

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-10009, Umatilla County)	CHANGE FROM A SURFACE WATER
)	POINT OF DIVERSION TO A
)	GROUNDWATER POINT OF
)	APPROPRIATION

Authority

ORS 540.505 to 540.580 establish 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

JOHN M. MCBEE AND DEBBIE A. MCBEE
1062 NW SKYLINE DR.
PENDLETON, OREGON 97801

Findings of Fact

1. On September 26, 2005, Jason and Janelle R. Hill filed a transfer application to change the POINT OF DIVERSION for lands described under a portion of Water Right Certificate 81586 to a hydraulically connected (pit) well under OAR 690-380-2130. The Department assigned the application number T-10009.
2. On November 16, 2005, an amendment to the application and associated map was submitted. The purpose of the amendment and maps was to more clearly identify the associated supplemental water right also proposed for a change in point of diversion.
3. On November 14, 2007, the application was assigned to John M. McBee and Debbie A McBee.
4. The portion of the first right to be transferred is as follows:
Certificate: 81586, Confirmed by the Umatilla River Decree, in the name of the Wilson Ditch Company
Use: Irrigation of 24.0 acres

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.

Priority Date: December 15, 1904

Quantity: 0.30 cubic foot per second (cfs)

Source: Umatilla River, tributary to the Columbia River

Authorized Points of Diversion:

TWP	RNG	MER	Sec	Q-Q	SURVEY COORDINATES
3 N	29 E	WM	22	SE SW	WILSON DITCH - 400 FEET NORTH AND 330 FEET WEST FROM THE S¼ CORNER OF SECTION 22
3 N	29 E	WM	27	NW NE	WILSON DITCH - 200 FEET SOUTH AND 1120 FEET EAST FROM THE S¼ CORNER OF SECTION 22
3 N	30 E	WM	31	SW SW	FURNISH CANAL - 380 FEET NORTH AND 650 FEET EAST FROM THE SW CORNER OF SECTION 31

Authorized Place of Use:

PRIMARY IRRIGATION					
TWP	RNG	MER	SEC	Q - Q	Acres
3 N	29 E	WM	16	SW SE	24.0

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

Permit: S-7400, in the name of the U.S. Bureau of Reclamation

Use: Supplemental Irrigation of 24.0 acres

Priority Date: July 1, 1924

Quantity: 0.30 cubic foot per second (cfs)

Rate & Duty: ONE-EIGHTIETH of one cubic foot per second, provided further that the right allowed herein for supplemental irrigation shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed therein.

Source: McKay Reservoir, a tributary of McKay Creek. Water is released into the channels of McKay Creek and Umatilla River and is re-diverted by Furnish Canal

Authorized Points of Diversion:

TWP	RNG	MER	SEC	Q-Q	Lot	SURVEY COORDINATES
2 N	32 E	WM	34	NW SE	--	MCKAY DAM
3 N	30 E	WM	31	SW SW	4	FURNISH CANAL - 380 FEET NORTH AND 650 FEET EAST FROM THE SW CORNER OF SECTION 31

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
TWP	RNG	MER	SEC	Q-Q	Acres
3 N	29 E	WM	16	SW SE	24.0

6. Application T-10009 proposes to move the points of diversion for the above described rights for 24.0 acres (TL 2400), approximately 1¼ miles downstream to a shallow, hydraulically connected (pit) well located:

TWP	RNG	MER	SEC	Q-Q	SURVEY COORDINATES
3 N	29 E	W.M.	16	SW SE	145 FEET NORTH AND 1780 FEET WEST FROM THE SE CORNER OF SECTION 16

7. Notice of the application for transfer was published on October 4, 2005, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
8. On February 22, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10009 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 23, 2007, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
9. On May 31, 2007, the Department issued a Preliminary Determination proposing to approve Transfer T-10009 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 June 5, 2007, and in The Pendleton Record newspaper on July 5, 12 and 19, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
10. 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.
11. A pump and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
12. Department staff hydrogeologist concluded that the proposed (pit) well meets all the requirements of ORS 540.531 and estimated that pumping of the well will result in a greater than 50 percent stream depletion in less than 10 days, thereby affecting the surface water source similarly to the authorized point of diversion, in accordance with OAR 690-380-2130(2)(c) and (11)(b).
13. The proposed change would not result in enlargement of the rights.
14. The proposed change would not result in injury to other water rights.

Conclusions of Law

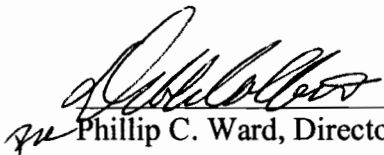
The proposed change from a surface water point of diversion to a groundwater point of appropriation in application T-10009 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change from a surface water point of diversion to a groundwater point of appropriation proposed in application T-10009 is approved.
2. Water right Certificate 81586 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
3. Permit S-7400 is amended.
4. 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 81586, Permit S-7400 and any related decree.
5. The well from which water is taken under the rights shall be constructed so that the use of the well will affect the surface water source similarly to the use of the original authorized points of diversion.
6. The use of water under these rights 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 points 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 points 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. 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 points of diversion.
10. The water user shall install and maintain 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.

11. The water shall report total flow figures when requested by the Department. The Watermaster may operate the headgates and monitor accuracy of the measuring devices, as needed.
12. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2009**. 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.
13. When satisfactory proof of the completed change is received, a new certificate confirming the portion of the certificated right transferred will be issued.

Dated at Salem, Oregon this 30 day of November, 2007.


Phillip C. Ward, Director

Mailing date: DEC 05 2007