

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

In the Matter of Transfer Application) FINAL ORDER APROVING A
T-10377, Lane County) CHANGE IN POINT OF DIVERSION
) AND A CHANGE IN PLACE OF USE

Authority

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

Norman McDougal
P.O. Box 518
Creswell, Oregon 97426

Findings of Fact

Background

1. On May 2, 2007, Norman McDougal filed an application to change the place of use, and add an additional point of diversion under Certificate 32562. The Department assigned the application number T-10377.
2. On October 1, 2007, Mike Evans, agent for the applicant, clarified by email that the proposal is a change in point of diversion for the transferred portion of the right, rather than an additional point of diversion.
3. The portion of the right to be transferred is as follows:

Certificate: 32562 in the name of Natron Plywood Co. (perfected under Permit S-25439)

Use: Irrigation of 62.9 acres

Priority Date: April 9, 1958

Rate: 0.79 cubic foot per second (cfs)

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 of one cfs per acre, 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

Source: An unnamed stream, a tributary of the Middle Fork Willamette River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot
18 S	2 W	WM	10	NW SW	Lot 2

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
18 S	2 W	WM	10	SW NE	14.20
18 S	2 W	WM	10	NE SE	8.20
18 S	2 W	WM	10	NW SE	34.50
18 S	2 W	WM	10	SW SE	4.80
18 S	2 W	WM	10	SE SE	1.20

4. Certificate 32562 does not list survey coordinates for the authorized point of diversion, however, the application map for Transfer Application T-10377 identifies the location of the authorized point of diversion more specifically as being:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
18 S	2 W	WM	10	NW SW	Lot 2	1008 FEET SOUTH AND 50 FEET WEST OF THE NW CORNER OF DLC 39

5. Application T-10377 proposes to change the point of diversion upstream approximately 4 miles to a point on the Middle Fork of Willamette River located:

Twp	Rng	Mer	Sec	Q-Q	GLot	Tax Lot	Survey Coordinates
18S	2W	WM	25	SE NW	Lot 3	305	2582 FEET SOUTH AND 1219 FEET WEST FROM THE N¼ CORNER OF SECTION 25

6. Application T-10377 also proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
18S	2W	WM	25	SW NE	0.36
18S	2W	WM	25	NE NW	1.14
18S	2W	WM	25	NW NW	16.59
18S	2W	WM	25	SW NW	9.25
18S	2W	WM	25	SE NW	22.92
18S	2W	WM	25	NE SW	6.10
18S	2W	WM	25	NW SE	6.54
Total					62.90

7. Notice of the application for transfer was published on May 8, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

8. 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.
9. On June 29, 2007, the Department mailed a copy of the Preliminary Determination proposing to deny Transfer Application T-10377 to the applicant. The Preliminary Determination set forth a deadline of September 28, 2007, for the applicant to respond. Mike Evans, the applicant's agent, responded by submitting an assessor map and an aerial photo indicating the unnamed stream described in the application is a side channel of the Middle Fork of Willamette River. Mr. Evans alleged the proposed point of diversion will secure water from the same source as the authorized point of diversion and requested that the Department reconsider the determination, and he provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
10. The application original maps did not meet current mapping standards because they did not include the location of property lines for the property involved in the transfer as required by OAR 690-380-3100(2)(j). The applicant's agent provided new maps correcting this deficiency.
11. The Department investigated the source of the unnamed stream and found it to be the Middle Fork of the Willamette River. The authorized point of diversion is on a small side channel of the river rather than on a separate tributary to the river, therefore confirming that the authorized and proposed points of diversion would take water from the same source.
12. On October 1, 2007, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-10377 to the applicant. The revised draft Preliminary Determination set forth a deadline of November 1, 2007, for the applicant to respond. The applicant's agent requested that the Department proceed with issuance of a Preliminary Determination and clarified that the proposed point of diversion is a change, rather than an additional point of diversion for the transferred portion of the right, and that the place of use of the manufacturing water use under the remaining portion of the right will not be changed by the action of this transfer. The agent also requested minor clerical corrections from the draft.
13. On October 17, 2007, the Department issued a Preliminary Determination proposing to approve Transfer T-10377 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 October 23, 2007, and in The Register-Guard newspaper on October 25, November 1 and November 8, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

14. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is 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 right were present within the five-year period prior to submittal of Application T-10377.
16. The proposed changes would not result in enlargement of the right.
17. The proposed changes would not result in injury to other water rights.

Conclusions of Law

The changes in place of use and point of diversion proposed in application T-10377 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 place of use and point of diversion proposed in application T-10377 are approved.
2. Water right certificate 32562 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
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 32562 and any related decree.
4. 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.
5. The former place of use for irrigation shall no longer receive water under this transferred portion of the right.
6. When required by the Department, the water user shall install, maintain and operate 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.
7. When required by the Department, the water user shall install, maintain and operate a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.

8. 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. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state'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.
9. The approved changes 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.
10. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 20 day of December 2007.


Phillip C. Ward, Director

Mailing date: DEC 24 2007