

STATE OF OREGON

COUNTY OF UMATILLA

ORDER APPROVING A CHANGE IN PLACE OF USE,
POINT OF DIVERSION, AND
CANCELLATION OF PORTIONS OF WATER RIGHTS

Pursuant to ORS 540.510 to 540.530, after notice was given and no objections were filed, and finding that no injury to existing water rights would result, this order approves, as conditioned or limited herein, TRANSFER 9125 submitted by

JOHN BROGOITTI
P.O. BOX 1432
PENDLETON, OREGON 97801.

The FIRST right to be modified was confirmed by decree of the Circuit Court of the State of Oregon for UMATILLA County as evidenced by Certificate 2512. The decree is recorded in the Order Record of the Water Resources Director in Volume 3, at Page 127. The date of priority is 1889.

The right allows the use of EAST BIRCH CREEK, a tributary of the UMATILLA RIVER, for DOMESTIC, STOCK USE AND IRRIGATION OF 24.0 ACRES. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.30 cubic foot per second, if available at the authorized point of diversion: GOV'T LOT 19, SECTION 7, T 2 S, R 33 E, W.M., or its equivalent in case of rotation, measured at the point of diversion from the source.

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 137-004-080 and OAR 690-01-005, you may either petition for judicial review or petition the Director for reconsideration of this order.

The authorized place of use for lands involved in the CHANGE IN PLACE OF USE are located as follows:

CERTIFICATE 2512

SE¼ SE¼ 8.0 ACRES
SECTION 12
TOWNSHIP 2 SOUTH RANGE 32 EAST, W.M.

LOT 16 0.2 ACRE
LOT 17 3.0 ACRES
SECTION 7
TOWNSHIP 2 SOUTH, RANGE 33 EAST, W.M.

The right to use water for the above purpose is restricted to beneficial use on the lands or place of use described and is subject to all other conditions and limitations contained in the decree.

The applicant proposes to CHANGE THE PLACE OF USE for the above described lands under Certificate 2512 to:

LOT 16 4.0 ACRES
LOT 17 7.2 ACRES
SECTION 7
TOWNSHIP 2 SOUTH, RANGE 33 EAST, W.M.

The applicant also proposes to CHANGE THE POINT OF DIVERSION for the above described 11.2 acres (at the new place of use) to:

LOT 18, SECTION 7, T 2 S, R 33 E, W.M.; 115 FEET NORTH AND 2795 FEET EAST FROM THE SE CORNER, SECTION 12, T 2 S, R 32 E, W.M..

The authorized place of use for lands ONLY involved in the CHANGE IN POINT OF DIVERSION are located as follows:

POINT OF DIVERSION ONLY
LOT 16 8.8 ACRES
LOT 17 4.0 ACRES
SECTION 7
TOWNSHIP 2 SOUTH, RANGE 33 EAST, W.M.

The applicant proposes to CHANGE THE POINT OF DIVERSION for the above described 12.8 acres to:

LOT 18, SECTION 7, T 2 S, R 33 E, W.M.; 115 FEET NORTH AND 2795 FEET EAST FROM THE SE CORNER, SECTION 12, T 2 S, R 32 E, W.M..

The SECOND right to be modified was confirmed by decree of the Circuit Court of the State of Oregon for UMATILLA County as evidenced by Certificate 2551. The decree is recorded in the Order Record of the Water Resources Director in Volume 3, at Page 127. The date of priority is MARCH, 1905.

The right allows the use of EAST BIRCH CREEK, a tributary of the UMATILLA RIVER, for IRRIGATION OF 7.0 ACRES, DOMESTIC AND STOCK USE. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.09 cubic foot per second, if available at the authorized point of diversion: GOV'T LOT 19, SECTION 7, T 2 S, R 33 E, W.M., or its equivalent in case of rotation, measured at the point of diversion from the source.

The authorized place of use for lands involved in the CHANGE IN PLACE OF USE is located as follows:

CERTIFICATE 2551

LOT 18 3.3 ACRES
SECTION 7
TOWNSHIP 2 SOUTH RANGE 33 EAST, W.M.

The right to use water for the above purpose is restricted to beneficial use on the lands or place of use described and is subject to all other conditions and limitations contained in the decree.

