

STATE OF OREGON

COUNTY OF JACKSON

**ORDER APPROVING A CHANGE IN USE AND PLACE OF USE,
AND CANCELING A PORTION OF A WATER RIGHT**

Pursuant to ORS 537.348 and ORS 540.510 to 540.530, after notice was given and no objections were filed, and finding that no injury to existing water rights would result, this order approves, as conditioned or limited herein, TRANSFER 8504 submitted by

BUREAU OF LAND MANAGEMENT
3040 BIDDLE ROAD
MEDFORD, OREGON 97504.

The FIRST right to be modified, as evidenced by Certificate 14368, was perfected under Permit 11753, with a date of priority of JULY 8, 1935. The right allows the use of JENNY CREEK, a tributary of KLAMATH RIVER, for IRRIGATION OF 36.0 ACRES. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.45 CUBIC FOOT PER SECOND (CFS) if available at the original point of diversion: SW $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 16, TOWNSHIP 40 SOUTH, RANGE 4 EAST, W.M.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-EIGHTIETH of one cubic foot per second per acre. The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

The authorized place of use is located as follows:

NW $\frac{1}{4}$ NW $\frac{1}{4}$	20.0 ACRES
SW $\frac{1}{4}$ NW $\frac{1}{4}$	6.0 ACRES
SECTION 22	
NW $\frac{1}{4}$ NW $\frac{1}{4}$	10.0 ACRES
SECTION 27	
TOWNSHIP 40 SOUTH, RANGE 4 EAST, W.M.	

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-080 and OAR 690-001-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

The right to use the water for the above purpose is restricted to beneficial use on the lands or place described.

The applicant proposes to change the USE and PLACE OF USE to INSTREAM USE FOR FISHERIES ENHANCEMENT in JENNY CREEK from the authorized point of diversion: SW¼ SE¼, SECTION 16, TOWNSHIP 40 SOUTH, RANGE 4 EAST, W.M. to the Oregon - California border, in the SW¼ SW¼, SECTION 9, TOWNSHIP 41 SOUTH, RANGE 4 EAST, W.M.

The applicant proposes the instream flow be for a rate of 0.45 cubic foot per second from April 1 to October 31 of each year.

An affidavit was received from the Bureau of Land Management, owner of certain land and the water right appurtenant to it. The portion of the FIRST water right certificate not involved in this proposed change has been abandoned and is requested to be canceled.

The abandoned water is a portion of the right described by Certificate 14368. The abandoned water right is for the use of 0.11 cubic foot per second from Jenny Creek, a tributary of the Klamath River. The date of priority is JULY 8, 1935. The abandoned water right is for irrigation of 9.0 acres.

A description of the place of use of the abandoned right is as follows:

SW¼ NW¼ 9.0 ACRES
SECTION 22
TOWNSHIP 40 SOUTH, RANGE 4 EAST, W.M.

ORS 540.621 provides: "Whenever the owner of a perfected and developed water right certifies under oath to the Water Resources Commission that the water right has been abandoned by the owner and that the owner desires cancellation thereof, the commission shall enter an order canceling the water right."

The SECOND right to be modified, as evidenced by Certificate 76239, was perfected under Permit 7019 (Transfer 2943), with a date of priority of OCTOBER 26, 1925. The right allows the use of JENNY CREEK, a tributary of KLAMATH RIVER, for IRRIGATION OF 59.7 ACRES. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.75 CUBIC FOOT PER SECOND (CFS): BEING 0.45 CFS AT EAST DITCH DIVERSION, IF AVAILABLE AT THE ORIGINAL POINT OF DIVERSION; NW¼ NW¼, SECTION 22, TOWNSHIP 40 SOUTH, RANGE 4 EAST, W.M.; WILLIAMS DITCH DIVERSION - NORTH 25 DEGREES 41 MINUTES EAST 1796 FEET FROM THE W¼ CORNER, SECTION 22 AND 0.30 CFS AT WILLIAMS DITCH DIVERSION, IF AVAILABLE AT THE ORIGINAL POINT OF DIVERSION, or its equivalent in case of rotation measured at the point of diversion from the source. The points of diversion

are located as follows:

