



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1266
503-986-0900
FAX 503-986-0904

January 8, 2007

WILLIAM R. MCALLISTER
80420 ROSS ROAD
TYGH VALLEY, OREGON 97063

SUBJECT: Transfer Application T-8080

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-8080. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication simultaneously with issuance of the Preliminary Determination. The notice initiates a 30-day period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Sincerely,

Dorothy I. Pedersen
Field Services Division

cc: Bob Wood, District 3 Watermaster
Mike Ladd, North Central Region Manager
Larry Toll, CWRE, Tenneson Engineering, 409 Lincoln St., The Dalles, OR 97058

**Notice of Preliminary Determination for
Water Right Transfer T-8080**

T-8080 filed by William McAllister, 80420 Ross Rd., Tygh Valley, Or. 97063, proposes a change in place of use under Certificates 11108, 51486, 51487, 60463, 76222, 76223 and 80637. The portions of the rights to be transferred allow the combined use of 0.68 cfs live flow for primary and supplemental irrigation and up to 60.0 acre feet of stored water (priority dates: May 27, 1931; April 12, 1941; March 20, 1951; March 22, 1961; February 28, 1977; July 23, 1968; May 1, 1975; and August 8, 1914) from seven diversions located in Sec. 16, T3S, R10E, W.M.; Sec. 29, T3S, R11E, W.M.; Sec. 32, T3S, R11E, W.M.; Sec. 11, T4S, R11E, W.M.; and Sec. 10 and 11, T4S, R12E, W.M., for irrigation and supplemental irrigation in Sec. 2 and 11, T4S, R12E, W.M.. The applicant proposes to change the place of use from the above described rights north to locations within Sec. 2, T4S, R12E, W.M., Sec. 7 and 8, of T4S, R13E, W.M..

The Water Resources Department has concluded that the proposed transfer appears to be consistent with the requirements of ORS Chapter 540 and OAR 690-380-5000.

Any person may file, jointly or severally, with the Department a protest or standing statement within 30 days after the date of final publication of notice in the Department's weekly notice or of this newspaper notice, whichever is later. A protest form and additional information on filing protests may be obtained by calling (503) 986-0881. The last date of newspaper publication is ***[DATE OF LAST PUBLICATION]***. If no protests are filed, the Department will issue a final order consistent with the preliminary determination.

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-8080, Wasco County)	PROPOSING APPROVAL OF A
)	CHANGE IN PLACE OF USE AND
)	PARTIAL CANCELLATION OF A
)	WATER RIGHT

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.

ORS 540.610 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

WILLIAM R. MCALLISTER
80420 ROSS ROAD
TYGH VALLEY, OREGON 97063

Findings of Fact

1. On September 8, 1998, William R. McAllister filed a transfer application to change the place of use under Certificates 11108, 51486, 51487, 60463, 76222, 76223 and 80637. The Department assigned the application number T-8080.
2. The Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-8080 to the applicant on November 30, 2006. The draft Preliminary Determination set forth a deadline in which the applicant could respond.
3. On December 6, 2006, oral comments were received via telephone from the applicant's agent, Larry Toll, CWRE identifying typos and errors needing correction. This Preliminary Determination corrected those errors originally contained in the draft of the Preliminary Determination.

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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Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	11	NW NE	3.3
4 S	12 E	WM	11	SW NE	0.7
4 S	12 E	WM	11	NE NW	2.7
4 S	12 E	WM	11	SE NW	3.1
TOTAL:					9.8

7. Application T-8080 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	13 E	WM	7	SE NW	6.4
4 S	13 E	WM	8	SW NW	3.4
TOTAL:					9.8

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

Certificate: 76223 in the name of BADGER IMPROVEMENT DISTRICT (perfected under Permit S-27390)

Use: IRRIGATION of 6.4 ACRES and SUPPLEMENTAL IRRIGATION of 7.8 ACRES

Priority Date: MARCH 22, 1961

Quantity: 0.15 CUBIC FOOT PER SECOND (CFS)

