

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

In the Matter of Transfer Application) FINAL ORDER
T-9942, Morrow County) APPROVING A CHANGE IN POINT OF
) DIVERSION AND POINT OF
) APPROPRIATION

ORS 537.705 and 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

ANDY AND ANDREA FLETCHER
3364 BRAMPTON WAY
BOISE, IDAHO 83706

Findings of Fact

1. On May 31, 2005, Lee Padberg filed a transfer application to change the point of diversion under Certificates 53120 and 67270, and to change the point of appropriation under Certificate 54550. The Department assigned the application number T-9942.
2. On March 13, 2006, the Department assigned the transfer application to Andy and Andrea Fletcher.
3. The portion of the first right to be transferred is as follows:

Certificate: 53120 in the name of JANE PENLAND
Use: IRRIGATION of 4.8 ACRES
Priority Date: 1875
Rate: 0.11 CUBIC FOOT PER SECOND (CFS)
Source: WILLOW CREEK, a tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
1 S	25 E	WM	34	N½ NE¼	not specified

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.

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	25 E	WM	34	NE NE	4.8

4. Application T-9942 proposes to move the authorized point of diversion within the same ¼-¼ to a location described as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
1 S	25 E	WM	34	NE NE	1050 FEET SOUTH AND 950 FEET WEST FROM THE NE CORNER OF SECTION 34

5. The portion of the second right to be transferred is as follows:

Certificate: 54550 in the name of ELMER E. PADBERG (perfected under Permit G-6828)

Use: IRRIGATION of 13.1 ACRES

Priority Date: OCTOBER 1, 1973

Rate: 0.08 CUBIC FOOT PER SECOND (CFS)

Limit/Duty: ONE-EIGHTIETH of ONE CFS per acre, not to exceed 3.0 ACRE FEET per acre irrigated during the irrigation season of each year

Source: PADBERG WELL, within the WILLOW CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
1 S	25 E	WM	35	NW SE	1810 FEET NORTH AND 1680 FEET WEST FROM SE CORNER, SECTION 35

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	25 E	WM	34	NE NE	8.3
1 S	25 E	WM	34	NE NE	4.8*

Note: The applicant has requested to diminish 4.8 acres from primary irrigation to supplemental irrigation, because of the existence of another primary right on the same lands under Certificate 53120.

6. Application T-9942 proposes to change the point of appropriation for the above described right approximately 5,000 feet northwest to a well located:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
1 S	25 E	WM	34	NE NE	470 FEET SOUTH AND 310 FEET WEST FROM THE NE CORNER, SECTION 34

7. The portion of the third right to be transferred is as follows:

Certificate: 67270 in the name of ELMER E. PADBERG (perfected under Permit 48116)

Use: SUPPLEMENTAL IRRIGATION of 8.3 ACRES

Priority Date: AUGUST 3, 1983

Rate: 0.06 CUBIC FOOT PER SECOND (CFS)

Limit/Duty: ONE-SIXTIETH of ONE CFS per acre, not to exceed 3.0 ACRE FEET per acre irrigated during the irrigation season of each year

Source: WILLOW CREEK, a tributary of the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
1 S	25 E	WM	35	NE SE	1550 FEET NORTH AND 640 FEET WEST FROM SE CORNER, SECTION 35

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	25 E	WM	34	NE NE	8.3

8. Application T-9942 proposes to change the point of diversion for the above described right approximately 1¼ miles downstream to a point located:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
1 S	25 E	WM	34	NE NE	1050 FEET SOUTH AND 950 FEET WEST FROM THE NE CORNER, SECTION 34

9. Notice of the application for transfer was published on June 28, 2005, 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.
10. On August 22, 2006, the Department issued a preliminary determination proposing to approve Transfer T-9942 and mailed a copy to the applicant. Additionally, notice of the preliminary determination for the transfer application was published on the Department's weekly notice on August 29, 2006, and in the Heppner-Gazette Times on September 13, 20, and 27, 2006, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
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 and ditch sufficient to use the full amount of water allowed under the existing rights are present for the surface water rights, and a pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing groundwater 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

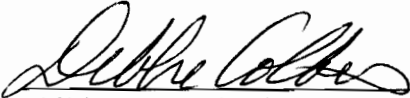
The changes in points of diversion and point of appropriation proposed in application T-9942 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in point of diversion and point of appropriation proposed in application T-9942 are 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 Certificates 53120, 54550, and 67270 and any related decree.
3. Water Right Certificates 53120, 54550, and 67270 are cancelled. New certificates will be issued to confirm those portions of the rights described by Certificates 53120, 54550, and 67270 not affected by this transfer.
4. The approved changes 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. The claim shall designate which right is to be used for primary irrigation and which rights are to be used for supplemental irrigation.
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. For the groundwater right, the quantity of water diverted at the new point of appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation.
6. Prior to diverting water at the new point of diversion on Willow Creek, 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.
7. 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.

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

Dated at Salem, Oregon this 3rd day of December 2006.


Phillip C. Ward, Director

Mailing date: DEC 05 2006