

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

In the Matter of Transfer Application                    )     FINAL ORDER APPROVING A  
T-10248, Union County                                    )     CHANGE IN 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**

PAUL C. RUDD  
64053 GEKELER LANE  
LA GRANDE, OR 97850

**Agent**

GREG BLACKMAN  
2006 ADAMS AVE.  
LA GRANDE, OR 97850

**Findings of Fact**

**Background**

1. On October 2, 2006, Paul C. Rudd filed an application to change the point of diversion under Certificate 36250. The Department assigned the application number T-10248.

2. The right to be transferred is as follows:

**Certificate:** 36250 in the name of JOAN DUCKETT, ADMINISTRATIX OF BOUVEE ESTATE BY ROY WELLS, LESSEE (perfected under Permit S-28727)

**Use:** IRRIGATION of 258.2 ACRES

**Priority Date:** APRIL 1, 1963

**Rate:** 5.06 CUBIC FEET PER SECOND (CFS)

**Limit/Duty:** ONE-FORTIETH cfs per acre, not to exceed 3.0 acre-feet per acre during the irrigation season, provided further that the right to use of water is limited to the period of use when the flow of the Lower Grande Ronde River is more than 300 cfs at USGS Gage No. 3325 (AKA Rondowa 133325000) and more than 420 cfs at Oregon-Washington border.

**Source:** STATE DITCH of GRANDE RONDE RIVER, a tributary of the SNAKE RIVER

**NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW**

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.

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
2 S	39 E	WM	15	NW NW	30 FEET SOUTH AND 2410 FEET WEST FROM THE N¼ CORNER OF SECTION 15
2 S	39 E	WM	15	NW SW	2640 FEET SOUTH AND 2230 FEET WEST FROM THE N¼ CORNER OF SECTION 15

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	39 E	WM	10	SW SW	29.2
2 S	39 E	WM	10	SE SW	39.9
2 S	39 E	WM	15	NE NW	37.2
2 S	39 E	WM	15	NW NW	29.6
2 S	39 E	WM	15	SW NW	25.0
2 S	39 E	WM	15	SE NW	34.7
2 S	39 E	WM	15	NE SW	37.2
2 S	39 E	WM	15	NW SW	25.4

- Application T-10248 proposes to move the authorized point of diversion downstream in the source approximately 1800 feet to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
2 S	39 E	WM	15	SW NW	1830 FEET SOUTH AND 2207 FEET WEST FROM THE N¼ CORNER OF SECTION 15

- Notice of the application for transfer was published on October 17, 2006, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 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. 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.
- On March 5, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10248 to the applicant. The letter that accompanied the draft Preliminary Determination set forth a deadline of April 7, 2007, in which the applicant could respond. The applicant did not respond by the deadline.
- On April 11, 2007, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10248 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 April 17, 2007, and in a local newspaper on April 28, May 5

and 12, 2007, pursuant to ORS 540.520 and OAR 690-380-4000. No protests were filed in response to the Department's weekly notice or to the newspaper notice.

8. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
9. 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-10248.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.

### **Conclusions of Law**

The change in point of diversion proposed in application T-10248 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 in point of diversion proposed in application T-10248 is approved.
2. Water right Certificate 36250 is cancelled.
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 36250 and any related decree.
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. Within two years after the date of this order, 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.
6. Prior to diverting water, the water user shall install 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. The water user shall maintain the headgate as required by the Department.

7. The approved change 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.
8. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 14<sup>th</sup> day of June 2007.



Phillip C. Ward, Director

*PCW*

Mailing date: JUN 20 2007