

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

In the Matter of Transfer Application)	SUPERSEDING FINAL ORDER
T-9724, Josephine County)	APPROVING AN ADDITIONAL POINT
)	OF DIVERSION AND CORRECTING
)	SCRIVENER'S ERRORS IN A
)	PREVIOUS ORDER

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.

Applicants

Wayne O. and Nancy K. Dollarhide
3199 Helms Road
Grants Pass, Oregon 97527

Findings of Fact

Background

1. On May 10, 2004, Wayne O. and Nancy K. Dollarhide filed an application to add an additional point of diversion, under Certificates 53116 and 53632. The Department assigned the application number T-9724.
2. On February 15, 2005, the Department adjusted the quantity of water to be transferred under Certificate 53116 from 1.84 cubic feet per second to 1.79 cubic feet per second, based upon continued review of the portion of the certificate proposed to be transferred. The Preliminary Determination, Findings of Fact #2 stated that the rate/duty was not specified on the certificate. However, Certificate 53116 allows diversion of 2.0 cfs from the Houck and George Ditch with 1856 priority for 100.0 acres, yielding a rate of 0.02 cfs/acre. Thus, the maximum amount allowed for the 89.3 acres proposed for transfer should be 89.3 acres x 0.02 cfs/acre = 1.79 cfs.
3. On February 15, 2005, Wayne Dollarhide amended the application to include domestic and stock uses as illustrated in Water Right Certificate 53116.

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 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.

4. The portion of the first right to be affected by the additional point of diversion is as follows:

Certificate: 53116 in the name of Barbara Bales Et Al
Use: Irrigation, Domestic and Stock
Priority Date: 1856
Quantity: 1.79 cubic feet per second, delivered through the Houck and George Ditch
Rate/Duty: 0.02 cfs/acre as per certificate, which allows 2.0 cfs for 100.0 acres
Acres: 89.5
Source: Althouse Creek, tributary to the Illinois River
Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼		Survey Coordinates
40	S	7	W	W.M.	8	NW	SW	180 FEET SOUTH AND 1180 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 8

Authorized Place of Use Affected by this Additional POD:

Township	Range		Meridian	Sec	¼ ¼		Lot	DLC	Acres
40	S	8	W	W.M.	13	SW	NE		30.5
40	S	8	W	W.M.	13	NW	SE		6.9
40	S	8	W	W.M.	13	SE	NE	2	5.2
40	S	8	W	W.M.	13	SE	NE	45	30.5
40	S	8	W	W.M.	13	NE	SE	45	7.2
40	S	7	W	W.M.	18	NW	SW	37	0.2
40	S	7	W	W.M.	18	SW	NW	37	8.8
40	S	7	W	W.M.	18	SW	NW	37	0.2

5. The portion of the second right to be affected by the additional point of diversion is as follows:

Certificate: 53632 in the name of Barbara Bales Et Al
Use: Irrigation
Priority Date: 1856 and 1870
Quantity: 0.67 cfs; being 0.61 cfs priority 1870 and 0.06 cfs priority 1856, delivered through the Houck and George Ditch
Rate/Duty: Not specified in certificate
Acres: 33.3; being 30.4 ac priority 1870 and 2.9 ac priority 1856
Source: Althouse Creek, tributary to the Illinois River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼		Survey Coordinates		
40	S	7	W	W.M.	8	NW	SW	180 FEET SOUTH AND 1180 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 8		

Authorized Place of Use Affected by this Additional POD:

Township	Range		Meridian	Sec	¼ ¼		Lot	DLC	Acres	
40	S	7	W	W.M.	18	NW	NW	—	38	1.4
40	S	7	W	W.M.	18	SW	NW	—	38	21.9
40	S	7	W	W.M.	18	SE	NW		38	3.6
40	S	7	W	W.M.	18	SW	NW		37	3.5
40	S	8	W	W.M.	13	SE	NW			2.9

Note: Section 18 areas have a priority date of 1870, Section 13 areas have a priority date 1856.

