

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

In the Matter of Transfer Application T-7919,) FINAL ORDER APPROVING A
Umatilla County) CHANGE IN POINT OF DIVERSION
) AND PLACE OF USE

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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. and Debbie A. McBee
1062 N.W. Skyline Drive
Pendleton, OR 97801

Findings of Fact

On February 2, 1998, Cunha Ranches, c/o Shauna Mosgrove filed a transfer application to change the place of use, under Certificate 2648 and the A.J. Vey decreed right. The Department assigned the application number T-7919. The file has been assigned to John M. and Debbie A. McBee. The application was amended on September 16, 2004, and again on December 1, 2004, to include Certificates 75453, 80983, a portion of 80979, 80980, and Permit 7400 (supplemental irrigation).

1. The portion of the FIRST right to be transferred is as follows:

PRIMARY IRRIGATION

Certificate: 80979 in the name of Wilson Ditch Company
Use: Irrigation
Priority Date: December 15, 1904
Rate/Duty: 0.43 cubic foot per second (cfs)
Acres: 34.0
Source: Umatilla River, tributary to Columbia River

SUPPLEMENTAL IRRIGATION

Permit: Permit 7400, in the name of Bureau of Reclamation
Use: Supplemental Irrigation
Priority Date: July 1, 1924

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 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.

Rate/Duty: ONE-EIGHTIETH of one cubic foot per second
Acres: 34.0
Source: McKay Reservoir, tributary to Umatilla River - (Diversion is at McKay Dam - NW¼ SE¼, Section 34, T 2 N, R 32 E, W.M.); water is run down the natural channels of McKay Creek and the Umatilla River and is proposed to be re-diverted at a shallow/hydraulically connected well.

Authorized Points of Diversion:

Township		Range		Meridian	Section	¼	¼	Lot	DLC	Survey Coordinates
3	N	29	E	W.M.	22	SE	SW			Wilson Ditch – 400’ N & 330’ W from S¼ Corner, Sec 22
3	N	29	E	W.M.	27	NW	NE			Wilson Ditch – 200’ S & 1120’ E from S¼ Corner, Sec 22
3	N	30	E	W.M.	31	SW	SW			Furnish Canal – 380’ N & 650’ E from SW Corner, Sec 31
2	N	32	E	W.M.	34	NW	SE			McKay Dam – Supplemental Irrigation

Authorized Place of Use:

Township		Range		Meridian	Sec	¼	¼	Type of Change	Acres
3	N	29	E	W.M.	21	NE	NE	(POD only)	22.4
3	N	29	E	W.M.	21	NW	NE	(POD only)	9.8
3	N	29	E	W.M.	21	SW	NE	(POD only)	1.8
TOTAL									34.0

2. Application T-7919 proposes to change the point of diversion for the above described rights downstream in the Umatilla River to a shallow/hydraulically connected well located:

Township		Range		Meridian	Sec.	¼	¼	Survey Coordinates
3	N	29	E	W.M.	21	SW	NE	Shallow Well - 1520’ S and 1520’ W from the NE corner, Section 21

3. The portion of the SECOND right to be transferred is as follows:

PRIMARY IRRIGATION

Certificate: 80980, in the name of Wilson Ditch Company
Use: Irrigation
Priority Date: December 15, 1904
Rate/Duty: 0.02 cubic foot per second (cfs)
Acres: 1.2
Source: Umatilla River, tributary to Columbia River

SUPPLEMENTAL IRRIGATION

Permit: Permit 7400, in the name of Bureau of Reclamation
Use: Supplemental Irrigation
Priority Date: July 1, 1924

Rate/Duty: one-eightieth of one cubic foot per second
Acres: 1.2
Source: McKay Reservoir, tributary to Umatilla River - (Diversion is at McKay Dam - NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 34, T 2 N, R 32 E, W.M.); water is released down the natural channels of McKay Creek and the Umatilla River.