The applicant proposes to CHANGE THE PLACE OF USE for the above described lands under Certificate 2551 to:

LOT 18 1.8 ACRES
LOT 17 1.5 ACRES

SECTION 7
TOWNSHIP 2 SOUTH, RANGE 33 EAST, W.M.

The applicant also proposes to CHANGE THE POINT OF DIVERSION for the above described 3.3 acres (at the new place of use) to:

LOT 18, SECTION 7, T 2 S, R 33 E, W.M.; 115 FEET NORTH AND 2795 FEET EAST FROM THE SE CORNER, SECTION 12, T 2 S, R 32 E, W.M..

The authorized place of use under Certificate 2551, for lands ONLY involved in the CHANGE IN POINT OF DIVERSION is located as follows:

POINT OF DIVERSION ONLY
LOT 18 3.7 ACRES
SECTION 7
TOWNSHIP 2 SOUTH, RANGE 33 EAST, W.M.

The applicant proposes to CHANGE THE POINT OF DIVERSION for the above described 3.7 acres to:

LOT 18, SECTION 7, T 2 S, R 33 E, W.M.; 115 FEET NORTH AND 2795 FEET EAST FROM THE SE CORNER, SECTION 12, T 2 S, R 32 E, W.M..

The right to use water for the above purpose is subject to the provisions of paragraph 33 of said decree and all other conditions and limitations contained in said decree.

CANCELLATION OF PORTIONS OF CERTAIN WATER RIGHTS

ORS 540.621 provides: "Whenever the owner of a perfected and developed water right certifies under oath to the Water Resources Commission that the water right has been abandoned by the owner and that the owner desires cancellation thereof, the Commission shall enter an order canceling the water right."

On January 23, 2004, affidavits were received from John Brogoitti, owner of certain land and the water right appurtenant to it. Portions of two water rights have been abandoned and are requested to be canceled.

The first portion is described by Certificate 2512, State Record of Water Right Certificates. The date of priority is 1889. The water use was for domestic, stock and irrigation of 24.0 acres from East Birch Creek, a tributary of the Umatilla River. The authorized rate of flow associated with the use is 0.30 cubic foot per second.

The abandoned portion for domestic use is within SE¼ SE¼, Section 12, Township 2 South, Range 32 East, W.M.; and Lot 16 and Lot 17, Section 7, Township 2 South, Range 33 East, W.M.

The second abandoned portion is described by Certificate 2551, State Record of Water Right Certificates. The date of priority is March 1905. The water use was for domestic, stock and irrigation of 7.0 acres from East Birch Creek, a tributary of the Umatilla River. The authorized rate of flow associated with the use is 0.09 cubic foot per second.

The abandoned portion is for domestic use within Lot 18, Section 7, Township 2 South, Range 33 East, W.M.

THESE CHANGES TO EXISTING WATER RIGHTS MAY BE MADE PROVIDED THE FOLLOWING CONDITIONS ARE MET BY THE WATER USER:

1. The proposed changes shall be completed on or before October 1, 2005.
2. 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.
3. 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.
4. When required by the Department, the water user shall operate the headgate and measuring device, as needed. The

water user shall report total flow figures when requested by the Watermaster. The Watermaster may monitor the accuracy of the measuring device, as needed.

5. Water shall be acquired from the same surface water source as the original point of diversion.
6. The former place of use shall no longer be irrigated as a part of this water right.
7. The water user shall install and maintain a fish screen or fish by-pass device. 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.

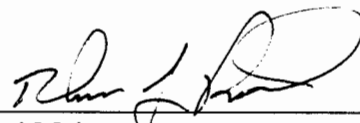
The water user may participate in the Oregon Department of Fish and Wildlife's cost sharing program for installation of screening and by-pass devices in accordance with ORS 540.525.

The abandoned portions of the water rights evidenced by Certificates 2512 and 2551 requested to be canceled are canceled.

Certificates 2512 and 2551 are canceled. When satisfactory proof of the completed changes are received, new certificates confirming this water right will be issued.

WITNESS the signature of the Water Resources

Director, affixed July 30, 2004.



For Phillip C. Ward, Acting Director