

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

In the Matter of Transfer Application)
T-9318, to Change the Point of Diversion)
and Place of Use, and to Partially Cancel)
the Right for the Use of Water)
Douglas County, Oregon) **FINAL ORDER APPROVING A
TRANSFER**

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

Dale Beattie
12986 Driver Valley Road
Oakland, Oregon 97462

Findings of Fact

1. Dale Beattie filed an application to transfer the point of diversion and place of use under Certificate 20269. The Department assigned the application number T-9318.
2. The right to be transferred and partially cancelled is as follows:

Certificate: 20269 in the name of Peter Adams
Use: Irrigation and domestic
Priority Date: August 14, 1945
Quantity: 0.02 cfs, being 0.01 cfs for irrigation and 0.01 cfs for domestic use
Rate/Duty: 1/80 cfs per acre, not to exceed 2½ acre-feet per acre irrigated during the irrigation season of each year
Acres: 0.8
Source: Calapooya Creek, tributary to Umpqua River
Authorized Point of Diversion:

Township	Range	Meridian	Sec	¼ ¼	Lot	DLC	Location
25	S	4	W	W.M.	7	NE NE	51

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 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Acres
25	S	4	W	W.M.	7	NE NE	1		0.8

3. Application T-9318 proposes to move the authorized point of diversion approximately ¼ mile downstream in Calapooya Creek to:

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Location
25	S	4	W	W.M.	7	NW NE	2		820' S and 2530' W from the NE corner of Section 7

4. Application T-9318 proposes to change the place of use of the right to:

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Acres
25	S	4	W	W.M.	7	NW NE	2		0.5
25	S	4	W	W.M.	7	NW NE		51	0.3

5. The location of the authorized point of diversion and place of use in the transfer map do not match the location on the final proof map for the water right perfected under Permit 16518. The Department has determined that the differences are due to a surveying error on the final proof map, and that the locations of the authorized point of diversion and place of use shown in the transfer map are correct.
6. The transfer map does not indicate the portion of the proposed POU in Lot 2 and the portion in DLC 51 in NW¼ NE¼ of Section 7, however, the additional map submitted by Maurice E. Farr for Permit R-11967, received April 28, 2004, shows the proposed place of use as 0.5 acre in Lot 2 and 0.3 acre in DLC 51. This additional map is being accepted as an addendum to the transfer map, to clarify the POU acreage.
7. 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.
8. The land from which the water right is proposed to be transferred is owned by Daniel A. Aten. Daniel A. Aten, consents to the transfer of the water right from his land.
9. Water has been used for irrigation within the five years prior to filing the application according to the terms and conditions of the right and no evidence is available that would demonstrate that the irrigation portion of the right is subject to forfeiture under ORS 540.610.
10. Water has not been used for domestic use under the right within the five years prior to filing the application. The water right holder submitted an affidavit authorizing cancellation of the domestic portion of the right.

11. The proposed change would not result in enlargement of the right, provided that the rate and duty are not exceeded. The Watermaster has requested a measuring device to be installed prior to use of the new point of diversion.
12. The proposed place of use has two appurtenant rights: Surface Water Registration (SWR) Claim 366 for 0.00475 cfs/ac primary irrigation (priority date November 14, 1898), and Permit 53356 for 0.0046 cfs/ac for primary irrigation March 1-June 30 (priority date January 20, 1993). Oregon law provides that when multiple rights apply to the same lands, the total allowed rate ($1/80$ cfs/acre = 0.0125 cfs/ac) and duty ($2\frac{1}{2}$ ac-ft/ac) must not be exceeded, with the earliest priority right being primary, unless the water user designates otherwise. All other rights must be diminished to supplemental, reduced to a "deficiency of rate", or cancelled. The right under Certificate 20269 to be transferred allows a full rate of $1/80$ cfs/ac (0.0125 cfs/ac). The applicant indicated, by phone, his intention for the earliest priority rights to be primary, and willingness to diminish later rights to supplemental. If T-9318 is approved, Permit 53356 shall not be perfected on the overlapping acreage at time of proof. At time of adjudication of SWR 366, the rate of the transferred right may need to be reduced to make up for the deficiency in the rate of the earlier priority right.
13. The proposed change would not result in injury to other water rights.
14. Under ORS 540.525 and OAR-380-5060, the Oregon Department of Fish and Wildlife (ODFW) requested that the new point of diversion be equipped with a fish screen having $3/32$ -inch mesh, to correspond with NMFS criteria.
15. Notice of T-9318 was published in conformance with OAR 690-015-0080 and OAR 690-380-4020. No protests were received.

Conclusions of Law

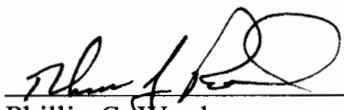
The changes in point of diversion and place of use proposed in application T-9318 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in point of diversion and place of use proposed in application T-9318 are approved.
2. Water right certificate 20269 is cancelled.
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 Certificate 20269 and any related decree.
4. The proposed change shall be completed on or before October 1, 2005.

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, 2006.
6. The quantity of water diverted at the proposed point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.
7. 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.
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. The water user may participate in the Department of Fish and Wildlife's cost-sharing program for installation of screening and by-pass devices in accordance with ORS 540.525.
9. The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 2½ acre-feet per acre for each acre irrigated during the irrigation season of each year.
10. Permit 53356 shall not be perfected on the overlapping acreage at time of proof. At time of adjudication of SWR 366, the rate of the transferred right may be reduced to make up for the deficiency of rate of the earlier priority right.
11. The 0.01 cfs for domestic use under Certificate 20269 is cancelled.
12. When satisfactory proof of the completed changes is received, a new certificate confirming the rights transferred will be issued.

Dated at Salem, Oregon this 21st day of July, 2004.



Phillip C. Ward
Acting Director

Mailing date: JUL 22 2004