Authorized Points of Diversion:

Township	Range	Meridian	Section	$\frac{1}{4}$	$\frac{1}{4}$	Lot	DLC	Survey Coordinates
3	N	29	E	W.M.	22	SE	SW	Wilson Ditch – 400' N & 330' W from S $\frac{1}{4}$ Corner, Sec 22
3	N	29	E	W.M.	27	NW	NE	Wilson Ditch – 200' S & 1120' E from S $\frac{1}{4}$ Corner, Sec 22
3	N	30	E	W.M.	31	SW	SW	Furnish Canal – 380' N & 650' E from SW Corner, Sec 31
2	N	32	E	W.M.	34	NW	SE	McKay Dam -- Supplemental Irrigation

Authorized Place of Use:

Township	Range	Meridian	Sec	$\frac{1}{4}$	$\frac{1}{4}$	Type of Change	Acres		
3	N	29	E	W.M.	21	SW	NE	(POD & POU)	1.2
TOTAL							1.2		

4. Application T-7919 proposes to change the point of diversion and place of use for the above described rights downstream in the Umatilla River to a shallow/hydraulically connected well located:

Township	Range	Meridian	Sec.	$\frac{1}{4}$	$\frac{1}{4}$	Survey Coordinates		
3	N	29	E	W.M.	21	SW	NE	Shallow Well - 1520' S and 1520' W from the NE corner, Section 21

Proposed Place of Use:

Township	Range	Meridian	Sec	$\frac{1}{4}$	$\frac{1}{4}$	Type of Change	Acres		
3	N	29	E	W.M.	21	SW	NE	(POD & POU)	1.2
TOTAL							1.2		

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

PRIMARY IRRIGATION

Certificate: 80979, in the name of the Wilson Ditch Company
Use: Irrigation
Priority Date: December 15, 1904
Rate/Duty: 0.13 cubic foot per second (cfs)
Acres: 10.5
Source: Umatilla River, tributary to Columbia River

SUPPLEMENTAL IRRIGATION

Permit Permit 7400, in the name of Bureau of Reclamation
Use: Supplemental Irrigation

Priority Date: July 1, 1924

Rate/Duty: one-eightieth of one cubic foot per second

Acres: 10.5

Source: McKay Reservoir, tributary to Umatilla River - (Diversion is at McKay Dam - NW¼ SE¼, Section 34, T 2 N, R 32 E, W.M.); water is released down the natural channels of McKay Creek and the Umatilla River.

Authorized Points of Diversion:

Township		Range		Meridian	Section	¼	¼	Lot	DLC	Survey Coordinates
3	N	29	E	W.M.	22	SE	SW			Wilson Ditch – 400’ N & 330’ W from S¼ Corner, Sec 22
3	N	29	E	W.M.	27	NW	NE			Wilson Ditch – 200’ S & 1120’ E from S¼ Corner, Sec 22
3	N	30	E	W.M.	31	SW	SW			Furnish Canal – 380’ N & 650’ E from SW Corner, Sec 31
2	N	32	E	W.M.	34	NW	SE			McKay Dam – Supplemental Irrigation

Authorized Place of Use:

Township		Range		Meridian	Sec	¼	¼	Type of Change	Acres
3	N	29	E	W.M.	21	NE	NE	(POD & POU)	2.6
3	N	29	E	W.M.	21	NW	NE	(POD & POU)	0.2
3	N	29	E	W.M.	21	SW	NE	(POD & POU)	5.7
3	N	29	E	W.M.	21	SE	NE	(POD & POU)	2.0
TOTAL									10.5

6. Application T-7919 proposes to change the point of diversion and place of use for the above described rights downstream in the Umatilla River to a shallow/hydraulically connected well located:

Township		Range		Meridian	Sec.	¼	¼	Survey Coordinates
3	N	29	E	W.M.	21	SW	NE	Shallow Well - 1520’ S and 1520’ W from the NE corner, Section 21

Proposed Place of Use:

Township		Range		Meridian	Sec	¼	¼	Type of Change	Acres
3	N	29	E	W.M.	21	NW	NE	(POD & POU)	5.8
3	N	29	E	W.M.	21	SW	NE	(POD & POU)	4.7
TOTAL									10.5

7. The FOURTH right to be transferred is as follows:

PRIMARY IRRIGATION

Certificate: 75453, in the name of John Correa

Use: Irrigation

Priority Date: February 2, 1924

Rate/Duty: 0.02 cubic foot per second (cfs)

Acres: 1.6
Source: Umatilla River, tributary to Columbia River

SUPPLEMENTAL IRRIGATION

Permit: Permit 7400, in the name of the Bureau of Reclamation
Use: Supplemental Irrigation
Priority Date: July 1, 1924
Rate/Duty: one-eightieth of one cubic foot per second
Acres: 1.6
Source: McKay Reservoir, tributary to Umatilla River - (Diversion is at McKay Dam - NW¹/₄ SE¹/₄, Section 34, T 2 N, R 32 E, W.M.); water is released down the natural channels of McKay Creek and the Umatilla River.

