

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING
T-10794, Josephine County)	CHANGES IN POINT OF DIVERSION,
)	CHANGE IN PLACE OF USE AND
)	PARTIAL CANCELLATION OF
)	WATER RIGHTS

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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

DEER CREEK CENTER FOR FIELD RESEARCH AND EDUCATION
KAREN PLEASANT, AGENT
PO BOX 207
SELMA OR 97538

Findings of Fact

Background

1. On February 26, 2009, KAREN PLEASANT, AGENT FOR DEER CREEK CENTER FOR FIELD RESEARCH AND EDUCATION, filed an application to change the place of use under Certificate 19720. The Department assigned the application number T-10794.
2. On June 25, 2009, the applicant added Certificates 6067 and 13831 to transfer T-10794 and requested a change in point of diversion for all rights included in the transfer.
3. On August 31, 2009 the applicant's CWRE submitted revised maps, for certificates 19720 and 6067 and page 4 Supplemental Form A for certificate 19720 clarifying there will be no remaining rights as a result of Transfer T-10794 for the listed certificates.

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.

4. On October 5, 2009, the applicant's CWRE e-mailed modifications to Transfer Application T-10794, removing 0.5 acre under Certificate 19720 in the NE/SE, Section 10, T38S, R8W, W.M., as it is not owned by the applicant, and submitted a revised map showing that 0.5 acre as remaining unaffected by the transfer. An affidavit requesting cancellation of 3.0 acres located in the NE/SE, Section 9, T38S, R8W, WM. was also submitted.
5. On December 4, 2009, Certificate 6067 was superseded by Certificate 85951, to confirm a change in point of diversion authorized by order of the State Engineer approving Transfer Application B-113 and recorded in Special Order Volume 10, pages 238-240.
6. On January 8, 2010, the applicant submitted revisions to page 2 of the transfer application and a revised Supplemental Form A to reflect superseding Certificate 85951 rather than canceled Certificate 6067. The applicant also submitted a revised transfer map and revised partial cancellation affidavit for Certificate 85951.
7. The portion of the first right to be transferred is as follows:

Certificate: 19720 in the name of NORA POMEROY PLANT (perfected under Permit S-17867)

Use: IRRIGATION of 20.0 ACRES and SUPPLEMENTAL IRRIGATION of 147.3 ACRES

Priority Date: AUGUST 15, 1947

Rate: 3.35 CUBIC FEET PER SECOND

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-FIFTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated throughout the irrigation season from April 1st to November 1st of each year; provided further that the amount of water allowed herein, together with the amount secured under any other right existing for the same lands shall not exceed the limitation allowed herein, and shall be subject to such reasonable rotation system as may be ordered by the proper state officer.

Source: DEER CREEK, tributary to the ILLINOIS RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
38 S	8 W	WM	10	SE SW

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Proposed changes
38 S	8 W	WM	10	SE SW	2.4	POD only
38 S	8 W	WM	10	NE SE	4.5	POD & POU
38 S	8 W	WM	10	NE SE	4.4	POD only
38 S	8 W	WM	10	NW SE	1.4	POD & POU
38 S	8 W	WM	10	NW SE	7.3	POD only

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Proposed changes
38 S	8 W	WM	9	NE SE	12.0	POD only
38 S	8 W	WM	10	NE SW	38.5	POD only
38 S	8 W	WM	10	NW SW	31.2	POD only
38 S	8 W	WM	10	SE SW	15.6	POD only
38 S	8 W	WM	10	NE SE	24.0	POD only
38 S	8 W	WM	10	NW SE	26.0	POD only

8. Certificate 19720 does not describe the location of the point of diversion, however information is available from the transfer application map and permit application map for permit S-17867, indicating that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
38S	8W	WM	10	SESW	360 FEET NORTH AND 650 FEET WEST FROM THE S1/4 CORNER OF SECTION 10