EAST DITCH - SE $\frac{1}{4}$ SW $\frac{1}{4}$, (a scrivener's error on certificate 76239 had listed this as the SE $\frac{1}{4}$ NW $\frac{1}{4}$) SELECTION 16, TOWNSHIP 40 SOUTH, RANGE 4 EAST, W.M.; 1450 FEET NORTH AND 3060 FEET WEST FROM THE SE CORNER OF SECTION 16; AND

WILLIAMS DITCH DIVERSION - NW $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 22, TOWNSHIP 40 SOUTH, RANGE 4 EAST, W.M.; NORTH 25 DEGREES 41 MINUTES EAST 1796 FEET FROM THE W $\frac{1}{4}$ CORNER, SECTION 22.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-EIGHTIETH of one cubic foot per second per acre.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

The authorized place of use is located as follows:

WILLIAMS DITCH

NW $\frac{1}{4}$ SW $\frac{1}{4}$ 3.0 ACRES

SW $\frac{1}{4}$ SW $\frac{1}{4}$ 12.0 ACRES

SECTION 22

NW $\frac{1}{4}$ NW $\frac{1}{4}$ 6.0 ACRES

SW $\frac{1}{4}$ NW $\frac{1}{4}$ 3.0 ACRES

SECTION 27

TOWNSHIP 40 SOUTH, RANGE 4 EAST, W.M.

EAST DITCH

SW $\frac{1}{4}$ SW $\frac{1}{4}$ 4.5 ACRES

SECTION 22

NW $\frac{1}{4}$ NW $\frac{1}{4}$ 8.0 ACRES

SW $\frac{1}{4}$ NW $\frac{1}{4}$ 3.5 ACRES

NW $\frac{1}{4}$ SW $\frac{1}{4}$ 19.7 ACRES

SECTION 27

TOWNSHIP 40 SOUTH, RANGE 4 EAST, W.M.

The right to use the water for the above purpose is restricted to beneficial use on the lands or place described.

The applicant proposes to change the USE and PLACE OF USE to INSTREAM USE FOR FISHERIES ENHANCEMENT in JENNY CREEK from the authorized points of diversion:

EAST DITCH - SE $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 16, TOWNSHIP 40 SOUTH, RANGE 4 EAST, W.M.; 1450 FEET NORTH AND 3060 FEET WEST FROM THE SE CORNER OF SECTION 16; AND

WILLIAMS DITCH DIVERSION - NW $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 22, TOWNSHIP 40 SOUTH, RANGE 4 EAST, W.M.; NORTH 25 DEGREES 41 MINUTES EAST 1796 FEET FROM THE W $\frac{1}{4}$ CORNER, SECTION 22

to the Oregon - California border, in the SW $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 9, TOWNSHIP 41 SOUTH, RANGE 4 EAST, W.M.

The applicant proposes the instream flow be for a rate of 0.45 cubic foot per second from the East Ditch Diversion from April 1 to October 31 of each year and for a rate of 0.30 cubic foot per second from the Williams Ditch Diversion from April 1 to October 31 of each year.

The THIRD right to be modified, as evidenced by Certificate 8982, was perfected under Permit 7559, with a date of priority of SEPTEMBER 10, 1926. The right allows the use of JENNY CREEK, a tributary of KLAMATH RIVER, for IRRIGATION OF 14.5 ACRES. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.18 CUBIC FOOT PER SECOND (CFS) if available at the original point of diversion: SW $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 16, TOWNSHIP 40 SOUTH, RANGE 4 EAST, W.M.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-EIGHTIETH of one cubic foot per second per acre.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

The authorized place of use is located as follows:

NE $\frac{1}{4}$ NE $\frac{1}{4}$	8.0 ACRES
SE $\frac{1}{4}$ NE $\frac{1}{4}$	6.5 ACRES
SECTION 28	
TOWNSHIP 40 SOUTH, RANGE 4 EAST, W.M.	

The right to use the water for the above purpose is restricted to beneficial use on the lands or place described.

