

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

In the Matter of Transfer Application)	FINAL ORDER
T-10239, Wasco County)	APPROVING AN ADDITIONAL POINT
)	OF DIVERSION AND
)	RE-DESCRIPTION OF A
)	WATER RIGHT

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

ASHLEY FAMILY RANCH, LLC
4120 RIVER ROAD
THE DALLES, OREGON 97058

Findings of Fact

Background

1. On September 14, 2006, Fred W. Ashley, owner of Ashley Family Ranch, LLC filed an application to add an additional point of diversion under Certificate 48410. The Department assigned the application number T-10239.
2. The portion of the right to be transferred is as follows:
 - Certificate:** 48410 in the name of Fred Ashley
 - Use:** Irrigation of 201.83 acres (balance of right = 24.0 acres, currently under Instream Lease IL-821, with priority dates of 1874 for 0.03 cfs and 1904 for 0.27 cfs)
 - Priority Date:** 1874 for 0.29 cfs and 1904 for the balance necessary to make up a total amount to which said lands are entitled (5.06 cfs) as designated below*
 - Rate/Duty:** The White River Decree states that an amount of water equivalent to ONE-FORTIETH of one cubic foot per second is allowed through June 30, and ONE-EIGHTIETH of one cubic foot per second thereafter, limited to 3.0 ACRE-FEET per each acre irrigated during any irrigation season (with further limitations contained in Paragraph 24 of said decree) if available at the original point of diversion: NW¼ SE¼, Section 10, T 4 S, R 13 E, W.M., French Estate and Knighten Ditch (listed as

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.

Anderson Ditch in adjudication proceedings) – 890 Feet South and 1680 Feet West from the E¼ of Section 10. (***original/entire right** - The date of 1874 is for 0.32 cubic foot per second of water, to be used on any of the lands herein described. All of the water used for the balance of the land shall take the date of 1904.)

Source: White River, a tributary of the Deschutes River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
4 S	13 E	WM	11	SW NW	2430 feet South and 1300 feet East from the NW Corner of Section 11

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q - Q	Acres	Acres (Instream Water Right Lease #821)	Acres (Balance = Water Right Subject to Transfer)
4 S	13 E	WM	11	NE NE	10.65	--	10.65
4 S	13 E	WM	11	NW NE	6.15	--	6.15
4 S	13 E	WM	11	SW NE	38.45	--	38.45
4 S	13 E	WM	11	SE NE	39.80	--	39.80
4 S	13 E	WM	11	SE NW	2.50	--	2.50
4 S	13 E	WM	11	NE SE	10.50	--	10.50
4 S	13 E	WM	11	NW SE	10.90	--	10.90
4 S	13 E	WM	12	NE NW	15.77	-13.40	2.37
4 S	13 E	WM	12	NW NW	17.00	-10.30	6.70
4 S	13 E	WM	12	SW NW	39.23	-0.30	38.93
4 S	13 E	WM	12	SE NW	34.88	--	34.88
TOTALS:					225.83 acres	24.00 acres	201.83 acres

Re-Description of Right

- The portion of Certificate 48410 involved in the transfer describes the authorized place of use as 201.83 acres in the Sections 11 and 12, of Township 4 South, Range 13 East, Willamette Meridian, Wasco County, Oregon, being on the south side of the White River, near the confluence with Tygh Creek.
- The transfer application map depicts the place of use under Certificate 48410 as being fairly consistent with the number of original acres in each ¼ ¼, but cannot be positively described because no original adjudication map prepared by the State Engineer exists for these lands under this right. The depiction of the lands on the application map is supported by three dated aerial photographs from the years 1958, 1972 and 2005. All three, including the color aerial photograph from 2005 portray a consistent “footprint” of irrigated lands throughout the years. Under OAR 690-14-0110(2), an applicant, with the aid of a Certified Water Rights Examiner (CWRE), may submit evidence of the correct location as it pertains to any

current claims. It appears this application map adequately describes the actual historical location of the place of use.