Rate/Duty: ONE-FORTIETH of one cubic foot per second per acre, and further limited to not to exceed 3.0 acre feet per acre for each acre irrigated during the irrigation season of each year from direct flow and storage from the reservoir constructed under Permit R-773 and the right allowed hereunder for the appropriation of water for lands having a valid prior right shall be limited to the amount necessary to make up any deficiency in water available to said lands under said prior right and the amount allowed herein, together with the amount secured under any other right existing for said lands, shall be limited by the duty of water as fixed herein

Source: BADGER CREEK and a RESERVOIR (constructed under Permit R-773), tributaries to WHITE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
3 S	10 E	WM	16	SW SW	Badger Lake – 400 feet North and 800 feet East from SW corner, Section 16
3 S	11 E	WM	29	NE SW	Badger Creek – 1290 feet South and 550 feet West from the Center, Section 29

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	11	NW NE	3.5
4 S	12 E	WM	11	NE NW	3.8
TOTAL:					7.3

11. Application T-8080 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4S	12 E	WM	2	SE SW	7.3
TOTAL:					7.3

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

Certificate: 51486 in the name of PINE HOLLOW COOPERATIVE, INC. and the DEPARTMENT of FISH and WILDLIFE (perfected under Permit S-33228)

Use: SUPPLEMENTAL IRRIGATION of 29.0 ACRES

Priority Date: JULY 23, 1968

Quantity: 30.0 ACRE FEET (AF)

Rate/Duty: A diversion of not to exceed 3.0 acre feet per acre for each acre irrigated during the irrigation season of each year. Water from the reservoir is to provide a supplemental supply for lands being benefited by exchange of water with lands below the reservoir under the terms of an agreement between the Badger Improvement District and Pine Hollow Cooperative, Inc., and the Pine Hollow Cooperative Water Users Agreement. In the exchange, upper lands use water diverted for the lower lands entitled thereto and replace it in a like amount from the reservoir authorized under Permit R-5250.

Source: PINE HOLLOW RESERVOIR (constructed under Permit R-5250), tributary to WHITE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
4 S	12 E	WM	10	NE NW	Pine Hollow Reservoir – 700 feet South and 1930 feet East from NW corner, Section 10

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	2	SE NW	4.3
4 S	12 E	WM	2	NW SE	4.0
4 S	12 E	WM	11	NW NE	8.2
4 S	12 E	WM	11	SW NE	0.7
4 S	12 E	WM	11	NE NW	7.7
4 S	12 E	WM	11	SE NW	4.1
TOTAL:					29.0

15. Application T-8080 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	2	SE SW	8.5
4 S	13 E	WM	7	SW NE	0.8
4 S	13 E	WM	7	SE NE	4.0
4 S	13 E	WM	7	SE NW	10.7
4 S	13 E	WM	8	SW NW	5.0
TOTAL:					29.0

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

Certificate: 80637 in the name of BADGER IMPROVEMENT DISTRICT (perfected under Permit S-2163)
Use: IRRIGATION of 4.3 ACRES
Priority Date: AUGUST 8, 1914
Quantity: 0.05 CUBIC FOOT PER SECOND (CFS)
Rate/Duty: ONE-EIGHTIETH of one cubic foot per second per acre, not to exceed 3.0 acre feet per acre
Source: SOUTH FORK BADGER CREEK, tributary to TYGH CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
3 S	11 E	WM	32	SW NE	Highland Ditch – N 65°21'W, 1938.2 feet from the E¼ corner, Section 32

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	2	SE NW	4.3
TOTAL:					4.3

17. Application T-8080 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	13 E	WM	7	SE NW	4.3
TOTAL:					4.3

Partial Cancellation of a Water Right

18. On November 3, 2006, Stix LLC, Pintail LLC, John Patrick Kennedy, Mary Elizabeth Kennedy, Barry Fletcher Kennedy and Carrie Marie Kennedy, owners of certain lands to which a portion of water right Certificate 60463 is appurtenant, submitted affidavits meeting the requirements of ORS 540.621 for partial cancellation of a water right as follows:

Determination and Proposed Action

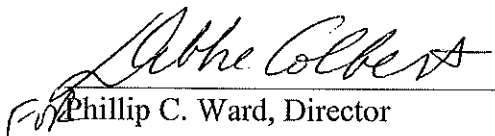
The change in place of use proposed in Transfer Application T-8080 appears to be consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000, and will be approved provided that protests are not filed pursuant to OAR 690-380-4030.