9. Transfer Application T-10794 proposes to move the authorized point of diversion approximately 0.1 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38S	8W	WM	10	SESW	750 FEET NORTH AND 1120 FEET WEST FROM THE S1/4 CORNER OF SECTION 10

10. Application T-10794 also proposes to change the place of use of 5.9 acres of the right identified above to the following location in Tax Lot 700:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	8 W	WM	11	NW SW	5.9

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

Certificate: 85951 in the name of BENSON J. and LEONE A. BENJAMIN (perfected under Permit S-4255)

Use: IRRIGATION of 85.3 ACRES

Priority Date: APRIL 8, 1919

Rate: 1.07 CUBIC FEET PER SECOND

Limit/Duty: The amount of water for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-EIGHTIETH cfs per acre, or its equivalent in case of rotation.

Source: DEER CREEK, tributary to the ILLINOIS RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
38S	8W	WM	10	SESW	360 FEET NORTH AND 650 FEET WEST FROM THE S1/4 CORNER OF SECTION 10

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	8 W	WM	10	NE SW	38.5
38 S	8 W	WM	10	NW SW	31.2
38 S	8 W	WM	10	SE SW	15.6

12. Transfer Application T-10794 proposes to move the authorized point of diversion approximately 0.1 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38S	8W	WM	10	SESW	750 FEET NORTH AND 1120 FEET WEST FROM THE S1/4 CORNER OF SECTION 10

13. The portion of the third right to be transferred is as follows:

Certificate: 13831 in the name of ED BECHTEL AND MAYBELLE BECHTEL
(confirmed by Illinois River (F) decree)
Use: IRRIGATION of 54.7 ACRES
Priority Date: 1885 and July 7, 1932
Rate: 1.665 CUBIC FEET PER SECOND (CFS), being 1.094 cfs at priority date
1885 and 0.571 cfs at priority date July 7, 1932
Limit/Duty: ONE-FIFTIETH cfs per acre during the irrigation season from April 1 to
November 1 of each year
Source: DEER CREEK, tributary to the ILLINOIS RIVER

Authorized Point of Diversion: NONE GIVEN

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	8 W	WM	10	NE SE	25.4
38 S	8 W	WM	10	NW SE	29.3

14. Certificate 13831 does not describe the location of the point of diversion, however information is available from the decree map and transfer application map, indicating that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
38S	8W	WM	11	NWSE	1150 FEET SOUTH AND 920 FEET EAST FROM THE C ¹ / ₄ CORNER OF SECTION 11

15. Transfer Application T-10794 proposes to move the authorized point of diversion approximately 1.5 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38S	8W	WM	10	SESW	750 FEET NORTH AND 1120 FEET WEST FROM THE S1/4 CORNER SECTION 10

16. Notice of the application for transfer was published on March 10, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
17. On June 2, 2009, the Department contacted the applicant by written correspondence to notify the applicant and applicant's agent that the transfer application and map did not state coordinates for authorized diversion consistently with the map of record for the right (in this case, the permit map). The Department requested that the deficiencies be resolved by July 3, 2009, and if the applicant proposed a change in point of diversion as well as a change in place of use, that the application be amended to add a change in point of diversion and additional fees be submitted.
18. On June 25, 2009, the applicant's agent responded and provided the requested information, fees and revised maps.
19. 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.
20. On February 1, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10794 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 3, 2010, for the applicant to respond. The applicant's agent emailed comments, identifying scrivener's errors and questions, and requested that the Department proceed with issuance of a Preliminary Determination. The applicant had previously provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
21. On February 11, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10794 and mailed a copy to the applicant.
22. On February 22, 2010, a letter was received from Karen Pleasant, calling attention to proposed corrections to the draft Preliminary Determination (which had been included in the Preliminary Determination) and requesting additional time for completion of the changes. More than one year may be needed to allow ample time in this economic climate to acquire funding through grants, coordinate with agencies such as ODFW which is experiencing budget cuts, and complete the work using students, volunteers and donations to get much of

the work done. The letter requested the date of completion be moved up to 2015. The Department considers this request reasonable, so the additional time is granted.

