

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-10852, Douglas County) CHANGE IN POINT OF DIVERSION

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

VICKY S. NEWFIELD
601 DAVIS PLACE ROAD
MT SHASTA CA 96067

Findings of Fact

Background

1. On April 21, 2009, VICTOR D. AND VICKY S. NEWFIELD filed an application to change the point of diversion for a portion of the right under Certificate 79477. The Department assigned the application number T-10852.
2. On February 24, 2010, Transfer Application T-10852 was amended to correct the acreage to reflect the 1956 Final Proof Survey Map, and to change the applicant to VICKY S. NEWFIELD, as Victor D. Newfield passed away on July 14, 2009.
3. The portion of the right to be transferred is as follows:

Certificate: 79477 in the name of P. W. GEORGE (perfected under Permit S-20139)
Use: IRRIGATION of 1.8 ACRES
Priority Date: MARCH 12, 1951
Rate: 0.023 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may 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.

exceed 2.5 acre-feet for each acre irrigated during the irrigation season of each year.

Source: UMPQUA RIVER, tributary to the PACIFIC OCEAN

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Pod ID #
23 S	7 W	WM	20	NE SE	44	1
23 S	7 W	WM	20	NW SE	44	2
23 S	7 W	WM	21	SW SW	44	3

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
23 S	7 W	WM	28	NE NW	44	1.8

4. Certificate 79477 does not list the legal location of the authorized points of diversion; however, information available from the Certified Water Right Examiner indicates the points of diversion for Certificate 79477 are more accurately described as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	POD ID #	Measured Distances
23 S	7 W	WM	20	NE SE	44	1	1700 FEET NORTH FROM THE SOUTH LINE AND 720 FEET WEST FROM THE EAST LINE OF SECTION 20
23 S	7 W	WM	20	NW SE	44	2	1990 FEET NORTH FROM THE SOUTH LINE AND 1870 FEET WEST FROM THE EAST LINE OF SECTION 20
23 S	7 W	WM	21	SW SW	44	3	150 FEET NORTH FROM THE SOUTH LINE AND 1150 FEET EAST FROM THE WEST LINE OF SECTION 21

5. According to the Certified Water Right Examiner, the 1956 Final Proof Survey for Permit 20139 incorrectly described the location of the place of use. The irrigated area has not changed; however, our understanding of how the public land survey lines overlay the land has changed based on current surveys. The location of the place of use would be described as follows:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
23 S	7 W	WM	28	NE NW	44	1.2
23 S	7 W	WM	28	NW NW	44	0.6

6. Transfer Application T-10852 proposes to move the authorized point of diversion for a portion of the right approximately 1130 feet downstream from POD No. 3 to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
23 S	7 W	WM	28	NE NW	44	1050 FEET SOUTH AND 1150 FEET EAST FROM THE NW CORNER OF SECTION 28

7. Notice of the application for transfer was published on April 28, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

8. On March 10, 2010, the Department mailed a copy of the draft Preliminary Determination to the applicant proposing to approve Transfer Application T-10852. The draft Preliminary Determination cover letter set forth a deadline of April 9, 2009, for the applicant to respond. 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.
9. On March 19, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10852 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 March 30, 2010. No protests were filed in response to the notice.
10. 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.

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

11. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
12. 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 Transfer Application T-10852.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.

Conclusions of Law

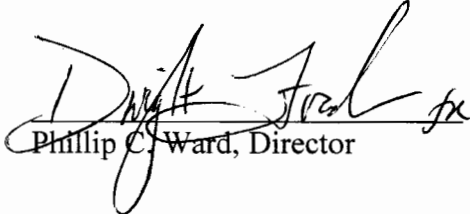
The change in point of diversion proposed in Transfer Application T-10852 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in point of diversion proposed in Transfer Application T-10852 is approved.
2. 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 79477 and any related decree.

3. Water right certificate 79477 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.
5. The Director may require the water user to install a totalizing flow meter or other suitable measuring devices at each point of diversion. If the Director notifies the water user to install totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.
6. 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.
7. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. A Claim of Beneficial Use prepared by a Certified Water Right 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.
8. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 30 day of April 2010.


Phillip C. Ward, Director

Mailing Date: MAY 03 2010