6. Application T-9724 proposes to Add a point of diversion approximately 1.5 miles downstream in the source to:

Township		Range		Meridian	Sec	¼ ¼		Survey Coordinates		
40	S	7	W	W.M.	18	NW	NW	245.7 FEET SOUTH AND 1151.0 FEET EAST FROM THE NW CORNER OF SECTION 18		

7. The application map contains an error in quantifying the acres of irrigation remaining in the NW ¼ NW¼ of section 18, T40S, R7W under Certificate 53632. The correct acreages remaining in the NW ¼, NW ¼ of section 18, T40S, R7W as per Certificate 53632 should be 24.17 ac within DLC 38, and 3.80 ac within DLC 37.
8. 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. However, the Oregon Department of Fish and Wildlife did request inclusion of a condition requiring installation of proper fish screens at the diversion point. This requirement is as per ORS 540.525.
9. On November 18, 2004, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-9724 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of December 21, 2004, for the applicants to respond to the draft and to clarify the status of some acreage figures on the transfer map. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the requested information.

10. On December 20, 2004, the Department issued a Preliminary Determination proposing to approve Transfer Application T-9724 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on December 28, 2004, and in the Grants Pass Daily Courier newspaper on December 13, 2004 and January 8 and 15, 2005, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
11. On February 17, 2005 the Department issued a Final Order approving the transfer, recorded at Special Order Volume 63, Pages 334 to 337.
12. The applicants requested extensions of time for completion of the changes and orders granting extensions of time were issued on August 17, 2006 (Special Order Volume 69, Pages 633-634, extending the completion date to October 1, 2007); October 17, 2007 (Special Order Volume 73, Pages 485-486, extending the completion date to October 1, 2008); and September 29, 2008 (Special Order Volume 75, Pages 886-887, extending the completion date to October 1, 2010).
13. Harold Center, a CWRE hired by the applicants to prepare a Claim of Beneficial Use for the transfer, discovered that the order approving T-9724 (Special Order Volume 63, Pages 334 to 337) contained an error by failing to include 0.2 acre in the SW NW of Section 18, T40S, R7W, W.M., as projected within DLC 37, in the listing of the portion of the right formerly evidenced by Certificate 53116 involved in the transfer. The transfer map for T-9724 showed the referenced 0.2 acre as part of the land proposed for transfer.
14. The above referenced 0.2 acre that should have been part of the transfer was instead included in remaining right Certificate 81142.
15. This order is issued to supersede the previous order recorded at Special Order Volume 63, Pages 334 to 337, to correct the 0.2 acre omission from T-9724 and to correct another scrivener's error in the cubic foot per second diversion rate stated in Finding #2 of that order.

Transfer Review Criteria (OAR 690-380-4010)

16. Water has been used within the last five years according to the terms and conditions of the right and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
17. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present.
18. The proposed change would not result in enlargement of the right.

19. The proposed change would not result in injury to other water rights.

Conclusions of Law

The proposed addition of a point of diversion in application T-9724 is consistent with the requirements of ORS 537.705 and ORS 540.505 to 540.580 and OAR 690-380-5000, and the scrivener's errors in Special Order Volume 63, Pages 334 to 337 and Certificate 81142 should be corrected in the record.

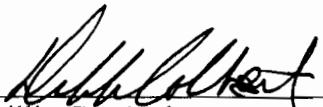
Now, therefore, it is ORDERED:

1. The order entered at Special Order Volume 63, Pages 334 to 337 is withdrawn and of no further force and effect and is superseded by this order. Certificate 81142 is cancelled and will be superseded by a new certificate.
2. The additional point of diversion as proposed in application T-9724 is approved.
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 Certificates 53116 and 53632 and any related decree.
4. Water right certificates 53116 and 53632 are cancelled. Remaining right Certificate 81141 will continue in effect, and Certificate 85789 will be issued to supersede Certificate 81142, to describe the portions of the rights not involved in this transfer.
5. The quantity of water diverted at the additional point of diversion, together with that diverted at the old point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
6. 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.
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. 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.

8. The proposed change shall be completed on or before October 1, 2010. 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 change and full beneficial use of the water.
9. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 1ST day of September, 2009.



Phillip C. Ward
Director

Mailing date: SEP 11 2009