

to June 1 and 4.0 acre-feet per acre during season April 1 to September 30, measured at point of diversion

Source: Reynolds Creek, tributary to John Day River

Authorized Point of Diversion: Based upon the John Day River Decree and associated adjudication map, the tabulation describing the right recognizes and identifies a ditch and dam located:

Twp	Rng	Mer	Sec	Q - Q
13 S	34 E	WM	25	SE NW

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q - Q	Acres
13 S	34 E	WM	25	SW NW	3.0
13 S	34 E	WM	25	NW SW	3.0
13 S	34 E	WM	26	SE NE	6.0
13 S	34 E	WM	26	NE SE	18.4
13 S	34 E	WM	26	NW SE	2.4
TOTAL:					32.8 ac.

3. Application T-10210 proposes to change the point of diversion to reflect historical use approximately 575 feet upstream from the authorized point of diversion to a pump site located:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
13 S	34 E	WM	25	NE SW	LATITUDE: NORTH 44 DEGREES 24 MINUTES 36.7 SECONDS LONGITUDE: WEST 118 DEGREES 33 MINUTES 56.5 SECONDS

4. The SECOND right to be transferred is as follows:

Certificate: 25737 in the name of SILVIA RIED, confirmed by the decree of the Circuit Court of the State of Oregon for Grant County, record at Salem in the Order Record of the State Engineer, in Vol. 15 at page 461

Use: Irrigation of 66.9 acres

Priority Date: 1868

Quantity of water: 1/40 cubic foot per second irrigated to June 1 and 1/80 cubic foot per second per acre thereafter; further limited to 1.0 acre-foot per calendar month to June 1 and 4.0 acre-feet per acre during season April 1 to September 30, measured at point of diversion

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Twp	Rng	Mer	Sec	Q - Q
13 S	34 E	WM	25	SE NW

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q - Q	Acres
13 S	34 E	WM	26	NE SW	7.1
13 S	34 E	WM	26	NE SE	0.3
13 S	34 E	WM	26	NW SE	37.7
13 S	34 E	WM	26	SW SE	21.8
TOTAL:					66.9 ac.

5. Application T-10210 proposes to change the point of diversion to reflect historical use approximately 550 feet upstream from the authorized point of diversion to a pump site located:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
13 S	34 E	WM	25	NE SW	LATITUDE NORTH 44 DEGREES 24 MINUTES 36.7 SECONDS LONGITUDE: WEST 118 DEGREES 33 MINUTES 56.5 SECONDS

6. Notice of the application for transfer was published on July 25, 2006 pursuant to ORS 540.520 and OAR 690-380-4000. The Department received no responses to that notice.
7. The Oregon Department of Fish and Wildlife (ODFW) 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. ODFW further determined that the new point of diversion is currently equipped with an appropriate fish screening and/or by-pass device.

Transfer Review Criteria (OAR 690-380-4010)

8. Pursuant to OAR 690-380-2120(2)(a), evidence has been submitted that the actual, current point of diversion for the water right in question, as described in Findings #2 and 4, has been in use for more than 10 years. In addition, pursuant to OAR 690-380-2120 (2)(c) the Watermaster provided a statement that to his knowledge there has been no complaint of injury due to the use of water at the actual, current point of diversion, prior to the transfer request.
9. The Watermaster has also provided a statement that there are no instream water rights on Reynolds Creek. Therefore the upstream movement provides no statutory requirement to determine whether there is injury to an upstream water right which would necessitate use of the consent to injury process. In addition, the Department has determined that there were no affected water rights requiring proof of service by the applicant. Therefore no proof of service was provided.
10. On July 6, 2007, the Department inadvertently mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10210 to the applicant. 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. The Department now intends to send out a Final Order consistent with ORS 540.532 and OAR 690-380-2120 (5).

11. Water has been used within the last five years according to the terms and conditions of the rights, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
12. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights are present.
13. The proposed change would not result in enlargement of the rights.
14. The proposed change would not result in injury to other water rights.
15. This transfer is being processed simultaneously with transfer application T-10209, also proposing to modify a portion of water right Certificate 25452.

Conclusion of Law

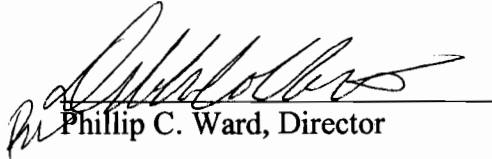
The proposed change in point of diversion to reflect historical use in application T-10210 is consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.

Now therefore, it is ORDERED:

1. The change proposed in T-10210 is approved. The proposed change shall be effective immediately upon issuance of the special order approving T-10210.
2. Water right certificate 25452 is cancelled. Certificate 83834 shall be issued to describe the change in point of diversion for the portion of the right included in T-10210. Certificate 83479 shall be issued for the portion of certificate 25452 not modified by the final orders approving T-10209 and T-10210. Together, Certificates 83834, 83479 and 83478 (which confirms a change in point of diversion under T-10209) shall supersede Certificate 25452.
3. Water right certificate 25737 is cancelled. Certificate 83835 shall be issued to confirm the change in point of diversion and to supersede certificate 25737.
4. The right to the use of the water is restricted to beneficial use at the places of use described, and is subject to all other conditions and limitations contained in Certificates 25452, 25737 and any related decree.
5. 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.
6. Prior to October 1, 2010, the water user shall install and maintain an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The water user shall maintain the existing headgate and shall make such improvements as may be required by the Department.

7. The water user shall maintain and operate a fish screening and fish by-pass device, as appropriate, at the new point of diversion, consistent with the Oregon Department of Fish and Wildlife operational and maintenance standards. The current diversion structure has fish passage already approved by ODFW fish passage specialists.

Dated at Salem, Oregon this 18 day of January 2008.


Phillip C. Ward, Director

Mailing date: FEB 08 2008