

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING
T-10772, Douglas County)	CHANGES IN POINT OF DIVERSION
)	AND PLACE 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

JAMES W. AND JANE P. RATZLAFF
391 STILLWATER RD
ROSEBURG OR 97470

Findings of Fact

Background

1. On January 20, 2009, James W. Ratzlaff and Jane P. Ratzlaff filed an application to change the points of diversion and to change the place of use under Certificates 80761 and 82929. The Department assigned the application number T-10772.
2. On May 28, 2009, the applicants requested that Transfer Application T-10772 be processed by an approved Reimbursement Authority contractor and submitted the necessary additional funds.

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

Certificate: 80761 in the name of R. B. OLIVER (perfected under Permit S-12340)

Use: IRRIGATION of 10.0 ACRES

Priority Date: AUGUST 31, 1936

Rate: 0.125 CUBIC FOOT PER SECOND (cfs)

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre during the irrigation season of each year

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.

Source: NORTH UMPQUA RIVER, tributary to the UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
26 S	4 W	WM	15	SW SE NE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	4 W	WM	15	SE NE	10.0

4. Certificate 80761 does not describe the distance of the point of diversion from a survey corner; however, on September 5, 1956 the State Engineer of Oregon issued an order approving an application of R. B. Oliver (Transfer Application O-25) for a change in point of diversion for this right. The order is recorded in Special Order Volume 9, Page 28 - 30. The point of diversion was moved to the following location:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26S	4W	WM	15	SW SE NE	160 FEET NORTH AND 1195 FEET WEST FROM THE E ¼ CORNER OF SECTION 15

5. On June 23, 1959, Department employee R. Jackson inspected the diversion point and noted that it was located at the approximate point described in the Transfer O-25 order, but the Department did not survey the location. The Certified Water Right Examiner preparing the map for Transfer Application T-10772 found the point of diversion to be located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26S	4W	WM	15	SW SE NE	180 FEET NORTH AND 1170 FEET WEST FROM THE E ¼ CORNER OF SECTION 15

6. Transfer Application T-10772 proposes to move the authorized point of diversion approximately 4.7 miles downstream to three points located as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
26S	5W	WM	24	SW SE	4	POD-1 1240 FEET NORTH AND 2020 FEET WEST FROM THE SE CORNER OF SECTION 24
26S	5W	WM	25	NE NW	3	POD-2 100 FEET SOUTH AND 3130 FEET WEST FROM THE SE CORNER OF SECTION 24
26S	5W	WM	25	NW NW	1	POD-3 1040 FEET SOUTH AND 4580 FEET WEST FROM THE SE CORNER OF SECTION 24

7. Transfer Application T-10772 also proposes to change the place of use of the transferred portion of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
26S	5W	WM	25	NW NE		6.5
26S	5W	WM	25	NE NW	3	3.5

8. The portion of the second right to be transferred is as follows:

Certificate: 82929 in the name of JAMES W. RATZLAFF (perfected under Permit S-51243)

Use: IRRIGATION of 18.5 ACRES

Priority Date: APRIL 17, 1990

Rate: 0.102 CFS FROM EITHER POINT OF DIVERSION 1 OR POINT OF DIVERSION 3 FOR IRRIGATION

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year

Source: NORTH UMPQUA RIVER, tributary to the UMPQUA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
26S	5W	WM	24	SW SE	4	POD-1 1240 FEET NORTH AND 2020 FEET WEST FROM THE SE CORNER OF SECTION 24
26S	5W	WM	25	NW NW	1	POD-3 1040 FEET SOUTH AND 4580 FEET WEST FROM THE SE CORNER OF SECTION 24

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Change(s)
26 S	5 W	WM	24	NE SE	5	7.8	POU
26 S	5 W	WM	24	SE SE		0.7	POU
26 S	5 W	WM	24	SE SE		0.5	POD & POU
26 S	5 W	WM	25	NW NE		6.0	POD & POU
26 S	5 W	WM	25	NE NW	3	3.5	POD & POU

9. Transfer Application T-10772 proposes to move the authorized points of diversion for 10.0 acres of the water right identified above approximately 4.7 miles upstream from POD-1 and POD-3 to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
26S	4W	WM	15	SW SE NE	38	POD-1: 180 FEET NORTH AND 1170 FEET WEST FROM THE E ¼ CORNER OF SECTION 15
26S	4W	WM	15	NE SE	38	POD-2: 105 FEET SOUTH AND 615 FEET WEST FROM THE E ¼ CORNER OF SECTION 15

10. Transfer Application T-10772 also proposes to change the place of use for 18.5 acres of the right identified above to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
26S	4W	WM	15	SE NE		38	10.0
26S	5W	WM	25	SW NW	2		8.5

11. Notice of the application for transfer was published on February 3, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
12. On June 10, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10772 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of July 13, 2009, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
13. On July 21, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10772 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 July 28, 2009, and in the Douglas County News-Review newspaper on August 5, 12 and 19, 2009, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
14. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new points 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)]

15. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
16. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-10772.
17. The proposed changes would not result in enlargement of the rights.
18. The proposed changes would not result in injury to other water rights.

Conclusions of Law

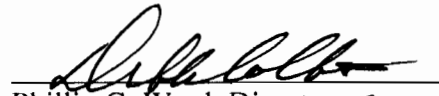
The change in points of diversion and change in place of use as proposed in Transfer Application T-10772 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in points of diversion and change in place of use proposed in Transfer Application T-10772 are 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 Certificates 80761 and 82929 and any related decree.
3. Water right certificates 80761 and 82929 are cancelled. New certificates will be issued describing the portions of the rights not affected by this transfer.
4. The quantity of water diverted at the new points of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.
5. Prior to diverting water, the water user shall install 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 measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain and operate the measuring device as required by the Department.
6. When required by the Department, the water user shall install, maintain and operate a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
7. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at each 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 screens and/or by-pass devices meet 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 devices were installed to the state's criteria. The water user shall maintain and operate the fish screens and/or by-pass devices, as appropriate, at the points of diversion consistent with ODFW's operational and maintenance standards.
8. The former place of use of the transferred rights shall no longer receive water under the rights that have been transferred off.
9. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2010**. 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.

10. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 23rd day of September, 2009.


Phillip C. Ward, Director B

Mailing date: SEP 28 2009