The applicant proposes to change the USE and PLACE OF USE to INSTREAM USE FOR FISHERIES ENHANCEMENT in JENNY CREEK from the authorized point of diversion: SW $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 16, TOWNSHIP 40 SOUTH, RANGE 4 EAST, W.M. to the Oregon - California border, in the SW $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 9, TOWNSHIP 41 SOUTH, RANGE 4 EAST, W.M.

The applicant proposes the instream flow be for a rate of 0.18 cubic foot per second from April 1 to October 31 of each year.

The FOURTH right to be modified, as evidenced by Certificate 38956, was perfected under Permit 23459, with a date of priority of MARCH 22, 1955. The right allows the use of JENNY CREEK, a tributary of KLAMATH RIVER, for IRRIGATION OF 120.0 ACRES. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 1.72 CUBIC FEET PER SECOND (CFS) if available at the original points of diversion:

#1 - SE $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 16, TOWNSHIP 40 SOUTH, RANGE 4 EAST, W.M.; 1240 FEET NORTH AND 2990 FEET WEST OF SE CORNER, SECTION 16;

#2 - SE $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 16, TOWNSHIP 40 SOUTH, RANGE 4 EAST, W.M.; 750 FEET NORTH AND 1250 FEET WEST OF SE CORNER, SECTION 16;

#3 - NE $\frac{1}{4}$ NE $\frac{1}{4}$, SECTION 22, TOWNSHIP 40 SOUTH, RANGE 4 EAST, W.M.; 1030 FEET SOUTH AND 630 FEET EAST FROM NW CORNER, SECTION 22.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-FORTIETH of one cubic foot per second per acre, or its equivalent of not to exceed 3 acre feet per acre for each acre irrigated during the irrigation season, and shall be still further limited to a diversion of not to exceed 1.72 cubic feet per second.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

The authorized place of use is located as follows:

SE $\frac{1}{4}$ SE $\frac{1}{4}$	2.1 ACRES
SECTION 21	
NW $\frac{1}{4}$ NW $\frac{1}{4}$	2.6 ACRES
SW $\frac{1}{4}$ NW $\frac{1}{4}$	18.1 ACRES
NW $\frac{1}{4}$ SW $\frac{1}{4}$	17.8 ACRES
SW $\frac{1}{4}$ SW $\frac{1}{4}$	8.7 ACRES
SECTION 22	
NW $\frac{1}{4}$ NW $\frac{1}{4}$	11.1 ACRES
SW $\frac{1}{4}$ NW $\frac{1}{4}$	24.2 ACRES
NW $\frac{1}{4}$ SW $\frac{1}{4}$	11.3 ACRES
SW $\frac{1}{4}$ SW $\frac{1}{4}$	7.6 ACRES
SECTION 27	
NE $\frac{1}{4}$ SE $\frac{1}{4}$	3.3 ACRES
SE $\frac{1}{4}$ SE $\frac{1}{4}$	13.2 ACRES

SECTION 28
TOWNSHIP 40 SOUTH, RANGE 4 EAST, W.M.

The right to use the water for the above purpose is restricted to beneficial use on the lands or place described.

The applicant proposes to change the USE and PLACE OF USE to INSTREAM USE FOR FISHERIES ENHANCEMENT in JENNY CREEK from the authorized point of diversion: SE¼ SW¼, SECTION 16, TOWNSHIP 40 SOUTH, RANGE 4 EAST, W.M.; 1240 FEET NORTH AND 2990 FEET WEST OF SE CORNER, SECTION 16 to the Oregon - California border, in the SW¼ SW¼, SECTION 9, TOWNSHIP 41 SOUTH, RANGE 4 EAST, W.M.

The applicant proposes the instream flow be for a rate of 1.72 cubic feet per second from June 1 until September 13 of each year.

