

Source: EAST FORK EVANS CREEK, tributary to the ROGUE RIVER, SUPPLEMENTAL SUPPLY FROM SPIGNET CREEK, tributary to EAST FORK EVANS CREEK.

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Ditch Name
34 S	2 W	WM	19	SE NE	BYBEE DITCH

Authorized Place of Use:

PRIMARY IRRIGATION: EAST FORK EVANS CREEK					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	3 W	WM	25	NW NW	0.3

SUPPLEMENTAL IRRIGATION : SPIGNET CREEK					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	3 W	WM	25	NW NW	0.3

5. Bybee Ditch is no longer in use.
6. The original certificate (Certificate 16153) did not list the authorized point of diversion (POD). Subsequent transfers (T-3324, T-3764, T-4799, T-7940, T-8031 and T-8987) resulted in a number of remaining rights which did not modify the authorized point of diversion.
7. Nonetheless, Certificate 75462 and Certificate 79742 described the authorized point of diversion as being located in the SENE, Section 19, T34S, R2W, W.M., for all the lands served by Bybee Ditch. Research of the water right maps of record and all associated documents indicate that Bybee Ditch was segmented and had at least two points of diversion that served specific lands. One of the diversion points from Bybee Ditch was a flume that served the southernmost segment of Bybee Ditch. This flume was washed out by a high water event in approximately 1971. Subsequently, a point of diversion was used approximately 400 feet downstream of where the flume was previously located.
8. The application map prepared by a Certified Water Rights Examiner (CWRE), Harold L. Center, described the location of the POD for the southernmost segment of Bybee Ditch as shown in the table below:

POINT OF DIVERSION FOR SOUTHERNMOST SEGMENT OF BYBEE DITCH:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
34 S	3 W	WM	24	NE SW	1660 FEET NORTH AND 2150 FEET EAST FROM THE SOUTHWEST CORNER OF SECTION 24

9. Transfer Application T-9957 proposes to move the authorized point of diversion approximately 0.7 mile downstream from the location described in Findings of Fact #8 to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
34 S	3 W	WM	25	NW NW	830 FEET SOUTH AND 390 FEET EAST FROM THE NW¼ CORNER OF SECTION 25

10. Transfer Application T-9957 also proposes to change the place of use of the right to:

PRIMARY IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot
34 S	3 W	WM	25	NW NW	0.3	192

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot
34 S	3 W	WM	25	NW NW	0.3	192

11. Notice of the application for transfer was published on July 5, 2005, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
12. On February 15, 2007, the Department issued a preliminary determination proposing to approve Transfer Application T-9957 and mailed a copy to the applicants. Additionally, notice of the preliminary determination for the transfer application was published on the Department's weekly notice on February 20, 2007 and in the Medford Mail Tribune newspaper on March 3, 10, and 17, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
13. 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.
14. Water has been used within the last five years according to the terms and conditions of the right, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
15. A pump sufficient to use the full amount of water allowed under the existing right is present.
16. The proposed change would not result in enlargement of the right.
17. The proposed change 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-9957 are consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore it is ORDERED:

1. 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 79742 and any related decree.
2. Certificate 79742 is cancelled. A new certificate will be issued describing that portion of the right not involved in this transfer.
3. The approved changes 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.
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 water shall no longer receive water as part of these rights.
6. Prior to diverting water, 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.
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. When satisfactory proof of the completed changes is received, a new certificate confirming the portion of the right transferred will be issued.

Dated at Salem, Oregon this 20th day of April 2007.


Phillip C. Ward, Director

Mailing Date: APR 23 2007