

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

In the Matter of Transfer Application)	FINAL ORDER
T-8494, Wasco County)	APPROVING A CHANGE IN POINTS
)	OF APPROPRIATION, A CHANGE IN
)	PLACE OF USE, AND A CHANGE IN
)	CHARACTER 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

CHENOWITH WATER PEOPLE'S UTILITY DISTRICT
ROGER PROWELL, MANAGER
P.O. BOX 870
THE DALLES, OR 97058

Findings of Fact

Background

1. On April 14, 2000, CHENOWITH WATER PEOPLE'S UTILITY DISTRICT filed an application to change the points of appropriation, place of use and character of use under a portion of Certificate 63260. The Department assigned the application number T-8494.

<p>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.</p>

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

Certificate: 63260 in the name of CHENOWITH IRRIGATION COOPERATIVE, INC.
(perfected under Permit U-184)

Use: IRRIGATION OF 324.5 ACRES

Priority Date: JUNE 6, 1946

Rate: 3.83 CUBIC FEET PER SECOND (CFS), LIMITED TO 1.45 CFS FROM WELL 1 AND 2.38 CFS FROM WELL 3. A DEFICIENCY LIMITED TO 0.51 CFS MAY BE USED FROM WELL 2. THE TOTAL THAT MAY BE USED FROM ALL 3 WELLS IS 3.83 CFS.

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to a diversion of ONE-SIXTIETH of one cubic foot per second per acre (or its equivalent) and 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year

Source: 3 WELLS within the COLUMBIA RIVER BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	OWRD Well Log ID	Change requested
2 N	13 E	WM	32	NE SE	43	WELL NO. 1 – 400 Feet South and 350 Feet West from the E¼ Corner of Section 32	WASC 3322	Change in POA
2 N	13 E	WM	32	NE SE	43	WELL NO. 2 – 350 Feet South and 400 Feet West from the E¼ Corner of Section 32	WASC 3323	Change in POA
2 N	13 E	WM	32	NE NE	41	WELL NO. 3 – 2350 Feet North and 920 Feet West from the E¼ Corner of Section 32	WASC 3314	No Change

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
2 N	13 E	WM	29	SW NE		39	1.6
2 N	13 E	WM	29	SE NE		39	3.0
2 N	13 E	WM	29	SW NW		39	0.9
2 N	13 E	WM	29	SW NW	4		2.1
2 N	13 E	WM	29	SE NW		39	2.1
2 N	13 E	WM	29	NE SW		39	22.4
2 N	13 E	WM	29	NW SW		39	0.8
2 N	13 E	WM	29	NW SW	12		1.5
2 N	13 E	WM	29	SW SW	11		1.6
2 N	13 E	WM	29	SE SW	10		14.5
2 N	13 E	WM	29	SE SW		41	3.8
2 N	13 E	WM	29	SE SW		39	7.8
2 N	13 E	WM	29	NE SE		39	6.0
2 N	13 E	WM	29	NW SE		39	23.2
2 N	13 E	WM	29	SW SE		39	8.8
2 N	13 E	WM	29	SW SE	9		7.7

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
2 N	13 E	WM	29	SW SE		41	15.5
2 N	13 E	WM	29	SE SE		41	13.8
2 N	13 E	WM	29	SE SE		39	2.0
2 N	13 E	WM	32	NE NE		41	10.9
2 N	13 E	WM	32	NW NE		41	38.3
2 N	13 E	WM	32	SW NE		41	10.6
2 N	13 E	WM	32	SW NE	4		8.2
2 N	13 E	WM	32	SW NE		43	2.8
2 N	13 E	WM	32	SE NE		43	10.8
2 N	13 E	WM	32	SE NE	4		0.3
2 N	13 E	WM	32	SE NE		41	0.7
2 N	13 E	WM	32	NE NW		41	21.2
2 N	13 E	WM	32	SE NW		41	3.4
2 N	13 E	WM	32	SE NW	3		3.3
2 N	13 E	WM	32	NE SE		43	27.8
2 N	13 E	WM	32	NW SE		43	12.9
2 N	13 E	WM	32	SW SE		43	2.9
2 N	13 E	WM	32	SE SE		43	17.5
2 N	13 E	WM	33	NW SW		43	4.6
2 N	13 E	WM	33	SW SW		43	9.2
TOTAL:							324.5