The portion of Certificate 60463 described in Finding #17 as abandoned will be cancelled.

If approved, the change and subsequent use of water shall be subject to the following conditions:

1. 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 11108, 51486, 51487, 60463, 76222, 76223 and 80637 and any related decree.
2. Upon issuance of a final order approving Transfer T-8080, Certificates 11108, 51486, 51487, 60463, 76222, 76223 and 80637 will be cancelled. New certificates will be issued describing the portions of the rights not voluntarily cancelled or transferred by T-8080, T-9990, T-10016 and T-10228.
3. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2008**. 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.
4. The former place of use of the transferred water shall no longer receive water as part of these rights.
5. When satisfactory proof of the completed change is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 5th day of January 2007.


Phillip C. Ward, Director

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1271

This Preliminary Determination was prepared by Ken Dowden. If you have any questions about the information in this document, you may reach me at (541)278-5456 or Ken.D.DOWDEN@ wrd.state.or.us.

Dorothy Pedersen

From: Dorothy Pedersen [Dorothy.I.PEDERSEN@wrd.state.or.us]
Sent: Thursday, January 11, 2007 4:00 PM
To: 'Ken Dowden'; 'Lisa Jaramillo'
Cc: 'Larry Toll @ Tenneson'
Subject: RE: PD for T- 8080 (McAlister)

Ken, Larry and Lisa,

Yes, when the total cubic feet per second allowed in a certificate is less per acre than the nominal rate stated in the certificate (such as 1/40 cfs/acre), it is possible to partially cancel the acreage without reducing the total cfs allowed, provided the total cfs divided by the remaining acreage under the right does not exceed the stated rate per acre.

The final order for T-8080 will reflect the original intent stated in the affidavits of partial cancellation, to cancel 11.0 acres, but not to cancel any cfs.

The transferred portion of Certificate 60463 will total 0.13 cfs (as in the DPD) and the remaining right certificate will total 2.37 cfs.

Dorothy

Dorothy Pedersen
(503) 986-0890

From: Ken Dowden [mailto:Ken.D.DOWDEN@wrd.state.or.us]
Sent: Thursday, January 11, 2007 3:41 PM
To: 'Lisa Jaramillo'; 'Dorothy Pedersen'
Cc: Larry Toll @ Tenneson
Subject: PD for T- 8080 (McAlister)

Hello Dorothy and Lisa, as per the earlier errors found in the dPD, Larry Toll fired off the e-mail below to me describing those deficiencies.

On December 6th, Larry called me and we went over a couple of errors he found in the dPD. While we talked, I made corrections on my electronic copy of the PD, and forwarded this PD (for their eyes only) to he and Bob Wood, and reflects the amendments/corrections. That e-mail is at the far bottom of this e-mail.

Now, at about the time I initially discussed these errors with Larry, I believe I left a voice mail message with Doug Parrow, asking whether we can entertain a "partial cancellation" without attaching any water to it. I do now believe we had a brief conversation on the phone, where he said "YES", that we could in this case since it was a deficiency of rate water right, and shouldn't further reduce the amount of water on the remaining acres. I cannot find this question or his answer in e-mail form.

With that answer from Doug, I then completed my electronic copies, FTP'd them and sent the transfer file in the U.S. Mail to Salem on the afternoon of December 14th, 2006.

If more documentation is needed, Doug Parrow may have either in e-mail form or recollects our conversation and can share with you.

I support the idea of fixing this at final order. I did urge Larry Toll to comment on the PD to this effect.

From: Larry Toll [mailto:LToll@tennesoneng.com]
Sent: Wednesday, December 13, 2006 10:59 AM

1/11/2007

Dorothy Pedersen

From: Larry Toll [LToll@tennesoneng.com]
Sent: Thursday, January 11, 2007 3:06 PM
To: Dorothy Pedersen
Cc: Ken Dowden; Lisa.J.JARAMILLO@wrd.state.or.us
Subject: Preliminary Determinations for Transfers 8080, 9990, 10016, & 10228

Dorothy,

Here my comments and think the following adjustments need to be made.