23. The rate allowed for the transferred portion of the right evidenced by Certificate 13831 has been adjusted in Finding of Fact #13, based on Department review of the T-10794 transfer documents prior to signature of this order.
24. Notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on February 16, 2010, and in the Grants Pass Daily Courier newspaper on February 22, March 1 and March 8, 2010, 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)]

25. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610
26. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-10794.
27. The proposed changes would not result in enlargement of the rights.
28. The proposed changes would not result in injury to other water rights.

Partial Cancellation of Water Rights

29. On February 26, 2009, October 5, 2009 and January 8, 2010, affidavits certifying that portions of two water rights have been abandoned and requesting cancellation of the rights, were received from Karen Pleasant, agent and Associate Director for Deer Creek Center for Field Research and Education. The portions of the rights to be cancelled are as follows:
30. The portion of the first right to be canceled is as follows:

Certificate: 19720 in the name of NORA POMEROY PLANT (perfected under Permit S-17867)
Use: IRRIGATION of 12.5 ACRES and SUPPLEMENTAL IRRIGATION of 17.7 ACRES
Priority Date: AUGUST 15, 1947
Rate: 0.60 CUBIC FOOT PER SECOND
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-FIFTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated throughout the irrigation season from April 1st to November 1st of each year; provided further that the amount of water allowed herein, together with the amount secured under any other right

existing for the same lands shall not exceed the limitation allowed herein, and shall be subject to such reasonable rotation system as may be ordered by the proper state officer.

Source: DEER CREEK, tributary to the ILLINOIS RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
38 S	8 W	WM	10	SE SW

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	8 W	WM	10	NE SE	2.6
38 S	8 W	WM	10	NW SE	1.3
38 S	8 W	WM	10	SE SW	1.6
38 S	8 W	WM	10	SW SW	7.0

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	8 W	WM	9	NE SE	3.0
38 S	8 W	WM	10	NE SW	1.5
38 S	8 W	WM	10	NW SW	8.8
38 S	8 W	WM	10	SE SW	4.4

31. The portion of the second right to be canceled is as follows:

Certificate: 85951 in the name of BENSON J. and LEONE A. BENJAMIN (perfected under Permit S-4255)

Use: IRRIGATION of 14.7 ACRES

Priority Date: APRIL 8, 1919

Rate: 0.18 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-EIGHTIETH cfs per acre, or its equivalent in case of rotation.

Source: DEER CREEK, tributary to ILLINOIS RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
38S	8W	WM	10	SESW	360 FEET NORTH AND 650 FEET WEST FROM THE S1/4 CORNER OF SECTION 10

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	8 W	WM	10	NE SW	1.5
38 S	8 W	WM	10	NW SW	8.8
38 S	8 W	WM	10	SE SW	4.4

Conclusions of Law

The change in points of diversion and change in place of use proposed in Transfer Application T-10794 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned portions of rights should be cancelled.

Now, therefore, it is ORDERED:

1. The change in points of diversion and change in place of use proposed in application T-10794 are approved. The portions of the rights that have been abandoned are cancelled.
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 Certificates 19720, 85951, 13831 and any related decree.
3. Water right Certificates 19720, 85951 and 13831 are cancelled. New certificates will be issued describing the portions of the rights not affected by this transfer and cancellations.
4. The quantity of water diverted at the new point of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.
5. Water use measurement conditions:
 - a. Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at the new point of diversion.
 - b. The water user shall maintain the meter or measuring device in good working order.
 - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.
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. 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.

8. The former place of use of the transferred rights shall no longer receive water under the rights.
9. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2015**. 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, new certificates confirming the rights transferred will be issued.

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

William E. Feber
for Phillip C. Ward, Director

Mailing date: APR 12 2010