

total limitation of 3.0 acre feet per acre from March 1 to October 1 of each year.

Source: SOUTH FORK SPRAGUE RIVER, tributary to the SPRAGUE RIVER

Authorized Point of Diversion: None Listed

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tract	Acres
36 S	14 E	WM	20	NW NE	1	40.0
36 S	14 E	WM	20	SW NE	1	40.0
36 S	14 E	WM	20	NE NW	1	40.0
36 S	14 E	WM	20	NW NE	4	39.3
36 S	14 E	WM	20	SW NW	4	15.0
36 S	14 E	WM	20	SE NW	1	40.0
36 S	14 E	WM	20	NE SE	3	40.0
36 S	14 E	WM	20	NW SE	2	38.8
36 S	14 E	WM	20	SW SE	2	4.0

- Certificate 9987 incorrectly described the place of use of 39.3 acres in Tract 4 as being in the NWNW of Section 20, Township 36 South, Range 14 East, Willamette Meridian. However, page 56 of the Modified Findings and Decree entered February 5, 1930, in *In the Matter of the Determination of the Relative Rights to the Use of the Water of the Sprague River and Its Tributaries (outside of the Klamath Indian Reservation), a Tributary of Williamson River*, confirms the 39.3 acres is located in the NWNW of Section 20, Township 36 South, Range 14 East, Willamette Meridian.
- Transfer Application T-10746 proposes to move the authorized point of diversion to reflect historical use of two points of diversion approximately ¾ mile and 1-¾ miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	14 E	WM	20	NW NW	POD - 1: 920 FEET SOUTH AND 60 FEET EAST FROM THE NW CORNER OF SECTION 20
36 S	14 E	WM	20	SE SE	POD - 2: 1310 FEET NORTH AND 1310 FEET WEST FROM THE SE CORNER OF SECTION 20

5. Application T-10746 also proposes the following points of diversion to serve the place of use under this right:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	POD	Tract	Acres
36 S	14 E	WM	20	NW NE	2	1	40.0
36 S	14 E	WM	20	SW NE	2	1	40.0
36 S	14 E	WM	20	NE NW	2	1	40.0
36 S	14 E	WM	20	NW NW	1	4	11.4
36 S	14 E	WM	20	NW NW	2	4	27.9
36 S	14 E	WM	20	SW NW	1	4	15.0
36 S	14 E	WM	20	SE NW	2	1	20.5
36 S	14 E	WM	20	SE NW	1	1	19.5
36 S	14 E	WM	20	NE SE	2	3	40.0
36 S	14 E	WM	20	NW SE	2	2	13.0
36 S	14 E	WM	20	NW SE	1	2	25.8
36 S	14 E	WM	20	SW SE	1	2	4.0

6. Notice of the application for transfer was published on December 16, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. The Oregon Department of Fish and Wildlife (ODFW) did request inclusion of a condition requiring installation of proper fish screens. The (ODFW) has determined that a fish screening and/or by-pass device is necessary at the 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. Listed fish species are not present at the point of diversion, the originating water right diversion is not screened, cost-share funds are not currently available, and the proposed diversion may be eligible for ODFW's cost-share program. A grace period of two years is appropriate until such time as cost share funds become available to assist in the construction of a fish screening and/or by-pass device. If cost share funds do not become available, the water user must screen within the indicated time period regardless of the availability of cost share funding.
8. On December 31, 2009, the applicant provided additional affidavits supporting the historic diversion of water at the points of diversion identified in Finding of Fact No. 4.

Transfer Review Criteria (ORS 540.532 and OAR 690-380-2120)

9. Pursuant to OAR 690-380-2120(2)(a), evidence has been submitted that the actual, current points of diversion for the water right in question, as described in Finding No. 4, have been in use for more than 10 years.
10. Pursuant to OAR 690-380-2120(2)(c), the Watermaster provided a statement that to his knowledge there has been no complaint of injury due to the use of water at the actual, current points of diversion, prior to the transfer request.

11. The Department did not identify any affected water rights pursuant to OAR 690-380-2120(3).
12. Water has been used within the last five years according to the terms and conditions of the right. There is no evidence available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
13. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present.
14. The proposed change would not result in enlargement of the right.
15. The proposed change would not result in injury to other water rights.

Conclusions of Law

The proposed change in points of diversion to reflect historical use in application T-10746 is consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change proposed in T-10746 is approved and effective immediately.
2. 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 9987 and any related decree.
3. Water right certificate 9987 is cancelled. Certificate 86009 is issued to describe the change in points of diversion included in T-10746.
4. The quantity of water diverted at the new points of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.
5. When required by the Department, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
6. Prior to October 1, 2012, 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. The water user may withdraw water at the new point of diversion without screening or by-pass devices until two years after the date of this order. 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.

Dated at Salem, Oregon this 8th day of January 2010.



for Phillip C. Ward, Director

Mailing date: JAN 19 2010