

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

In the Matter of Transfer Application)	SUPERSEDING FINAL ORDER
T-10380, Marion County)	APPROVING A TEMPORARY
)	CHANGE IN POINT OF DIVERSION
)	AND PLACE OF USE AND
)	CORRECTING A PREVIOUS ORDER

Authority

ORS 540.505 to 540.580 establish the process in which a water right holder may submit a request to temporarily transfer the place of use and, if necessary to convey the water to the temporary place of use, the point of diversion 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

Dan Hammelman
14477 Dominic Rd. NE
Mt. Angel, OR 97362

Agent

Pacific Hydro-Geology Inc.
Attn: Greg or Malia Kupillas
18487 S. Valley Vista Rd.
Mulino, OR 97042

Findings of Fact

Background

1. On May 7, 2007, Dan Hammelman filed an application to temporarily change the place of use under Certificates 17119 and 26311 and to temporarily change the place of use and point of diversion under Certificate 34692 for a period of two years. The Department assigned the application number T-10380.
2. On May 31, 2007, amendments to the application and map were received by the Department. The amendments changed the location of the proposed point of diversion.
3. The first right to be transferred is as follows:
Certificate: 17119 in the name of Lawrence McCracken (perfected under Permit S-15475)
Use: IRRIGATION of 4.7 ACRES
Priority Date: APRIL 23, 1943
Rate: 0.059 CUBIC FOOT PER SECOND (cfs)

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.

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre during the irrigation season of each year

Source: BUTTE CREEK, tributary to PUDDING RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC
6 S	1 E	WM	16	NW NE	Mitchel Whitlock DLC 39

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	1 E	WM	16	SW NE	Mitchel Whitlock DLC 39	4.7

4. Application T-10380 proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	1 E	WM	16	SW NE	39	2.8
6 S	1 E	WM	16	SE NW	39	0.3
6 S	1 E	WM	16	NE SW	39	0.2
6 S	1 E	WM	16	NW SE	39	1.4

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

Certificate: 26311 in the name of Robert F. Cook (perfected under Permit S-22233)

Use: IRRIGATION of 4.4 ACRES

Priority Date: APRIL 6, 1953

Rate: 0.05 CUBIC FOOT PER SECOND (cfs)

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre during the irrigation season of each year

Source: BUTTE CREEK, tributary to PUDDING RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC
6 S	1 E	WM	16	NW NE	Whitlock DLC 39

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	1 E	WM	16	SW NE	Whitlock DLC 39	1.2
6 S	1 E	WM	16	SE NE	Whitlock DLC 39	3.2

6. Application T-10380 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	1 E	WM	16	NE SW	39	0.5
6 S	1 E	WM	16	NW SE	39	3.9

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

Certificate: 34692 in the name of Richard D. Harris (perfected under Permit S-27352)

Use: IRRIGATION of 16.1 ACRES

Priority Date: APRIL 24, 1961

Rate: 0.20 CUBIC FOOT PER SECOND (cfs)

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre during the irrigation season of each year

Source: BUTTE CREEK, tributary to PUDDING RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	1 E	WM	16	NW NE	Whitlock DLC 39	4030 FEET NORTH AND 1580 FEET WEST FROM THE SE CORNER OF SECTION 16

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	1 E	WM	16	SW NE	39	1.8
6 S	1 E	WM	16	SE NE	39	1.6
6 S	1 E	WM	16	NE SE	39	7.2
6 S	1 E	WM	16	NW SE	39	5.5

8. Application T-10380 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	1 E	WM	16	NE SW	39	1.7
6 S	1 E	WM	16	NW SE	39	14.4

9. A change in point of diversion is necessary to convey the water to the proposed temporary place of use. Application T-10380 proposes to move the authorized point of diversion approximately 300 feet downstream from the existing authorized point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	1 E	WM	16	NWNE	Whitlock DLC 39	4150 FEET NORTH AND 1880 FEET WEST FROM THE SE CORNER OF SECTION 16

10. Notice of the application for temporary transfer was published on May 22, 2007, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
11. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary 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. This diversion may be eligible for screening cost share funds.

12. On July 13, 2007, the Department issued a Final Order approving Transfer Application T-10380. The order was recorded at Special Order Volume 72, Pages 613 through 617. The order contained an error in the inclusion of language in Condition #8 of that order that required the submittal of a Claim of Beneficial Use.
13. This order is issued to supersede the previous order recorded at Special Order Volume 72, Pages 613 through 617, and to correct the error in Condition #8 of that order.
14. 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.
15. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Application T-10380.
16. The proposed change would not result in enlargement of the rights.
17. The proposed change would not result in injury to other water rights. This finding is made through an abbreviated review recognizing that the transfer may be revoked under ORS 540.523(6) if the Department later finds that the transfer is causing injury to any existing water right.

Conclusions of Law

The temporary changes in point of diversion and place of use proposed in application T-10380 are consistent with the requirements of ORS 540.523 and OAR 690-380-800 and the error in Special Order Volume 72, Pages 613 through 617 should be corrected in the record.


Now, therefore, it is ORDERED:

1. The order entered at Special Order Volume 72, Pages 613 through 617 is withdrawn and of no further force and effect, and is superseded by this order.
2. The changes in point of diversion and place of use proposed in application T-10380 are approved.
3. The former place of use **shall not** be irrigated as part of this water right during the 2007 and 2008 irrigation seasons.
4. The use shall revert to the authorized place of use at the end of the 2008 irrigation season. The authorization to use the new point of diversion shall be terminated concurrently.
5. The approval of this temporary transfer may be revoked or modified if the Department finds the change causes injury to any existing water right.
6. A subsequent application for permanent transfer of Certificates 17119, 26311 and 34692 shall be subject to a full and complete review to determine consistency with the requirements

of OAR Chapter 690, Division 380. Approval of this temporary transfer does not establish a precedent for approval of a subsequent application filed for a permanent transfer.

7. The use of water at the temporary place of use authorized by this transfer shall be in accordance with the terms and conditions of Certificates 17119, 26311 and 34692.
8. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.
9. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (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's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.
10. Prior to diverting of water at the new point of diversion, the water user shall install an in-line flow meter or other suitable device for measuring and recording the quantity of water used. 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 use of the remaining water right described by Certificates 17119, 26311 and 34692 shall continue to be in accordance with the terms and conditions of Certificates 17119, 26311 and 34692.

Dated at Salem, Oregon this 27th day of July 2007.


Phillip C. Ward, Director

Mailing Date: AUG 01 2007