

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

In the Matter of Transfer Application) FINAL ORDER APPROVING AN
T-10214, Douglas County) ADDITIONAL POINT OF DIVERSION

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

ARTHUR H. LEVASSEUR, JR AND ALVIN L. HENDRICK
309 GAZLEY RD
MYRTLE CREEK OR 97457

Findings of Fact

Background

1. On July 10, 2006, Arthur H. Levasseur, Jr and Alvin L. Hendrick filed an application for additional points of diversion under Certificate 55393. The Department assigned the application number T-10214.
2. On July 25, 2007, Art Levasseur, Jr. indicated that his new address is 309 Gazley Road, Myrtle Creek, Oregon 97457.
3. The first portion of the right being affected is as follows:

Certificate: 55393 in the name of ARTHUR H LEVASSEUR, JR. (perfected under Permit S-42288)

Use: IRRIGATION of 0.6 ACRE and STOCK

Priority Date: JUNE 27, 1977

Rate: 0.0075 CUBIC FOOT PER SECOND (CFS) FOR IRRIGATION & 0.001 CFS FOR STOCK

This is an order in other than a 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 137-004-0080, you may either 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.

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year
FOR IRRIGATION

Source: SOUTH UMPQUA RIVER, tributary to UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
30 S	5 W	WM	19	SE NE	43	675 FEET NORTH AND 40 FEET WEST FROM E1/4 CORNER OF SECTION 19

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
30 S	5 W	WM	19	SE NE	43	0.6

LIVESTOCK					
Twp	Rng	Mer	Sec	Q-Q	DLC
30 S	5 W	WM	19	SE NE	43

4. The second portion of the right being affected is as follows:

Certificate: 55393 in the name of ARTHUR H LEVASSEUR, JR. (perfected under Permit S-42288)

Use: IRRIGATION of 1.2 ACRES, and STOCK

Priority Date: JUNE 27, 1977

Rate: 0.015 CUBIC FOOT PER SECOND FOR IRRIGATION & 0.002 CFS FOR STOCK

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year
FOR IRRIGATION

Source: SOUTH UMPQUA RIVER, tributary to UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
30 S	5 W	WM	19	SE NE	43	675 FEET NORTH AND 40 FEET WEST FROM E1/4 CORNER OF SECTION 19

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
30 S	5 W	WM	19	SE NE	43	1.2

LIVESTOCK					
Twp	Rng	Mer	Sec	Q-Q	DLC
30 S	5 W	WM	19	SE NE	43

5. Application T-10214 proposes to add two Points of Diversion (POD), both of which are less than ¼ mile downstream. The PODs would be located at:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
30 S	5 W	WM	19	SE NE	43	POD 2: 580 FEET NORTH AND 5 FEET WEST FROM E1/4 CORNER OF SECTION 19
30 S	5 W	WM	19	SE NE	43	POD 3: 520 FEET NORTH AND 25 FEET WEST FROM E1/4 CORNER OF SECTION 19

6. There is an intervening point of diversion between the original POD and the proposed additional PODs.
7. Application T-10214 proposes that the lands described below would be served by PODs described below:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	POD	Comments
30 S	5 W	WM	19	SE NE	43	0.6	1 & 2	Hendrick: POD #1 is the existing POD. POD #2 is proposed to be added.
30 S	5 W	WM	19	SE NE	43	1.2	1 & 3	Levasseur: POD #1 is the existing POD. POD #3 is proposed to be added.

8. Notice of the application for transfer was published on July 25, 2006, pursuant to OAR 690-380-4000. The Oregon Department of Fish and Wildlife indicated that the new PODs could impact the spawning gravels used by Fall Chinook in October.
9. On June 4, 2007, the Department issued a Preliminary Determination proposing to approve Transfer T-10214 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on June 5, 2007, and in The News-Review newspaper on June 22, 29 and July 6, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
10. The Oregon Department of Fish and Wildlife (ODFW) has determined that fish screens and/or by-pass devices are necessary at the new points 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)]

11. Water has been used within the last five years according to the terms and conditions of the rights, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
12. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Application T-10214.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.

Conclusions of Law

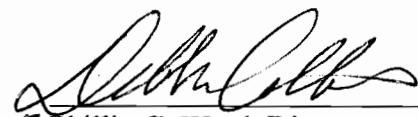
The changes in additional points of diversion proposed in application T-10214 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes of additional points of diversion proposed in application T-10214 are approved.
2. Water Right Certificate 55393 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
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 Certificate 55393 and any related decree.
4. The quantity of water diverted at the additional points of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
5. Prior to diverting water at the new points of diversion, the water user shall install fish screens and/or by-pass devices, as appropriate, at the new points 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 screens and/or by-pass devices, as appropriate, at the points of diversion consistent with ODFW's operational and maintenance standards.
6. When required by the Department, the water user shall install, maintain and operate in-line flow meters, weirs, or other suitable devices for measuring and recording the quantity of water diverted. The type and plans of the measuring devices must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
7. When required by the Department, the water user shall install, maintain and operate headgates to control and regulate the quantity of water diverted. The type and plans of the headgates must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
8. 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.

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 28th day of August 2007.


Phillip C. Ward, Director

Mailing date: AUG 30 2007

