



**Authorized Place of Use:**

IRRIGATION AND POWER					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	9 W	WM	26	SE NW	10.0

4. Certificate 2164 does not describe the location of the point of diversion, however information is available from the water right map and Permit S-3328 indicating that the point of diversion is located as follows:

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	9 W	WM	26	SW NE	SOUTH 55° 57 MINUTES EAST, 3,417.6 FEET FROM THE SECTION CORNER COMMON TO SECTIONS 22, 23, 26 AND 27

5. The water right under Certificate 2164 for 1.50 cfs was transferred from C. E. Donaldson to the Fairview Water District about 1923. The use was changed from irrigation to household and domestic and the power claim was cancelled. That transfer is documented in Abstract of Permit No. 3328, Application No. 5468, a note on Certificate No. 2164, Power Claim #423 (Cancelled); and correspondence letters dated Jan. 31, 1934 and August 20, 1934.
6. In 2007, the Fairview Water District consented to transfer of the water right under Certificate 2164 for 1.5 cfs to Casey M. Allen for irrigation use. The consent to transfer is documented in the minutes from October 8, 2007, Fairview Water District regular board meeting.
7. Application T-10700 proposes to move the authorized point of diversion approximately 6 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	10 W	WM	13	NW SW	700 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 13

8. Application T-10700 proposes to change the character of use to irrigation.
9. Application T-10700 also proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
1S	10W	WM	12	SW SW	5		2.8
1S	10W	WM	12	SE SW	5		28.2
1S	10W	WM	12	SW SE	4		18.9
1S	10W	WM	13	NW NE		43	17.9
1S	10W	WM	13	SW NE		43	15.4
1S	10W	WM	13	NE NW		43	21.9
1S	10W	WM	13	SE NW		43	15.2

10. Notice of the application for transfer was published on August 26, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

11. On October 27, 2008, the Department sent a letter, requesting clarification of the place of use, a revised transfer map, and documentation confirming that the Fairview Water District consented to the transfer. The Department requested that the deficiencies be resolved by November 28, 2008. The requested information was received on November 28, 2008, however the description of the place of use in the transfer application and the Land Use Information Form did not exactly match.
12. On February 11, 2009, Casey Allen submitted a revised Land Use Information Form signed by the county planning officials.
13. On February 13, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T- 10700 to the applicant. The draft Preliminary Determination set forth a deadline of March 31, 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.
14. On July 21, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10700 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 July 28, 2009, and in the Headlight-Herald newspaper on August 19 and 26 and September 2, 2009, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
15. 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)]***

16. Evidence was submitted with the application indicating that water has been used within the last five years according to the terms and conditions of the right, as modified by the acknowledged transfer. The water use affidavit shows that the water delivery system was limited to a backup supply for the last few years of the five year period due to the high cost of filtration associated with surface water sources. This condition suggests that there may have been extended periods of time during which the right of surface water use was not fully exercised. However, the information in the record is not sufficient to initiate cancellation proceedings under ORS 540.631.
17. A diversion structure and ditch 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-10700.
18. The irrigation of 120.3 acres at 1.5 cfs (equivalent to the customary rate of 1/80 of one cfs per acre) and a duty limited to 305 acre-feet per year (equivalent to 2.5 acre-feet per acre

irrigated) during the irrigation season (March 1 – October 31) would not be an enlargement of the right. If so limited, the proposed change would not result in enlargement of the right.

19. The proposed change would not result in injury to other water rights.

### **Conclusions of Law**

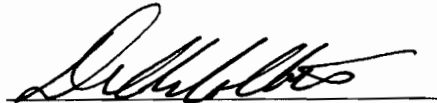
The changes in point of diversion, character of use and place of use proposed in application T-10700 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

### **Now, therefore, it is ORDERED:**

1. The changes in point of diversion, character of use and place of use proposed in application T-10700 are approved.
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 2164 and any related decree.
3. Water right Certificate 2164 is cancelled.
4. The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.
5. The former place of use of the transferred right shall no longer receive water under the right.
6. The amount of water used for irrigation shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, 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 (March 1 through October 31) of each year.
7. Prior to diverting water, the water user shall install 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 measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain and operate the measuring device as required by the Department.
8. 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.

9. The approved changes 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 applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.
10. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 7<sup>th</sup> day of October 2009.

  
Phillip C. Ward, Director *PC*

Mailing date: NOV 25 2009