- Based on the Government Land Office survey map, it appears the course of the river has changed slightly but does not offer any assistance in identifying the existing water right. The application map is consistent with the county Assessor's office map in its portrayal of property lines and the layout of roads in the area. A review of the information supports that the CWRE based his re-tracement on reference points established or re-established by government land surveyors. With the lack of any original adjudication maps or other sources prepared by the State Engineer, the Department concludes that the land to which the right has always been appurtenant should be re-described, consistent with the application map prepared by the CWRE, and is described in the table below.
- The following table lists the place of use as described in existing Certificate 48410 and a proposed re-description based on the above findings:

Original Description of Place of Use				Proposed Re-description of Place of Use		
Certificate	Q - Q	Sec.	Acres	Q - Q	Estimated Acres	Current Tax Lot
48410	NE NE	11	10.65	NE NE	12.20	4S 13E 11 - TL 100
48410	NW NE	11	6.15	NW NE	3.90	4S 13E 11 - TL 100
48410	SW NE	11	38.45	SW NE	38.00	4S 13E 11 - TL 100
48410	SE NE	11	39.80	SE NE	37.10	4S 13E 11 - TL 100
48410	SE NW	11	2.50	SE NW	4.30	4S 13E 11 - TL 100
48410	NE SE	11	10.50	NE SE	5.30	4S 13E 11 - TL 100
48410	NW SE	11	10.90	NW SE	1.20	4S 13E 11 - TL 100
48410	NE NW	12	2.37	NE NW	5.83	4S 13E 12 - TL 2700
48410	NW NW	12	6.70	NW NW	18.20	4S 13E 12 - TL 2700
48410	SW NW	12	38.93	SW NW	39.00	4S 13E 12 - TL 2700
48410	SE NW	12	34.88	SE NW	36.80	4S 13E 12 - TL 2700
TOTAL:		201.83 acres	TOTAL:	201.83 acres		
Township 4 South, Range 13 East, Sections 11 and 12						

- Application T-10239 proposes to add an additional point of diversion for the above re-described lands downstream approximately 700 feet to a point located:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
4 S	13 E	WM	11	SE NW	1970 feet South and 1810 feet East from the NW Corner of Section 11

- 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. This diversion may be eligible for screening cost share funds.

10. The Watermaster has determined that an approved in-line flow meter, weir, or other suitable device for measuring the rate of water diverted be installed prior to water use. The measuring device shall be located in the ditch below the point where the inflow from both the existing point of diversion and the new proposed point of diversion enter the ditch. In order to measure the total flow diverted at both points of diversion, the Watermaster has recommended the installation of a Parshall flume, V-notch weir, standard contracted weir or other similar device, as appropriate. 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.
11. On January 7, 2008, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10239 to the applicant. The draft Preliminary Determination set forth a deadline of February 7, 2008, 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.
12. On April 30, 2008, the Department issued a Preliminary Determination proposing to approve Transfer T-10239 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 May 6, 2008 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)]

13. 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.
14. 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 Application T-10239.
15. The proposed change would not result in enlargement of the right.
16. The proposed change would not result in injury to other water rights.

Conclusions of Law

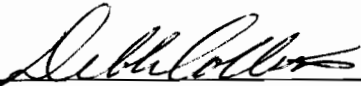
The proposed additional point of diversion in application T-10239 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The additional point of diversion proposed in application T-10239 is approved.

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 Certificate 48410 and any related decree.
3. Water right certificate 48410 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer. The quantity of water diverted at the additional point of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
4. 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. 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.
5. Prior to diverting water, the water user shall install an in-line flow meter, weir, or other suitable device to measure the quantity of water diverted. The measuring device shall be located in the ditch below the point where the inflow of both the existing point of diversion and the new proposed point of diversion enter the ditch. 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.
6. The approved changes shall be completed and full beneficial use of the water shall be made on or before October 1, 2009. 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 change and full beneficial use of the water.
7. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 12th day of June 2008.


P. Phillip C. Ward, Director

Mailing Date: 6-17-08

