

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

In the Matter of Transfer Applications	)	PRELIMINARY DETERMINATION
T-10804 and T-10805, Wheeler County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN PLACE OF USE AND A
	)	RE-DESCRIPTION OF A WATER
	)	RIGHT; AND TERMINATION OF
	)	TEMPORARY TRANSFER T-10805

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

ROBERTA VANDEHEY
20481 WINLOCK LANE
FOSSIL, OR 97830

Findings of Fact

Background

1. On March 4, 2009, ROBERTA VANDEHEY filed an application to change the place of use under Certificates 54724 and 82920. The Department assigned the application number T-10804.

2. On November 11 2009, the certified water right examiner submitted a revised map, identifying the place of use based on the physical survey made to these lands.

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

Certificate: 54724 in the name of MICHAEL F. VANDEHEY (confirmed by John Day River Decree)

Use: IRRIGATION of 9.4 ACRES AND DOMESTIC USE

Priority Date: 1895

Limit/Duty: The amount of water used for irrigation, is limited to a diversion of ONE-FORTIETH of one cubic foot per second, or its equivalent for each acre irrigated to June 1 and ONE-EIGHTIETH cubic foot per second per acre

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.
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thereafter; further limited to one acre-foot per calendar month to June 1 and 4.0 acre feet per acre during season April 1 to September 30, measured at the point of diversion.

Source: ALDER CREEK, tributary to the JOHN DAY RIVER

Authorized Point of Diversion:

Twsp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	24 E	WM	31	SE NE	1340 FEET SOUTH AND 5 FEET WEST FROM THE NE CORNER OF SECTION 31

Authorized Place of Use:

IRRIGATION AND DOMESTIC USE					
Twsp	Rng	Mer	Sec	Q-Q	Acres
7 S	24 E	WM	31	SE SE	9.4

4. Certificate 54724 describes the authorized point of diversion as shown above. However, a new physical survey was made by the CWRE, Jerold L. Page. A brass cap monument was found on the NE corner of Section 31, T 7S, R 24 E, W.M. and the survey was conducted from this location. The survey indicates that the point of diversion on Certificate 54724 would be described as follows, based on current understanding of its relation to a survey corner:

Re-described Point of Diversion:

Twsp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	24 E	WM	32	SW NW	1270 FEET SOUTH AND 40 FEET EAST FROM THE NE CORNER OF SECTION 31

5. Application T-10804 proposes to change the place of use of the right to:

IRRIGATION AND DOMESTIC USE					
Twsp	Rng	Mer	Sec	Q-Q	Acres
7 S	24 E	WM	31	NE SE	6.4
7 S	24 E	WM	31	NE SE	1.4
7 S	24 E	WM	31	SE SE	1.1
7 S	24 E	WM	31	SE SE	0.1
7 S	24 E	WM	31	SE SE	0.4
Total Acres:					9.4

6. A portion of the second right is to be transferred. The entire right is as follows:

Certificate: 82920 in the name of DOROTHY ROBERTA HOFER VANDEHEY
(perfected under Permit S-44272)

Use: IRRIGATION of 43.5 ACRES

Priority Date: MAY 2, 1979

Rate: 1.09 CUBIC FEET 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 a diversion of ONE-FORTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to

exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: UNNAMED STREAM, tributary to ALDER CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	24 E	WM	32	SW NW	1370 FEET SOUTH AND 10 FEET EAST FROM NE CORNER, SECTION 31

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	24 E	WM	31	NE SE	17.0
7 S	24 E	WM	31	SW SE	4.7
7 S	24 E	WM	31	SE SE	21.8
Total Acres:					43.5

7. Certificate 82920 describes the authorized point of diversion as shown above. However, a new physical survey was made by the CWRE, Jerold L. Page. A brass cap monument was found on the NE corner of Section 31, T 7S, R 24 E, W.M. and the survey was conducted from this location. The survey indicates that the point of diversion on Certificate 82920 would be described as follows, based on current understanding of its relation to a survey corner:

Re-described Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	24 E	WM	32	SW NW	1270 FEET SOUTH AND 40 FEET EAST FROM THE NE CORNER OF SECTION 31

8. Certificate 82920 describes the authorized place of use as above, however a new physical survey of the land to which the right has always been appurtenant was made by the CWRE, Jerold L. Page. The survey indicates that based on current understanding of how the Public Land Survey lines overly the land, the place of use for Certificate 82920 would be described as below. The application map for T-10804 was adjusted accordingly.

