

STATE OF OREGON

COUNTY OF YAMHILL

In the Matter of Transfer Application T-8162,)
Approving a Change in Point of Diversion ,) FINAL ORDER
Place of Use and Character of Use)

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 15 implemented the statutes and provided the Department's procedures and criteria for evaluating this transfer application.

Applicant

John Vander Meide
P.O. Box 644
McMinnville, Oregon 97128

Findings of Fact

1. John Vander Meide submitted a transfer application to change the point of diversion, place of use and character of use of water under Certificate 56401. The application was received on January 19, 1999, and included the required fees. The Department assigned the transfer application number T-8162.
2. T-8162 proposes to modify the following portion of a water right:
Certificate: 56401 issued in the name of Eldon and Jerry Garris
Use: Irrigation
Priority Date: November 1, 1976
Quantity: 0.08 cfs
Rate & Duty: 1/80 of one cfs per acre irrigated and a maximum of 2½ acre-feet per acre (16.75 ac-ft for 6.7 acres)
Acres: 6.7
Source: An unnamed stream, tributary to Baker Creek

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Location
4	S	5	W	W.M.	16	NE NW		50	800' S and 1380' E from the NW corner of Section 16

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order 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

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Acres
4	S	5	W	W.M.	16	NE NW		50	3.5
4	S	5	W	W.M.	16	NW NW		50	3.1
4	S	5	W	W.M.	16	SE NW		50	0.1

1. Application T-8162 proposes to move the authorized points of diversion upstream to the following headwater springs:

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Location
4	S	5	W	W.M.	16	NE NW		50	Spring A: N43°49'E 2018 feet from the SW corner of DLC 50
4	S	5	W	W.M.	16	NE NW		50	Spring B: N44°03'E 2079 feet from the SW corner of DLC 50
4	S	5	W	W.M.	16	NE NW		50	Spring C: N44°29'E 2042 feet from the SW corner of DLC 50
4	S	5	W	W.M.	16	NE NW		50	Spring D: N44°06'E 2198 feet from the SW corner DLC 50
4	S	5	W	W.M.	16	NE NW		50	Spring E: N60°47'E 2249 feet from the SW corner of DLC 50

2. Application T-8162 proposes to change the place of use of the right to:

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Acres
4	S	5	W	W.M.	16	NE NW		50	N71°17'E 1782 feet from the SW corner of DLC 50

3. Application T-8162 proposes to change the character of use to commercial use, water bottling.
4. Notice of the application for transfer was published on January 26, 1999 pursuant to ORS 540.520 and OAR 690-015-0080. No comments were filed in response to the notice.
5. A site inspection indicated that Springs A, B, C, and D are the headwaters of the unnamed stream source for water right Certificate 56401, but that Spring E is a separate source, not part of the water right. Water from Spring E is therefore not subject to transfer.
6. Water has been used on the subject lands within five years prior to filing the transfer application according to the terms and conditions of the right, and no evidence is available that would demonstrate that this portion of the right is subject to forfeiture under ORS 540.610.
7. The proposed changes would not result in enlargement of the right or injury to other water rights, provided a suitable measuring device is installed prior to diversion of water from the proposed diversion points.
8. Yamhill County has granted the applicant a Conditional Use Permit for the proposed changes.

9. Pursuant to ORS 540.520 (5), notice of the changes proposed by T-8162 was published for three consecutive weeks in the McMinnville News-Register and no protests were filed.

Conclusions of Law

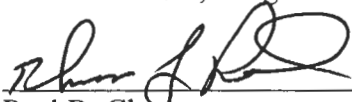
The proposed changes in place of use, point of diversion and character of use in application T-8162 are consistent with the requirements of ORS 540.505 to 540.580, provided that Spring E is not included as a source, and a measurement device is installed.

Order

Now, it is therefore ORDERED:

1. Transfer T-8162 is approved, provided the following conditions are met by the water user:
 - a. Water shall be acquired from the same surface water source as the original point of diversion (Springs A, B, C, and D).
 - b. The quantity of water diverted at the new points of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion, and shall be limited to not more than 0.08 cfs, further limited to a diversion not to exceed 2.5 acre-feet per acre transferred (a total of 16.75 acre-feet), per year.
 - c. The season of diversion for this right shall continue to be limited to the irrigation season each year.
 - d. The proposed changes shall be completed on or before October 1, 2005.
 - e. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department by October 1, 2006.
 - f. Prior to diverting water at the new points of diversion, the water user shall install and maintain an in-line flow meter or other suitable device 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.
 - g. The original place of use affected by this transfer shall no longer be irrigated as a part of this water right.
2. Certificate 56401 is cancelled. A new certificate will be issued to confirm that portion of the right NOT involved in transfer T-8162.
3. When satisfactory proof of the completed changes is received, a new certificate confirming the transferred portion of the water right shall be issued.

Dated at Salem, Oregon this 17th day of May, 2004.



Paul R. Cleary
Director