3. Transfer Application T-8494 proposes to change the point of appropriation for the above described Wells No. 1 and No. 2 to three new points of appropriation, being approximately 50 feet north and west to Wells No. 4 and No. 6, and approximately 1 mile south to Well No.5. The three proposed wells are located as follows:

Twp	Rng	Mer	Sec	Q - Q	DLC	Measured Distances	OWRD Well Log ID
2 N	13 E	WM	32	NE SE	43	WELL NO. 4 – 400 feet South and 415 feet West from the E¼ Corner of Section 32	WASC 50457
1 N	13 E	WM	5	SE NE	40	WELL NO. 5 – 2450 feet South and 750 feet West from the NE Corner of Section 5	WASC 2452
2 N	13 E	WM	32	NE SE	43	WELL NO. 6 – 315 feet South and 430 feet West from the E¼ Corner of Section 32	WASC 51647

4. Transfer Application T-8494 also proposes to change the character of use under a portion of Certificate 63260 to municipal use. Municipal use shall continue to be limited to the irrigation season of March 1 through October 31 of every year.
5. Transfer Application T-8494 also proposes a change in place of use under a portion of Certificate 63260 located:

MUNICIPAL						
Twp	Rng	Mer	Sec	Q - Q	GLot	DLC
1 N	13 E	WM	4	SW NW		40
1 N	13 E	WM	5	NE NE		40
1 N	13 E	WM	5	NW NE		40
1 N	13 E	WM	5	SW NE		40
1 N	13 E	WM	5	SE NE		40

MUNICIPAL						
Twp	Rng	Mer	Sec	Q - Q	GLot	DLC
1 N	13 E	WM	5	NE SE		40
1 N	13 E	WM	5	NW SE		40
2 N	13 E	WM	28	NW NW		
2 N	13 E	WM	28	SW SW		41
2 N	13 E	WM	29	NE NE	1	
2 N	13 E	WM	29	NE NE		37
2 N	13 E	WM	29	NW NE	2	
2 N	13 E	WM	29	NW NE		37
2 N	13 E	WM	29	SW NE		37
2 N	13 E	WM	29	SW NE		39
2 N	13 E	WM	29	SE NE	7	
2 N	13 E	WM	29	SE NE		37
2 N	13 E	WM	29	SE NE		39
2 N	13 E	WM	29	NE NW		37
2 N	13 E	WM	29	SW NW	4	
2 N	13 E	WM	29	SW NW		37
2 N	13 E	WM	29	SW NW		39
2 N	13 E	WM	29	SE NW		37
2 N	13 E	WM	29	SE NW		39
2 N	13 E	WM	29	NE SW		39
2 N	13 E	WM	29	NW SW	12	
2 N	13 E	WM	29	NW SW		39
2 N	13 E	WM	29	SW SW	11	
2 N	13 E	WM	29	SW SW		39
2 N	13 E	WM	29	SE SW	10	
2 N	13 E	WM	29	SE SW		39
2 N	13 E	WM	29	SE SW		41
2 N	13 E	WM	29	NE SE		39
2 N	13 E	WM	29	NW SE		39
2 N	13 E	WM	29	SW SE	9	
2 N	13 E	WM	29	SW SE		39
2 N	13 E	WM	29	SW SE		41
2 N	13 E	WM	29	SE SE		39
2 N	13 E	WM	29	SE SE		41
2 N	13 E	WM	32	NE NE		41
2 N	13 E	WM	32	NW NE		41
2 N	13 E	WM	32	SW NE	4	
2 N	13 E	WM	32	SW NE		41
2 N	13 E	WM	32	SW NE		43
2 N	13 E	WM	32	SE NE	4	
2 N	13 E	WM	32	SE NE	5	
2 N	13 E	WM	32	SE NE		41
2 N	13 E	WM	32	SE NE		43
2 N	13 E	WM	32	NE NW		41
2 N	13 E	WM	32	NW NW	1	
2 N	13 E	WM	32	NW NW		41
2 N	13 E	WM	32	SW NW	2	
2 N	13 E	WM	32	SW NW		41
2 N	13 E	WM	32	SE NW	3	
2 N	13 E	WM	32	SE NW		41

