

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

In the Matter of Transfer Application)
T-10600, Baker County)
)
)

FINAL ORDER
APPROVING A CHANGE IN POINT OF
DIVERSION AND PLACE OF USE

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

RICHARD D. STEPHENS
14400 N ROCK CREEK LANE
HAINES, OREGON 97833

Findings of Fact

Background

1. On April 14, 2008, Richard D. Stephens filed an application to change the place of use and points of diversion under Certificates 82336 and 84857. The Department assigned the application number T-10600.
2. On February 25, 2009, a revised application and map were received reflecting changes made as a result of initial review by Department staff.

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.

3. The portion of the first right to be transferred is as follows:

Certificate: 82336 in the name of WILLIAM J. F. ASHWOOD (confirmed by Powder River Decree)
Use: IRRIGATION of 73.5 ACRES
Priority Dates: APRIL 26, 1884 for 10.0 ACRES, APRIL 1891 for 34.0 ACRES, MAY 1895 for 29.5 ACRES
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-FORTIETH of one cubic foot per second, or its equivalent for each acre irrigated during the irrigation season of each year.
Source: ROCK CREEK, tributary to the POWDER RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured distances
7 S	38 E	WM	35	SE NE	ASHWOOD - 1493 FEET SOUTH AND 244 FEET WEST FROM THE NE CORNER OF SECTION 35
7 S	38 E	WM	35	SE NE	CASE OSBORN - 1493 FEET SOUTH AND 295 FEET WEST FROM THE NE CORNER OF SECTION 35
7 S	38 E	WM	35	SE NE	ANDERSON ASHWOOD - 1442 FEET SOUTH AND 792 FEET WEST FROM THE NE CORNER OF SECTION 35

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres	Priority	Ditch
7 S	38 E	WM	36	NW NW	10.0	4/26/1884	ASHWOOD
7 S	38 E	WM	36	NW NW	29.5	5/1895	CASE OSBORN
7 S	38 E	WM	36	SW NW	34.0	4/1891	ANDERSON ASHWOOD

4. Certificate 82336 describes the Ashwood Ditch in Section 36, Township 7 S., Range 38 E., however, information is available from previous Certificate 3977 and decree maps that indicate the Ashwood Ditch is located as described above in Section 35 Township 7 S., Range 38 E.

5. Transfer Application T-10600 proposes to move the authorized points of diversion approximately 0.25 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured distances
7 S	38 E	WM	36	SW NW	ANDERSON MORRIS - 900 FEET NORTH AND 920 FEET EAST FROM THE W¼ CORNER OF SECTION 36

6. Transfer Application T-10600 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Priority
7 S	38 E	WM	36	NE SE	21.5	5/1895
7 S	38 E	WM	36	NE SE	12.0	4/1891
7 S	38 E	WM	36	NE SE	6.0	4/26/1884
7 S	38 E	WM	36	NW SE	4.0	4/26/1884
7 S	38 E	WM	36	NW SE	22.0	4/1891
7 S	38 E	WM	36	NW SE	8.0	5/1895

7. The portion of the second right to be transferred is as follows:

Certificate: 84857 in the name of DON R. STEPHENS (confirmed by Powder River Decree)

Use: IRRIGATION of 73.5 ACRES

Priority Date: 1882

Limit/Duty: The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed ONE-FORTIETH of one cubic foot per second, if available at the original point of diversion: OWEN DITCH, or its equivalent in case of rotation, measured at the point of diversion from the source, and subject to all other conditions and limitations contained in said decree.

Source: ROCK CREEK, tributary to the POWDER RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured distances
7 S	38 E	WM	36	SW NW	ANDERSON MORRIS - 900 FEET NORTH AND 920 FEET EAST FROM THE W¼ CORNER OF SECTION 36

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	38 E	WM	36	NE SE	39.5
7 S	38 E	WM	36	NW SE	34.0

8. Transfer Application T-10600 proposes to move the authorized point of diversion approximately 0.25 mile upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured distances
7 S	38 E	WM	35	SE NE	CASE OSBORN - 1493 FEET SOUTH AND 295 FEET WEST FROM THE NE CORNER, SECTION 35
7 S	38 E	WM	35	SE NE	ASHWOOD - 1493 FEET SOUTH AND 244 FEET WEST FROM THE NE CORNER, SECTION 35
7 S	38 E	WM	35	SE NE	ANDERSON ASHWOOD - 1442 FEET SOUTH AND 792 FEET WEST FROM THE NE CORNER, SECTION 35

9. Transfer Application T-10600 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	38 E	WM	36	NW NW	39.5
7 S	38 E	WM	36	SW NW	34.0

10. A scrivener's error was found on a portion of Certificate 84857 that is not modified by this transfer. Certificate 84857 describes a place of use as 0.5 acres in the SWSW of Section 36, Township 7 South, Range 38 East, Willamette Meridian, Baker County, Oregon.
- a. Based on the superseded Certificate 4390 and associated maps, the actual place of use is in the SESE of Section 36, Township 7 South, Range 38 East, Willamette Meridian, Baker County, Oregon as follows:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	38 E	WM	36	SESE	0.5

11. Notice of the application for transfer was published on April 29, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
12. On April 13, 2009 the Department received a statement from the Oregon Department of Fish and Wildlife (ODFW) indicating that a fish screening and/or by-pass device is not necessary at this time.
13. On April 17, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10600 to the applicant. The cover letter for the draft Preliminary Determination set forth a deadline of May 17, 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 May 6, 2009, the Department issued a preliminary determination proposing to approve Transfer T-10600 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 May 12, 2009, and in the Baker City Herald on May 29, June 5, and 12, 2009, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

Transfer Review Criteria [OAR 690-380-4010(2)]

15. 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.
16. 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 Transfer Application T-10600.

17. The proposed changes would not result in enlargement of the rights.
18. The proposed changes would not result in injury to other water rights.

Conclusions of Law


The changes in place of use and point of diversion proposed in Transfer Application T-10600 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 place of use and point of diversion proposed in Transfer Application T-10600 are approved.
2. Water right certificates 82336 and 84857 are cancelled. New certificates will be issued describing the portions of the rights not affected by this transfer, and correcting scrivener's errors in Certificates 82336 and 84857.
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 Certificates 82336 and 84857 and any related decree.
4. The quantity of water diverted at the new points of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.
5. The former place of use of the transferred rights shall no longer receive water under the rights.
6. 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.
7. 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.
8. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2010**. 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, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 13th day of July 2009.


Phillip C. Ward, Director *PCW*

Mailing Date JUL 1 6 2009