

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING
T-10793, Josephine County)	CHANGES IN POINTS OF DIVERSION,
)	PLACE OF USE, CHARACTER OF USE
)	AND PARTIAL CANCELLATION OF A
)	WATER RIGHT

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.

ORS 540.621 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

DEER CREEK CENTER FOR FIELD RESEARCH AND EDUCATION
KAREN PLEASANT, AGENT
PO BOX 207
SELMA OR 97538

Findings of Fact

Background

1. On February 26, 2009, DEER CREEK CENTER FOR FIELD RESEARCH AND EDUCATION filed an application to change the points of diversion, place of use, and character of use under Certificates 13864 and 14622. The Department assigned the application number T-10793.
2. On August 12, 2009, the applicant submitted a revised map and application for Certificate 13864 that clarifies there are 18.9 acres for which only the point of diversion is being changed, and one acre that will remain unaffected by the transfer.

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.

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

Certificate: 13864 in the name of H. T. HABERMAN and G. C. SUMMER (confirmed by Illinois River (F) decree)

Use: IRRIGATION of 28.9 ACRES

Priority Date: DECEMBER 31, 1897

Rate: 0.58 CUBIC FOOT PER SECOND

Limit/Duty: ONE-FIFTIETH cfs per acre irrigated

Irrigation Season: APRIL 1 TO NOVEMBER 1 OF EACH YEAR

Source: SQUAW CREEK, tributary to DEER CREEK

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Proposed Changes
38 S	8 W	WM	9	SW NE	5.0	POD, USE & POU
38 S	8 W	WM	9	SE NE	1.0	POD, USE & POU
38 S	8 W	WM	9	SE NE	0.6	POD ONLY
38 S	8 W	WM	9	NE SE	4.0	POD, USE & POU
38 S	8 W	WM	9	NE SE	12.0	POD ONLY
38 S	8 W	WM	10	SW NW	1.3	POD ONLY
38 S	8 W	WM	10	NW SW	5.0	POD ONLY

4. Certificate 13864 does not list survey coordinates for the authorized points of diversion; however, mapping for transfer application T-10793, based on the State Engineer's map used in the adjudication of rights, identifies the location of the authorized points of diversion more specifically as being:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	8 W	WM	4	SW SE	660 FEET NORTH AND 530 FEET EAST FROM THE SOUTH ¼ CORNER OF SECTION 4
38 S	8 W	WM	9	SW NE	50 FEET SOUTH AND 440 FEET WEST FROM THE SE CORNER OF THE NW ¼ NE ¼ OF SECTION 9

5. Transfer Application T-10793 proposes to move the authorized points of diversion to a point that is approximately 0.11 mile upstream from one current point of diversion and 0.27 mile downstream from the other current point of diversion, located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	8 W	WM	9	NW NE	530 FEET NORTH AND 660 FEET WEST FROM THE SE CORNER OF THE NW ¼ NE ¼ OF SECTION 9

6. Transfer Application T-10793 proposes to change the character of use of 10.0 acres of irrigation identified in Finding of Fact #4 to year-round Quasi-Municipal use as shown in the table below.

7. Application T-10793 also proposes to change the place of use of the right for 10.0 acres of equivalent irrigation as follows:

FROM					
IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	8 W	WM	9	SW NE	5.0
38 S	8 W	WM	9	SE NE	1.0
38 S	8 W	WM	9	NE SE	4.0
TO					
QUASI-MUNICIPAL					
Twp	Rng	Mer	Sec	Q-Q	Tax Lot
38 S	8 W	WM	9	SW NE	100
38 S	8 W	WM	9	SE NE	100
38 S	8 W	WM	9	NE SE	100

