

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

In the Matter of Transfer Application                    )     **FINAL ORDER APPROVING A CHANGE**  
T-10173, Benton County                                    )     **IN POINT OF DIVERSION, PLACE OF**  
  )     **USE AND CHARACTER 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**

DONALD R. HAMBLIN  
29499 BUCHANAN RD.  
CORVALLIS, OR 97333

**Findings of Fact**

**Background**

1. On May 11, 2006, Donald R. Hamblin filed a transfer application to change the use, place of use, and point of diversion under Certificate 27247. The Department assigned the application number T-10173.
  
2. The right to be transferred is as follows:  
**Certificate:** 27247 in the name of CLAUDE BUCHANAN (perfected under Permit S-21027)  
**Use:** IRRIGATION of 29.3 ACRES  
**Priority Date:** DECEMBER 26, 1951  
**Rate:** 0.36 CUBIC FOOT PER SECOND (cfs)  
**Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year  
**Source:** MUDDY CREEK, tributary to MARYS RIVER

**Authorized Point of Diversion:**

<b>Twp</b>	<b>Rng</b>	<b>Mer</b>	<b>Sec</b>	<b>Q-Q</b>	<b>DLC</b>	<b>Survey Coordinates</b>
13 S	5 W	WM	16	NW SW	52	<i>Not specified in Certificate</i>

**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:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
13 S	5 W	WM	16	SW NW	52	9.2
13 S	5 W	WM	16	NW SW	52	17.0
13 S	5 W	WM	17	SE NE	52	1.2
13 S	5 W	WM	17	NE SE	52	1.9

3. The Department received information that better describes the location of the authorized point of diversion for Certificate 27247 as follows:

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
13 S	5 W	WM	16	NW SW	52	1400 FEET NORTH AND 170 FEET EAST FROM THE SW CORNER OF SECTION 16

4. Application T-10173 proposes to move the authorized point of diversion approximately 1/8 mile upstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
13 S	5 W	WM	16	SW SW	52	1260 FEET NORTH AND 710 FEET EAST FROM THE SW CORNER OF SECTION 16

5. Application T-10173 proposes to change the character of use to Wildlife Management.

6. Application T-10173 also proposes to change the place of use of the right to:

WILDLIFE MANAGEMENT					
Twp	Rng	Mer	Sec	Q-Q	DLC
13 S	5 W	WM	16	SW NW	52
13 S	5 W	WM	16	NE SW	52
13 S	5 W	WM	16	NW SW	52
13 S	5 W	WM	16	SW SW	52
13 S	5 W	WM	16	SW SW	
13 S	5 W	WM	16	SE SW	52
13 S	5 W	WM	16	SE SW	
13 S	5 W	WM	17	SE NE	52
13 S	5 W	WM	17	NE SE	52

7. Upon review of the proposed transfer of the primary irrigation right under Certificate 27247 described in Findings of Fact #2 and #6, the Department discovered the presence of Greenberry Irrigation District primary irrigation Permits S-54059 (priority date 01/03/2003), S-53779 (priority date 09/01/2000), and S-53780 (priority date 10/04/2000) and supplemental irrigation Application S-84436 (priority date 05/18/2000) on both the land from which the water right is proposed to be removed and on the proposed lands. Unperfected water uses (presently at the application or permit stage) are not eligible for character of use changes. If T-10173 is approved, the permit or application holder must either move the portions of the supplemental Greenberry Irrigation District permits on the lands described in Findings #2 and #6, by means of a permit amendment, to other lands, or the permit or application holder will need to agree not to prove up on the portions of the permits and application on the lands described in Findings of Fact #2 and #6.

8. On October 12, 2007, Greenberry Irrigation District (holder of the permits and application described in Finding #7) informed the Department that it consents to the changes proposed in T-10173, understands the implications to District water right permits and applications appurtenant to the lands and will move or not prove up on those portions of the water uses.
9. Notice of the application for transfer was published on May 30, 2006 pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
10. The Oregon Department of Fish and Wildlife 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 to safely transport fish back to the body of water from which the fish were diverted and that the diversion is currently equipped with an appropriate fish screening and/or by-pass device.
11. On May 18, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10173 to the applicant. The draft Preliminary Determination set forth a deadline of June 18, 2007, for the applicant to respond to the draft and to provide documentation of ownership. 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.
12. On October 17, 2007, the Department issued a Preliminary Determination proposing to approve Transfer T-10173 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 Gazette-Times newspaper on October 29, November 5 and November 12 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)]***

13. 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.
14. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
15. T-10173 proposes to increase the size of the place of use of the right evidenced by Certificate 27247 by including the current place of use within the proposed place of use. As defined by OAR 690-380-0100(2) the proposed change could result in enlargement if not conditioned so as to prevent use of more water than could have been beneficially used without waste for the existing authorized use. The best currently available information indicates that beneficial use of water for irrigation of crops in the area would not likely exceed a maximum instantaneous rate of 0.29 cfs and a seasonal use of 2.2 acre-feet per acre on 29.3 acres, for a total volume of 64.46 acre-feet per year.

16. On June 6, 2007, Don Hamblin requested to limit the use under the right evidenced by Certificate 27247 to no more than 64.46 acre-feet per year at a rate not to exceed 0.29 cfs. Therefore, the proposed use, if so conditioned, would not result in enlargement of the right.
17. The proposed change, as conditioned, would not result in injury to other water rights.

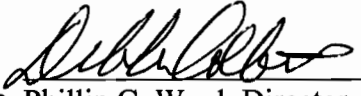
### **Conclusions of Law**

The proposed changes in point of diversion, place of use and character of use in application T-10173 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 point of diversion, place of use and character of use proposed in T-10173 are approved.
2. Certificate 27247 is cancelled.
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 27247, and any related decree.
4. The use of water under the right evidenced by Certificate 27247 shall be limited to a rate of 0.29 cfs and a total annual volume of 64.46 acre-feet during the irrigation season of each year.
5. Prior to diverting water, the water user shall install and maintain an in-line totalizing flow meter, capable of displaying instantaneous flow, 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.
6. Any pond or wetland area supplied under this right shall be constructed in a manner so as not to appropriate other public waters.
7. The water user shall maintain and operate a fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.
8. 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.
9. 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