, identifying lands under the county roads and corrected the acres identified in the certificates.

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order 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 137-004-080 and OAR 690-01-005, 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.

T-9979

3. The portion of the first right to be transferred in T-9979 is as follows:

Certificate: 4623 in the name of DAVID CLARK (confirmed by Powder River decree)

Use: IRRIGATION of 38.2 ACRES

Priority Date: 1888

Limit/Duty: ONE-FORTIETH cfs per acre

Source: EAGLE CREEK, tributary to POWDER RIVER

Authorized Point of Diversion:

Ditch Name
NEWT YOUNG DITCH

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	45 E	WM	25	NE NW	38.2

4. Certificate 4623 does not describe the location of the point of diversion, however information is available from Certificate 75354 that indicates that the common point of diversion is located as follows:

Authorized Point of Diversion:

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 NW CORNER, SECTION 33

5. The portion of the second right to be transferred in T-9979 is as follows:

Certificate: 49435 in the name of PAUL KNOBLAUCH (confirmed by Powder River decree)

Use: IRRIGATION of 19.5 ACRES

Priority Date: 1885

Limit/Duty: ONE-FORTIETH cfs per acre

Source: EAGLE CREEK, tributary to POWDER RIVER

Authorized Point of Diversion:

Ditch Name
NEWT YOUNG DITCH

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	45 E	WM	24	SE SW	19.5

6. Certificate 49435 does not describe the location of the point of diversion, however information is available from Certificate 75354 that indicates that the common point of diversion is located as follows:

Authorized Point of Diversion:

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 NW CORNER, SECTION 33

7. The portion of the third right to be transferred in T-9979 is as follows:

Certificate: 75354 in the name of EAGLE VALLEY IRRIGATION CO. (perfected under Permit S-28626)

Use: SUPPLEMENTAL IRRIGATION of 57.4 ACRES

Priority Date: DECEMBER 28, 1962

Limit/Duty: 190 acre feet stored water only, not to exceed 3.5 acre feet per acre for each irrigation season for 7637.47 acres

Source: CRATER LAKE RESERVOIR, tributary to KETTLE CREEK

Authorized Point of Diversion:

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 NW CORNER, SECTION 33

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	45 E	WM	24	SE SW	19.2
9 S	45 E	WM	25	NE NW	38.2

T-9980

8. The portion of the first right to be transferred in T-9980 is as follows:

Certificate: 4590 in the name of DAVID T. ALLEN (confirmed by Powder River decree)

Use: IRRIGATION of 38.8 ACRES

Priority Date: 1885

Limit/Duty: ONE-FORTIETH cfs per acre,

Source: EAGLE CREEK, tributary to POWDER RIVER

Authorized Point of Diversion:

Ditch Name
NEWT YOUNG DITCH

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	45 E	WM	25	NW NE	38.8

9. Certificate 4590 does not describe the location of the point of diversion, however information is available from Certificate 75354 that indicates that the common point of diversion is located as follows:

Authorized Point of Diversion:

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 NW CORNER, SECTION 33

10. The portion of the second right to be transferred in T-9980 is as follows:

Certificate: 75354 in the name of EAGLE VALLEY IRRIGATION CO. (perfected under Permit S-28626)

Use: SUPPLEMENTAL IRRIGATION of 38.8 ACRES

Priority Date: DECEMBER 28, 1962

Limit/Duty: 190 acre feet stored water only, not to exceed 3.5 acre feet per acre for each irrigation season for 7637.47 acres

Source: CRATER LAKE RESERVOIR, tributary to KETTLE CREEK

Authorized Point of Diversion:

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 NW CORNER, SECTION 33

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	45 E	WM	25	NW NE	38.8

11. Applications T-9979 and T-9980 propose to move the authorized point of diversion approximately 1½ miles downstream to:

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

12. Notice of the application for transfer was published on August 2, 2005, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
13. On March 30, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Applications T-9979 and T-9980 and partially cancel water rights to the applicant(s). The draft Preliminary Determination set forth a deadline in which the applicants could respond.

14. On May 24, 2007, the Department issued a Preliminary Determination proposing to approve Transfer Applications T-9979 and T-9980 and partially cancel water rights. A copy of the Preliminary Determination was mailed to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on May 29, 2007, and in *The Record-Courier* newspaper on May 31, June 7 and June 14, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
15. The Oregon Department of Fish and Wildlife (ODFW) 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.

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

16. Water has been used within the last five years according to the terms and conditions of the rights, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
17. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Applications T-9979 and T-9980.
18. The proposed change would not result in enlargement of the rights.
19. The proposed change would not result in injury to other water rights.

Partial Cancellation of a Water Right

20. Affidavits for partial cancellation of water rights appurtenant to lands now covered by county roads were received from the Baker County Commissioners. The first affidavit of partial cancellation is as follows:

Certificate: 4623 in the name of DAVID CLARK

Use: IRRIGATION of 1.8 ACRES

Priority Date: 1888

Limit/Duty: ONE-FORTIETH cfs per acre

Source: EAGLE CREEK, tributary to POWDER RIVER

Authorized Point of Diversion:

Ditch Name
NEWT YOUNG DITCH

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	45 E	WM	25	NE NW	1.8

21. A second affidavit for partial cancellation of a water right was received from the Baker County Commissioners as follows:

Certificate: 4590 in the name of DAVID T. ALLEN
Use: IRRIGATION of 1.2 ACRES
Priority Date: 1885
Limit/Duty: ONE-FORTIETH cfs per acre
Source: EAGLE CREEK, tributary to POWDER RIVER

Authorized Point of Diversion:

Ditch Name
NEWT YOUNG DITCH

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	45 E	WM	25	NW NE	1.2

22. A third affidavit for partial cancellation of a water right was received from the Baker County Commissioners as follows:

Certificate: 49435 in the name of PAUL KNOBLAUCH
Use: IRRIGATION of 0.5 ACRE
Priority Date: 1885
Limit/Duty: ONE-FORTIETH cfs per acre
Source: EAGLE CREEK, tributary to POWDER RIVER

Authorized Point of Diversion:

Ditch Name
NEWT YOUNG DITCH

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	45 E	WM	24	SE SW	0.5

Conclusions of Law

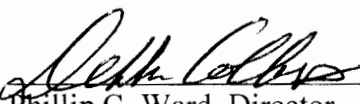
The change in point of diversion proposed in applications T-9979 and T-9980 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned rights should be cancelled.

Now, therefore, it is ORDERED:

1. The changes in point of diversion proposed in applications T-9979 and T-9980 are approved. The portions of the rights that have been abandoned are cancelled.

2. Water right certificates 4590 and 49435 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer and cancellation.
3. Water right certificate 4623 is cancelled.
4. Water right certificate 75354 is modified. The Department will issue a superseding certificate describing the right when it determines that is necessary for record keeping.
5. 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 4590, 4623, 49435 and 75354 and any related decree.
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. 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 screen and/or by-pass device, as appropriate, at the new point of diversion. The fish screen and/or by-pass device must meet ODFW design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW criteria. Once installed the water user shall continue to maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW operational and maintenance standards.
8. Prior to diverting water, the water user shall install 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 measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain and operate the measuring device as required by the Department.
9. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2008**. 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.
10. When satisfactory proof of the completed change is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 20th day of July 2007.


Phillip C. Ward, Director

Mailing date: 7-24-07