8. Certificate 13864 does not list the yearly duty of water for irrigation. Permits issued subsequent to the adjudication proceedings generally allowed 4.5 acre feet per acre per year for irrigation.
9. Transfer application T-10793 requests that the quantity of water allowed under certificate 13864 for irrigation be pro-rated for year-round quasi-municipal use. A rate of diversion of 1/50 cfs per acre is equal to 0.02 cfs per acre or 0.20 cfs for 10 acres. Based on an irrigation season of 216 days out of 365 days per year, the pro-rated adjusted rate of diversion for year-round use would be 0.12 cfs ($216 / 365 \times 0.20 \text{ cfs} = 0.12 \text{ cfs}$). The annual duty of water, based on Finding of Fact #8 above, for 10 acres of equivalent irrigation use would be 45 acre feet ($10 \text{ acres} \times 4.5 \text{ acre-feet per acre} = 45.0 \text{ acre feet}$).
10. The portion of the second right to be transferred is as follows:

Certificate: 14622 in the name of T. W. KENNEDY (perfected under Permit S-13060)

Use: DOMESTIC

Priority Date: JUNE 6, 1938

Rate: 0.01 CUBIC FOOT PER SECOND

Limit/Duty: NONE GIVEN FOR DOMESTIC

Source: EAST FORK SQUAW CREEK, tributary to SQUAW CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	8 W	WM	33	NE SW	NONE GIVEN

Authorized Place of Use:

DOMESTIC				
Twp	Rng	Mer	Sec	Q-Q
37 S	8 W	WM	33	SW SE

11. Certificate 14622 does not list survey coordinates for the authorized point of diversion, however, mapping for transfer application T-10793, based on the permit application map, identifies the location of the authorized point of diversion more specifically as being:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	8 W	WM	33	NE SW	300 FEET SOUTH AND 300 FEET WEST FROM THE CENTER ¼ CORNER OF SECTION 33

12. Certificate 14622 and the permit application map incorrectly states the authorized source as “East Fork Squaw Creek”. The map submitted with transfer application T-10793 and the current USGS quadrangle map, using the same coordinates, indicate the diversion is actually on the “West Fork of Squaw Creek”.

13. Transfer Application T-10793 proposes to move the authorized point of diversion approximately 2 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	8 W	WM	9	NW NE	530 FEET NORTH AND 660 FEET WEST FROM THE SE CORNER OF THE NW ¼ NE ¼ OF SECTION 9

14. Transfer Application T-10793 proposes to change the character of use to year-round Quasi-Municipal use.

15. Application T-10793 also proposes to change the place of use of the right to:

QUASI-MUNICIPAL					
Twp	Rng	Mer	Sec	Q-Q	TaxLot
38 S	8 W	WM	9	SW NE	100
38 S	8 W	WM	9	SE NE	100
38 S	8 W	WM	9	NE SE	100

16. Domestic use under Certificate 14622 is allowed year-round, therefore, no pro-rating of the rate of diversion will be needed.
17. Certificate 14622 does not state an annual duty for domestic use, however, ORS 540.610 states “beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state”. It is unlikely that the quantity of water, if diverted continuously at a rate of 0.01 cfs for 365 days of the year (0.01 cfs x 60 sec/min x 60 min/hr x 24 hr/day x 365 days/year ÷ 43,560 square feet per acre = 7.24 acre-feet per year), could have been beneficially used for domestic use.
18. Use of more water per year than could maximally have been beneficially used for the original domestic use would constitute enlargement of the right, which is not allowable. Therefore, to avoid enlarging the right in the conversion to quasi-municipal use, an annual volume limit should be added to the right, based on the best available estimate of the

maximum amount of water that could have been beneficially diverted and used for domestic use during a year.