Transfer 8080 - Finding of Fact - #18

There should be no water included to be abandoned. The certificate was issued at less than the maximum rate. Canceling land and no water still leave this water right below the maximum rate allowed. No water was listed in affidavits to be abandoned.

Transfer 9990 - Finding of Fact - #5 and #7

This is my mistake. The map shows that in the SW of the NW, 2.3 acres are to be transferred out with primary and supplemental water rights. They both are under Cert 82086 (permit 15165). However in my application I only listed the primary part of this water right. This needs to be amended to include the 2.3 acres of supplemental listed on the map.

This would move to the 2.0 acres in the NE of the SW and 0.3 acre in the NW of the SW of Section 1. Once again I show it on the map but not in the application.

Transfer 10016 - Finding of Fact - #2

Source of water should be Badger Creek and Badger Lake Reservoir. I believe that this certificate was issued in 3 blocks of land. One for Badger Creek and Badger Lake Reservoir for primary on lands with no existing water rights, Badger Lake Reservoir for supplemental for lands with existing Badger Creek water rights, and Badger Creek and Badger Lake Reservoir for supplemental to lands with some other source as the primary right.

Transfer 11228 - Finding of Fact - #2

Clarify that the source of water should be Badger Creek and Badger Lake Reservoir for primary and Badger Lake Reservoir only for supplemental. I believe that this certificate was issued in 3 blocks of land. One for Badger Creek and Badger Lake Reservoir for primary on lands with no existing water rights, Badger Lake Reservoir for supplemental for lands with existing Badger Creek water rights, and Badger Creek and Badger Lake Reservoir for supplemental to lands with some other source as the primary right.

Thanks for looking at these and sorry that I did not see these on the Drafts.

Larry

Larry Toll, P.E., W.R.E.
 Tenneson Engineering Corporation
 409 Lincoln Street
 The Dalles, OR 97058
 Phone: 541-296-9177
 Fax: 541-296-6657
 E-mail: ltoll@tennesoneng.com

Pd Noticed

1-9-07

FO due 2/9/07

Water Right Transfer Completion Checklist

T-8080

Transfer Specialist: kdd

Water Rights Affected

App File No.	Permit No.	Certificate No.	RR/CR Needed	RR/CR Nos.
S-14116	S-10195	11108	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	82972
S-34734	S-27390	76223	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	82973
S-19264	S-22633	76222	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	82974
S-3843	S-2163	80637	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	82975
S-45212	S-33228	51486	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	82976
S-53066	S-39616	51487	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	82977
S-55374 Copies Needed	S-43524	60463	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	82978

Watermaster District: 3

CWRE No.: 132

Irrig Dist Name/Address: Badger Improvement District, P.O. Box 818, Wamic, OR 97063

Commentors Name/Address: Larry Toll = agent

Preliminary Determination

- | | |
|---|--|
| <input checked="" type="checkbox"/> Electronic Files uploaded | <input type="checkbox"/> File Folder updated |
| <input checked="" type="checkbox"/> Preliminary Determination | <input type="checkbox"/> Fee Refund Due |
| <input checked="" type="checkbox"/> PD Cover letter | <input type="checkbox"/> Newspaper Notice required |
| <input checked="" type="checkbox"/> Public Notice | |
| <input checked="" type="checkbox"/> Remaining Rights | |

Comments/Special Issues: This transfer is being processed concurrently with T-10228, T-9990 and T-10016 that affect the same water rights. Remaining right certificates are being issued to reflect the changes from all four applications.

DPD Review (Optional)	PD Review (Salem)	Final Order Review (Salem)
Reviewer: _____ Date: _____	Reviewer: <u>[Signature]</u> Date: <u>12-27-07</u>	Reviewer: _____ Date: _____
Coordinator: _____ Date: _____	Coordinator: <u>[Signature]</u> Date: <u>1/4/07</u>	Coordinator: <u>[Signature]</u> Date: <u>3/9/07</u>

Special Order Volume: 71, Pages 192

Final Order Signature Date: 2-12-07

WRIS clone correction needed