MUNICIPAL						
Twp	Rng	Mer	Sec	Q - Q	GLot	DLC
2 N	13 E	WM	32	NE SW	6	
2 N	13 E	WM	32	NE SW		43
2 N	13 E	WM	32	NW SW		
2 N	13 E	WM	32	SE SW		43
2 N	13 E	WM	32	NE SE		43
2 N	13 E	WM	32	NW SE	6	
2 N	13 E	WM	32	NW SE		43
2 N	13 E	WM	32	SW SE		43
2 N	13 E	WM	32	SE SE		43
2 N	13 E	WM	33	NW NW		41
2 N	13 E	WM	33	SW NW	7	
2 N	13 E	WM	33	SW NW		41
2 N	13 E	WM	33	SW NW		43
2 N	13 E	WM	33	SE NW	6	
2 N	13 E	WM	33	NE SW	8	
2 N	13 E	WM	33	NW SW	8	
2 N	13 E	WM	33	NW SW		43
2 N	13 E	WM	33	SW SW		43

6. Certificate 63260 contains a scrivener's error in the opening description of the water right. The total amount of acres described is 364.4 acres, and should be corrected to state 365.0 acres. This is equal to the total acreage amount from the tabulation in the certificate, which matches the associated Final Proof survey map it was based on. Thus, transfer application T-8494 is being processed for 324.5 acres, leaving a remaining right certificate to be issued describing a total of 40.5 acres.
7. Notice of the application for transfer was published on April 25, 2000, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. On September 4, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-8494 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 4, 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 April 22, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Application T-8494 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on April 27, 2010, and in The Dalles Chronicle newspaper on April 30, May 7 and 14, 2010, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.

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

10. Water has been used within the last five-year period prior to submittal of the transfer application according to the terms and conditions of the right.

11. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
12. The Department has determined that the proposed points of appropriation Well No. 4 (WASC 50457), Well No. 5 (WASC 2452) and Well No. 6 (WASC 51647) all will develop the same source of water as the authorized existing wells Well No. 1 (WASC 3322) and Well No. 2 (WASC 3323), and being the same as Well No. 3 (WASC 3314) which will continue to be used by Chenoweth Water PUD.
13. Wells, pumps, pipeline, multiple delivery and sprinkler systems sufficient to use the full amount of water allowed under the existing right within the five-year period prior to submittal of Transfer Application T-8494.
14. The proposed changes would not result in enlargement of the right, provided the rate of diversion for municipal use does not exceed 3.83 cubic feet per second and be further limited to a total quantity diverted of 811.25 acre feet during the irrigation season of March 1 to October 31 of each year.
15. The proposed changes, as conditioned, would not result in injury to other water rights.
16. The Chenoweth Peoples Water Utility District is a municipality as defined in ORS Chapter 540.510(3)(b), Chapter 261 and a water supplier defined in ORS 448.115. Therefore, pursuant to ORS 540.510(3), the District may request a change in character of use from irrigation to municipal uses and may exercise the right on lands formerly known as Columbia Crest Water District, newly annexed and absorbed through a Resolution Agreement consistent with ORS 261.141. Therefore, pursuant to OAR 690-380-3000(13)(b), the applicant is **NOT** required to provide the above described report of ownership information.

Conclusions of Law

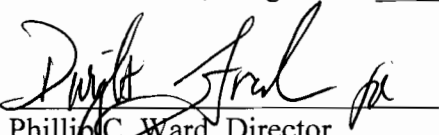
The change in points of appropriation, place of use and character of use proposed in Transfer Application T-8494 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in points of appropriation, place of use and character of use proposed in Transfer Application T-8494 are approved.
2. The right to the use of the water is restricted to beneficial use at the proposed place of use described, and is subject to all other conditions and limitations contained in Certificate 63260 and any related decree.
3. Water right certificate 63260 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.

4. Water shall be acquired from the same aquifer (water source) as the original points of appropriation Well No. 1 (WASC 3322) and Well No. 2 (WASC 3323).
5. The quantity of water diverted at the new points of appropriation, together with that diverted at the original Well No. 3 point of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation, totaling 3.83 cfs to be used in any combination between the District's Wells Nos. 3, 4, 5 and 6.
6. The total quantity of water diverted for municipal use shall not exceed 811.25 acre feet during the irrigation season of March 1 through October 31 of each year.
7. Consistent with the 1959 Declaration by the State Engineer of The Dalles Critical Groundwater area, before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each new point of appropriation. The water user shall maintain the meters or measuring devices in good working order. In addition, the water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.
8. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2015**. 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.
9. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 15 day of June 2010.


Phillip C. Ward, Director

Mailing Date: JUN 16 2010