SUMMARY OF WATER RIGHT CHANGES

Certificate	Legal Description	Transferred Instream (Acres)	Remaining Right (Acres)	Canceled (Acres)
14368	NW¼ NW¼ Section 22	20.0	0	0
	SW¼ NW¼ Section 22	6.0	0	9.0
	NW¼ NW¼ Section 27	10.0	0	0
	T 40 S, R 4 E, W.M.			
	Original water right: 45.0 acres at 0.56 cfs	36.0 acres 0.45 cfs		9.0 acres 0.11 cfs

76239	Williams Ditch			
	NW¼ SW¼ Section 22	3.0	0	0
	SW¼ SW¼ Section 22	12.0	0	0
	NW¼ NW¼ Section 27	6.0	0	0
	SW¼ NW¼ Section 27	3.0	0	0
	T 40 S, R 4 E, W.M.			
	East Ditch			
	SW¼ SW¼ Section 22	4.5	0	0

	NW¼ NW¼ Section 27	8.0	0	0
	SW¼ NW¼ Section 27	3.5	0	0
	NW¼ SW¼ Section 27	19.7	0	0
	T 40 S, R 4 E, W.M.			
	Original water right for 59.7 acres at 0.75 cfs	59.7 acres 0.75 cfs		

Certificate	Legal Description	Transferred Instream (Acres)	Remaining Right (Acres)	Canceled (Acres)
8982	NE¼ NE¼ Section 28	8.0	0	0
	SE¼ NE¼ Section 28	6.5	0	0
	SW¼ SE¼ Section 28	0	17.8	0
	SE¼ SW¼ Section 28	0	12.7	0
	NE¼ NW¼ Section 33	0	5.8	0
	T 40 S, R 4 E, W.M.			
	Original water right for 50.8 acres at 0.64 cfs	14.5 acres 0.18 cfs	36.3 acres 0.46 cfs	

38956	SE¼ SE¼ Section 21	2.1	0	0
	NW¼ NW¼ Section 22	2.6	0	0
	SW¼ NW¼ Section 22	18.1	0	0
	NW¼ SW¼ Section 22	17.8	0	0
	SW¼ SW¼ Section 22	8.7	0	0
	NW¼ NW¼ Section 27	11.1	0	0
	SW¼ NW¼ Section 27	24.2	0	0
	NW¼ SW¼ Section 27	11.3	0	0
	SW¼ SW¼ Section 27	7.6	0	0
	NE¼ SW¼ Section 28	0	1.8	0

SE¼ SW¼ Section 28	0	1.8	0
NE¼ SE¼ Section 28	3.3	7.7	0
NW¼ SE¼ Section 28	0	0.2	0
SE¼ SE¼ Section 28	13.2	9.8	0
T 40 S, R 4 E, W.M.			
Original water right for 141.3 acres at 2.02 cfs	120.0 acres 1.72 cfs	21.3 acres 0.30 cfs	

FINDINGS

The Director finds, in accordance with OAR 690-77-075(2):

1. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights; and,
2. The proposed reaches are appropriate, considering:
 - a. The instream water right begins at the recorded point of diversion;
 - b. The location of confluences with other streams downstream of the point of diversion;
 - c. The location of the state border downstream of the point of diversion; and,
 - d. There are no know areas of natural loss of stream flow to the river bed.

THESE CHANGES TO AN EXISTING WATER RIGHT MAY BE MADE PROVIDED THE FOLLOWING CONDITIONS ARE MET BY THE WATER USER:

1. The proposed changes shall be effective upon the date of this order.
2. The former place of use shall no longer be irrigated as a part of this water right.

A total instream right of 3.10 cubic feet per second will be maintained, during the period from April 1 to October 31 of each year in Jenny Creek, tributary to the Klamath River.

The portion of the water right requested to be canceled is canceled and of no further force or effect.

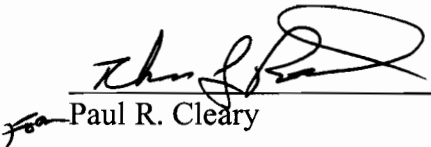
Certificate 14368 is canceled. A new certificate confirming the instream water right will be issued.

Certificate 76239 is canceled. A new certificate confirming the instream water right will be issued.

Certificate 8982 is canceled. A new certificate confirming the instream water right will be issued. A new certificate confirming the remaining right will be issued.

Certificate 38956 is canceled. A new certificate confirming the instream water right will be issued. A new certificate confirming the remaining right will be issued.

WITNESS the signature of the Water Resources Director, affixed FEBRUARY 16, 2001.


Paul R. Cleary