

STATE OF OREGON

COUNTY OF JACKSON

ORDER APPROVING AN ADDITIONAL POINT OF DIVERSION

Pursuant to ORS 540.510 to 540.530, after notice was given and no objections were filed, and finding that no injury to existing water rights would result, this order approves, as conditioned or limited herein, TRANSFER 8971 submitted by

PHILIP A. AND MERRELL M. SCHWIMMER  
501 LITTLE APPLGATE ROAD  
JACKSONVILLE, OREGON 97530.

The right to be modified, was confirmed by decree of the Circuit Court of the State of Oregon for JACKSON County as evidenced by a PORTION of Certificate 32964. The decree is recorded in the Order Record of the Water Resources Director in Volume 16, at Page 523. The date of priority is 1908.

The right allows the use of LITTLE APPLGATE RIVER, a tributary of APPLGATE RIVER, for IRRIGATION OF 13.0 ACRES AND STOCK. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.26 cubic foot per second, if available at the authorized point of diversion: NW¼ SE¼, SECTION 13, AND NE¼ NE¼, SECTION 14, TOWNSHIP 39 SOUTH, RANGE 3 WEST, W.M., or its equivalent in case of rotation, measured at the point of diversion from the source.

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 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

The authorized place of use is located as follows:

NW¼ NW¼        13 ACRES  
SECTION 11  
TOWNSHIP 39 SOUTH, RANGE 3 WEST, W.M.  
BEING WITHIN DLC 37

The right to use water for the above purpose is restricted to beneficial use on the lands or place of use described and is subject to all other conditions and limitations contained in the decree.

The applicant proposes AN ADDITIONAL POINT of diversion to:

SE¼ SW¼, SECTION 3, TOWNSHIP 39 SOUTH, RANGE 3 WEST, W.M.; 230 FEET NORTH AND 480 FEET WEST FROM THE SOUTH ¼ CORNER OF SECTION 3.

THIS CHANGE TO AN EXISTING WATER RIGHT MAY BE MADE PROVIDED THE FOLLOWING CONDITIONS ARE MET BY THE WATER USER:

1. The proposed change shall be completed on or before October 1, 2005.
2. The quantity of water diverted at the new point of diversion, together with that diverted at the old point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
3. 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.
4. Water shall be acquired from the same surface water source as the original point of diversion.

5. The water user shall install and maintain a fish screen or fish by-pass device. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning of construction and shall be installed under the supervision of the Department of Fish and Wildlife.

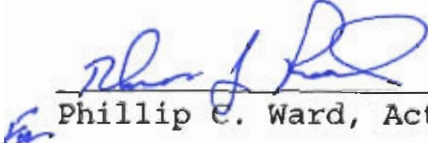
The water user may participate in the Oregon Department of Fish and Wildlife's cost sharing program for installation of screening and by-pass devices in accordance with ORS 540.525.

6. Upon submittal of the Claim of Beneficial Use for transfer the current landowner of the property to which this water right is appurtenant shall submit a time limited transfer for the entire water right described in transfer 8971. Further more, the time limited transfer shall request a temporary character of use change from irrigation to instream use for fisheries enhancement, and that the reach shall be defined from the original point of diversion to the mouth of the Little Applegate River.

Certificate 32964 is canceled. A new certificate will be issued to confirm that portion of the right NOT involved in this transfer. When satisfactory proof of the completed change is received, a new certificate confirming this water right will be issued.

WITNESS the signature of the Water Resources

Director, affixed September 8, 2004.

  
Phillip C. Ward, Acting Director