

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

In the Matter of Transfer Application) FINAL ORDER APPROVING AN
T-10550, Washington 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

JOSEPH DUYCK TRUST
c/o KEVIN DUYCK
37995 NW HARRINGTON ROAD
CORNELIUS OR 97113

Findings of Fact

Background

1. On February 8, 2008, KEVIN DUYCK filed an application for an additional point of diversion under Certificates 38911, 43876, and 44670. The Department assigned the application number T-10550.
2. The portion of the first right to be transferred is as follows:

Certificate: 38911 in the name of JOSEPH DUYCK (confirmed by PERMIT 33538)
Use: IRRIGATION of 44.6 ACRES
Priority Date: APRIL 25, 1968
Rate: 0.55 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-EIGHTIETH 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

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.

Source: EAST FORK DAIRY CREEK, tributary to DAIRY CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
1 N	3 W	WM	4	SW SE	37	EAST FORK DAIRY CREEK - 1060 FEET NORTH AND 1150 FEET EAST FROM NORTHEAST CORNER OF DLC 55

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 N	3 W	WM	4	SW NE	37	12.0
1 N	3 W	WM	4	SE NE	37	4.0
1 N	3 W	WM	4	NE SW	37	6.8
1 N	3 W	WM	4	SE SW	37	9.8
1 N	3 W	WM	4	NW SE	37	12.0

3. The second right to be transferred is:

Certificate: 43876 in the name of JOSEPH DUYCK (confirmed by PERMIT 36121)

Use: IRRIGATION of 103.5 ACRES

Priority Date: APRIL 6, 1971

Rate: 0.90 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-EIGHTIETH 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: EAST FORK DAIRY CREEK, tributary to DAIRY CREEK

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
1 N	3 W	WM	4	SW SE	37	POD 1 - 1140 FEET NORTH AND 1110 FEET EAST FROM NORTHEAST CORNER OF DLC 55

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 N	3 W	WM	4	SW NE	37	0.2
1 N	3 W	WM	4	SW NW	37	1.9
1 N	3 W	WM	4	SE NW	37	7.4
1 N	3 W	WM	4	NE SW	37	30.1
1 N	3 W	WM	4	NW SW	37	24.5
1 N	3 W	WM	4	SW SW	37	24.8
1 N	3 W	WM	4	SE SW	37	10.4
1 N	3 W	WM	4	NW SE	37	0.1
1 N	3 W	WM	5	NE SE	37	1.8
1 N	3 W	WM	5	SE SE	37	2.3

4. The third right to be transferred is:

Certificate: 44670 in the name of JOSEPH DUYCK (confirmed by PERMIT 37567)

Use: IRRIGATION of 8 ACRES

Priority Date: JANUARY 5, 1973

Rate: 0.10 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-EIGHTIETH 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: EAST FORK DAIRY CREEK, tributary to DAIRY CREEK

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
1 N	3 W	WM	4	SW SE	37	POD 1 - 1060 FEET NORTH AND 1150 FEET EAST FROM NORTHEAST CORNER OF DLC 55

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
1 N	3 W	WM	4	SE NE		37	0.8
1 N	3 W	WM	4	SE NE	1		2.0
1 N	3 W	WM	4	NE SE		37	0.8
1 N	3 W	WM	4	NE SE	2		4.4

5. Transfer Application T-10550 proposes an additional point of diversion on Certificates 38911, 43876, and 44670 approximately 1,700 feet downstream from the authorized points of diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
1 N	3 W	WM	4	SE SW	37	EAST FORK DAIRY CREEK 2 - 185 FEET NORTH AND 120 FEET EAST FROM NORTHEAST CORNER OF J. HARRIS DLC 55

6. Notice of the application for transfer was published on March 11, 2008 pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. On August 11, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10550 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of September 14, 2009, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
8. Transfer Applications must be signed by all applicants or landowners. There are eight people listed as applicants and only two originally signed the Application. The remaining six signatures were received on September 15, 2009.
9. On September 29, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10550 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 October 6, 2009, and in the Hillsboro Argus newspaper on October 9, 16 and 23, 2009, 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 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)]

11. Water has been used within the last five years 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.
12. 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-10550.

13. The proposed change would not result in enlargement of the rights.
14. The proposed change would not result in injury to other water rights.

Conclusions of Law

The additional point of diversion proposed in Transfer Application T-10550 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The additional point of diversion proposed in application T-10550 is approved.
2. Water right certificates 38911, 43876, and 44670 are cancelled. A new certificate will be issued to describe the portion of Certificate 38911 not affected by this transfer.
3. The right to the use of the water is restricted to beneficial use at the places of use described, and is subject to all other conditions and limitations contained in Certificates 38911, 43876, and 44670 and any related decree.
4. The quantity of water diverted at the additional point of diversion together with that diverted at the original points of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.
5. The Director may require the water user to install a totalizing flow meter or other suitable measuring devices at each point of diversion. If the Director notifies the water user to install totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices
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 approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicants 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 23rd day of November 2009.


Phillip C. Ward, Director *PCW*

Mailing date: DEC 11 2009