19. Estimates of in-house domestic use available from agencies such as the United States Geological Survey (USGS), American Water Works Association (AWWA) and PennState Cooperative Extension indicate an average in-house domestic water use of approximately 70 gallons per person per day, or approximately 0.47 acre-feet per year for a household that includes six people. A reasonable estimate of maximum annual water use for the household yard and garden is approximately 1.67 acre-feet, assuming the domestic use included irrigation of ½ acre lawn and garden, and basing the amount of water needed to irrigate the garden or lawn on information from Oregon State University Extension. Combining the maximum reasonable estimates for in-house (0.47 acre-foot) and out-of-house domestic use (1.67 acre-feet) yields an estimate of annual maximum beneficial use of 2.14 acre-feet.
20. Notice of the application for transfer was published on March 10, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
21. On June 2, 2009, the Department contacted Karen Pleasant by written correspondence to notify the applicant's agent of the deficiencies in the application. Specifically, (1) documentation was not submitted to indicate the applicant qualifies as a quasi-municipal water user under OAR 690-300-0010(40); (2) evidence of use submitted did not show use within the last 5 years; (3) maps submitted with the application did not show authorized points of diversion as depicted by Department records; and (4) clarification is needed to correctly describe the authorized source of water. The Department requested that the deficiencies be resolved by July 3, 2009.
22. On June 25, 2009, the applicant's agent submitted the requested information, thereby eliminating the deficiencies in the application.
23. On September 16, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10793 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 19, 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. The applicant submitted corrections to the draft and a replacement page 3 of Supplemental Form A for Certificate 13864, and requested that the completion date be extended to 2015 because of anticipated delays due to reliance on students, volunteers and donations to complete the development.
24. On October 10, 2009, the applicant agreed to limit quasi-municipal use under the two rights as follows, in order to avoid enlargement of the rights:

Water Right	Diversion Rate	Annual Volume
Certificate 13864	0.12 cfs	45.0 acre-feet
Certificate 14622	0.01 cfs	2.14 acre-feet

25. On October 30, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10793 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 November 3, 2009 and in the Grants Pass Daily Courier newspaper on November 9, 16 and 23, 2009, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
26. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point 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)]

27. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
28. 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-10793.
29. The proposed changes, if not conditioned to limit the right to the maximum beneficial use for the original characters of use, could result in enlargement of the rights. However, if the rights are conditioned as indicated in Finding of Fact #24, the changes would not result in enlargement of the rights.
30. The proposed changes, if conditioned to avoid enlargement, would not result in injury to other water rights.

Partial Cancellation of a Water Right

31. On February 26, 2009, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Karen Pleasant, agent and Associate Director for Deer Creek Center for Field Research and Education. The right to be cancelled is as follows:

Certificate: 14622 in the name of T. W. KENNEDY (perfected under Permit S-13060)
Use: IRRIGATION of 14 ACRES
Priority Date: JUNE 6, 1938
Rate: 0.28 CUBIC FOOT 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-FIFTIETH 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 4.5

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

Source: EAST FORK SQUAW CREEK, tributary to SQUAW CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
37 S	8 W	WM	33	NE SW

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	8 W	WM	33	NW SE	4.0
37 S	8 W	WM	33	SW SE	10.0

Conclusions of Law

The change in points of diversion, change in place of use and change in character of use proposed in Transfer Application T-10793 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned portion of a right should be cancelled.

Now, therefore, it is ORDERED:

1. The change in points of diversion, change in place of use and change in character of use proposed in application T-10793 are approved. The portion of the right that has been abandoned is cancelled.
2. Water right certificates 13864 and 14622 are cancelled. A new certificate will be issued describing that portion of the right evidenced by Certificate 13864 not affected by this transfer and partial cancellation.
3. 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 13864, 14622 and any related decree with the exception that quasi-municipal use resulting from certificate 13864 may be exercised year round at a maximum flow rate of 0.12 cfs, further limited to a maximum volume of 45 acre-feet per year; and the use resulting from Certificate 14622 will be limited to a maximum diversion rate of 0.01 cfs, further limited to a maximum annual volume of 2.14 acre-feet.
4. The quantity of water diverted at the new point of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.
5. Water use measurement conditions:
 - a. 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 the new point of diversion.

- b. The water user shall maintain the meter or measuring device in good working order.
- c. The water user shall allow the Watermaster access to the meter or measuring devices; provided however, where the meter or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.
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 the 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 screen and/or by-pass device meets 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 device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.
8. The former place of use of 0.1 acre of the right evidenced by Certificate 13864 in the SE NE of Section 9, from which the right has been transferred, shall no longer receive water under the right.
9. 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 change(s) 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 24th day of December 2009.

for William E. Forbes
Phillip C. Ward, Director

Mailing date: JAN 04 2010