Certificate	Original Description of Place of Use		Proposed Re-Description of Place of Use		
	¼-¼	Acres	¼-¼	Acres	Current Tax Lot
82920	NE SE	17.0	NE SE	16.0	2300
82920	SW SE	4.7	SW SE	3.9	2300
82920	SE SE	21.8	SE SE	23.6	2300
TOTAL		43.5	TOTAL	43.5	
Township 7 South, Range 24 East, Section 31					

9. The portion of the re-described right to be transferred is as follows:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	24 E	WM	31	NE SE	6.4
7 S	24 E	WM	31	NE SE	1.4
7 S	24 E	WM	31	SE SE	1.1
7 S	24 E	WM	31	SE SE	0.1
7 S	24 E	WM	31	SE SE	0.4
Total Acres:					9.4

10. Application T-10804 proposes to change the place of use for this portion of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	24 E	WM	31	SE SE	9.4

11. On November 24, 2008, Roberta Vandehey filed an application to lease portion of the lands described on Certificate 82920 for instream use until October 1, 2014. The department assigned the application number IL-957. The portion of the right included in IL-957 is the portion not affected by T-10804, but the order recorded at Special Order Volume 80, Pages 231-233 described the portion of the right as listed in Certificate 82920. Since the right is being re-described by this order, IL-957 will be terminated and a new lease will list the portion of the right consistent with the following remainder, not being transferred under T-10804. The remaining lands are re-described as follows:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	24 E	WM	31	NE SE	8.2
7 S	24 E	WM	31	SW SE	3.9
7 S	24 E	WM	31	SE SE	22.0
Total Acres:					34.1

12. Transfer T-10805 was filed on March 4, 2009, proposing a temporary change in place of use, and approved on November 24, 2009 by Special Order Volume 79, Pages 199-202. The temporary transfer expires at the end of the 2014 irrigation season; however the applicant requested that T-10805 be terminated upon approval of T-10804.
13. Notice of the application for transfer was published on March 17, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
14. On March 17, 2011, the Department electronically mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10804 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 18, 2011, for the applicant to respond.
15. On April 19, 2011, the applicant requested that the time for completion of the transfer be extended to October 1, 2015, and provided comments in regards to the headgate and measuring device conditions.

16. On April 21, 2011, the Watermaster submitted a revised Watermaster Injury Review modifying the headgate and measuring device conditions.
17. On April 22, 2011, a revised draft Preliminary Determination was sent to the applicant for review. A new deadline of July 12, 2011 was set for response to the revised draft Preliminary Determination. On July 11, 2011 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.

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

18. Water has been used 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.
19. A diversion structure and ditch 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-10804.
20. The proposed change would not result in enlargement of the rights.
21. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The change in place of use proposed in Transfer Application T-10804 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the right should be re-described and Temporary Transfer T-10805 should be terminated. If protests are not filed pursuant to OAR 690-380-4030, Transfer Application T-10804 will be approved (including re-description of a water right) and Temporary Transfer T-10805 will be terminated.

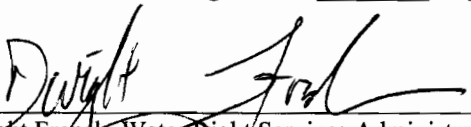
If application T-10804 is approved, the final order will include the following:

1. *The change in place of use proposed in application T-10804 is approved and the portion of Certificate 82920 is re-described.*
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 54724 and 82920 and any related decree.*
3. *Water right certificate 54724 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer, consistent with the re-description of the right.*
4. *Temporary Transfer T-10805 is terminated.*
5. *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.

- 6. The Director may require the water user to install a totalizing flow meter or other suitable measuring device at the point of diversion. If the Director notifies the water user to install a totalizing flow meter or other measuring device, the water user shall install such device specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meter or measuring device in good working order and shall allow the Watermaster access to the meter or measuring device.*
- 7. The former place of use of the transferred rights shall no longer receive water under the rights.*
- 8. The approved change 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 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.*
- 9. When satisfactory proof of the completed change is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 20 day of July, 2011.


Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

This Preliminary Determination was prepared by Carrie Jones. If you have questions about the information in this document, you may reach me at 541-523-8224 x 36 or Carrie.R.Jones@wrds.state.or.us.

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.