Authorized Points of Diversion:

Township		Range		Meridian	Section	¼	¼	Lot	DLC	Survey Coordinates
3	N	29	E	W.M.	22	SE	SW			Wilson Ditch
2	N	32	E	W.M.	34	NW	SE			McKay Dam – Supplemental Irrigation

Authorized Place of Use:

Township		Range		Meridian	Sec	¼	¼	Type of Change	Acres
3	N	29	E	W.M.	21	NW	NE	(POD only)	1.6
TOTAL									1.6

8. Application T-7919 proposes to change the point of diversion for the above described rights downstream in the Umatilla River to a shallow/hydraulically connected well located:

Township		Range		Meridian	Sec.	¼	¼	Survey Coordinates
3	N	29	E	W.M.	21	SW	NE	Shallow Well - 1520' S and 1520' W from the NE corner, Section 21

9. The FIFTH right to be transferred is as follows:

PRIMARY IRRIGATION

Certificate: 80983, in the name of the Wilson Ditch Company
Use: Irrigation
Priority Date: February 2, 1924
Rate/Duty: 0.17 cubic foot per second (cfs)
Acres: 13.4
Source: Umatilla River, tributary to Columbia River

SUPPLEMENTAL IRRIGATION

Permit: Permit 7400, in the name of Bureau of Reclamation
Use: Supplemental Irrigation
Priority Date: July 1, 1924
Rate/Duty: one-eightieth of one cubic foot per second
Acres: 13.4

Source: McKay Reservoir, tributary to Umatilla River - (Diversion is at McKay Dam - NW¼ SE¼, Section 34, T 2 N, R 32 E, W.M.); water is released down the natural channels of McKay Creek and the Umatilla River.

Authorized Points of Diversion:

Township	Range	Meridian	Section	¼ ¼	Lot	DLC	Survey Coordinates
3	N	29	E	W.M.	22	SE SW	Wilson Ditch – 400’ N & 330’ W from S¼ Corner, Sec 22
3	N	29	E	W.M.	27	NW NE	Wilson Ditch – 200’ S & 1120’ E from S¼ Corner, Sec 22
3	N	30	E	W.M.	31	SW SW	Furnish Canal – 380’ N & 650’ E from SW Corner, Sec 31
2	N	32	E	W.M.	34	NW SE	McKay Dam – Supplemental Irrigation

Authorized Place of Use:

Township	Range	Meridian	Sec	¼ ¼	Type of Change	Acres	
3	N	29	E	W.M.	21	NW NE (POD only)	13.4
TOTAL						13.4	

10. Application T-7919 proposes to change the point of diversion for the above described rights downstream in the Umatilla River to a shallow/hydraulically connected well located:

Township	Range	Meridian	Sec.	¼ ¼	Survey Coordinates		
3	N	29	E	W.M.	21	SW NE	Shallow Well - 1520’ S and 1520’ W from the NE corner, Section 21

11. Notice of the application for transfer was published pursuant to ORS 540.520, OAR 690-380-4000 and OAR 690-380-4020. No comments were filed in response to the notices. The application was amended on September 16, 2004, and December 1, 2004, to include Certificates 75453, 80983 and portions of 80980, and Permit 7400 (supplemental irrigation). This prompted the application to be re-noticed in the Department’s weekly notice and in the newspaper pursuant to ORS 540.520(5). Again, no comments were filed in response to the notice.
12. T-7919 proposes to change points of diversion appropriating surface water to a well that is hydraulically connected to the surface water source. The withdrawal of water from the well will affect the surface water source similarly to the use of water from the authorized points of diversion.
13. 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.
14. A well, pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present. Application is through a center pivot for half circle.
15. The proposed changes would not result in enlargement of the rights.

16. The proposed changes would not result in injury to other water rights.

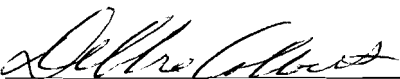
Conclusions of Law

The changes in points of diversion and place of use proposed in application T-7919 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580, and OAR 690-380-5000.

Now therefore, it is ORDERED:

1. The changes in points of diversion and place of use proposed in application T-7919 are approved.
2. Water right Certificates 75453, 80979, 80980, and 80983 are cancelled. New certificates will be issued describing those portions of the rights not involved in this transfer.
3. The right to 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 75453, 80979, 80980, 80983, Permit 7400, and any related decree.
4. The proposed changes shall be completed on or before October 1, 2006.
5. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department by October 1, 2007.
6. Prior to diverting water, the water user shall install and maintain an in-line flow meter or other suitable device for measuring and recording the quantity of water appropriated. 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 satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 30 day of August, 2005.

For 
Phillip C. Ward, Director

Mailing date: SEP 06 2005