

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

In the Matter of Transfer Application T-10395, Jackson County))))	FINAL ORDER APPROVING CHANGES IN POINT OF DIVERSION AND PLACE OF USE, AND PARTIAL CANCELLATION OF WATER RIGHTS
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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

CYNTHIA A. EDWARDS
13238 EAST EVANS CREEK RD
ROGUE RIVER, OREGON 97537

Findings of Fact

Background

1. On May 29, 2007, Cynthia A. Edwards filed an application to change the place of use for a portion of the lands under Certificates 50143, 43986 and the point of diversion for a portion of the lands described under Certificates 51335, 50143, 43986, 43985 and 24152. The Department assigned the application number T-10395.

2. The portion of the first right to be transferred is as follows:

Certificate: 24152 in the name of David S. Blair (perfected under Permit S-24619)
Use: SUPPLEMENTAL IRRIGATION of 7.2 ACRES
Priority Date: DECEMBER 4, 1956
Rate: 0.09 CUBIC FOOT PER SECOND

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 137-004-0080, you may either 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.

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 4.5 acre-feet per acre per year
Source: MAY CREEK, tributary to EVANS CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
34 S	3 W	WM	32	SE NW

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	3 W	WM	5	SW NW	1.2
35 S	3 W	WM	5	SE NW	6.0

3. Certificate 24152 does not describe the location coordinates of the point of diversion, measured from a survey corner, however information is available from the 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
34 S	3 W	WM	32	SE NW	35 FEET NORTH AND 1675 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 32

4. Application T-10395 proposes to move the authorized point of diversion for these lands approximately 1 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Survey Coordinates
35S	3W	WM	5	NE SW	308	PORTABLE PUMP TO BE MOVED WITHIN THE REACH BETWEEN A POINT 85 FEET SOUTH AND 2660 FEET EAST, AND A POINT 480 FEET SOUTH AND 2015 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 5.

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

Certificate: 43985 in the name of Paul B. and Cytha G. Dickey (perfected under Permit S-6124)

Use: IRRIGATION of 7.2 ACRES

Priority Date: DECEMBER 1, 1923

Rate: 0.09 CUBIC FOOT PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre

Source: EVANS CREEK, tributary to the ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
35 S	3 W	WM	5	SE NW	650 FEET NORTH AND 2610 FEET EAST FROM THE W1/4 CORNER OF SECTION 5

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	3 W	WM	5	SW NW	1.2
35 S	3 W	WM	5	SE NW	6.0

6. Application T-10395 proposes to move the authorized point of diversion for these lands approximately 1/7th mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Survey Coordinates
35S	3W	WM	5	NE SW	308	PORTABLE PUMP TO BE MOVED WITHIN THE REACH BETWEEN A POINT 85 FEET SOUTH AND 2660 FEET EAST, AND A POINT 480 FEET SOUTH AND 2015 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 5.

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

Certificate: 43986 in the name of Paul B. and Cytha G. Dickey (perfected under Permit S-3312)

Use: IRRIGATION of 3.6 ACRES

Priority Date: MARCH 27, 1917

Rate: 0.045 CUBIC FOOT PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre

Source: EVANS CREEK, tributary to the ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
35 S	3 W	WM	5	SE NW	650 FEET NORTH AND 2610 FEET EAST FROM THE W1/4 CORNER OF SECTION 5

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	3 W	WM	5	SE NW	3.3
35 S	3 W	WM	5	NE SW	0.3

8. Application T-10395 proposes to change the place of use and move the authorized point of diversion approximately 1/7th mile downstream for this portion of the right. The proposed new point of diversion is:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Survey Coordinates
35S	3W	WM	5	NE SW	308	PORTABLE PUMP TO BE MOVED WITHIN THE REACH BETWEEN A POINT 85 FEET SOUTH AND 2660 FEET EAST, AND A POINT 480 FEET SOUTH AND 2015 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 5.

9. Application T-10395 proposes the new place of use to be:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	3 W	WM	5	SW NW	3.6

10. The portion of the fourth right to be transferred is as follows:

Certificate: 50143 in the name of David S. Blair (perfected under Permit 17593)

Use: IRRIGATION OF 3.6 ACRES

Priority Date: MARCH 6, 1947

Rate: 0.045 CUBIC FOOT PER SECOND

Limit/Duty: ONE-EIGHTIETH per acre for each acre irrigated from direct flow, not to exceed 4.5 acre-feet per acre per year for each acre irrigated during the irrigation season from April 2 to October 31 of each year from direct flow and storage

Source: MAY CREEK, tributary to EVANS CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
34 S	3 W	WM	32	SE NW	35 FEET NORTH AND 1675 FEET EAST FROM THE W1/4 CORNER OF SECTION 32

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	3 W	WM	5	SW NW	3.6

11. Application T-10395 proposes to change the place of use and move the authorized point of diversion for a portion of the right. The new authorized point of diversion is approximately 1 mile downstream at:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Survey Coordinates
35S	3W	WM	5	NE SW	308	PORTABLE PUMP TO BE MOVED WITHIN THE REACH BETWEEN A POINT 85 FEET SOUTH AND 2660 FEET EAST, AND A POINT 480 FEET SOUTH AND 2015 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 5.

12. Application T-10395 proposes the new place of use for this portion of the right to be:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	3 W	WM	5	SE NW	3.3
35S	3 W	WM	5	NE SW	0.3

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

Certificate: 51335 in the name of Streets, Bagley and Saunders (confirmed by Rogue River (F) State Water Board decree)

Use: IRRIGATION of 1.0 ACRE

Priority Date: 1901

Rate: 0.014 CUBIC FOOT PER SECOND

Source: MAY CREEK, tributary to EVANS CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
34 S	3 W	WM	32	SE NW	35 FEET NORTH AND 1675 FEET EAST FROM THE W1/4 CORNER OF SECTION 32

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	3 W	WM	5	NW NW	0.2
35 S	3 W	WM	5	SE NW	0.8

14. Application T-10395 proposes to move the authorized point of diversion for this portion of the right approximately 1 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
35S	3W	WM	5	NE SW	308	PORTABLE PUMP TO BE MOVED WITHIN THE REACH BETWEEN A POINT 85 FEET SOUTH AND 2660 FEET EAST, AND A POINT 480 FEET SOUTH AND 2015 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 5.

15. Notice of the application for transfer was published on June 5, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
16. 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.
17. On August 3, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10395 to the applicant. The draft Preliminary Determination set forth a deadline of September 7, 2007, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination with correction of some identified scrivener's errors in Finding of Fact No. 24 of the draft document, and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
18. On September 12, 2007, the Department issued a Preliminary Determination proposing to approve Transfer T-10395 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on September 18, 2007, and in the Grants Pass Daily Courier newspaper on October 3, 10 and 17, 2007, 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)]

19. Water has been used within the last five years according to the terms and conditions of the rights, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610
20. Pumps, 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 Application T-10395.
21. The proposed change would not result in enlargement of the rights provided the diversion of water under Certificates 24152 and 51225 and a portion of Certificate 50143 is limited to availability of water at the original diversion points on May Creek. Therefore, when May Creek, the water source for Certificate 24152 and 51225 and a portion of Certificate 50143 goes dry, irrigation will end under those portions of those water rights, even if there is still water in Evans Creek.
22. The proposed changes would not result in injury to other water rights.

Partial Cancellation of a Water Right

23. On May 29, 2007, three affidavits were received certifying that portions of three water rights have been abandoned and requesting cancellation of the portions of the rights were received from Cynthia A. Edwards.

24. The portion of the first right to be cancelled is as follows:

Certificate: 43986 in the name of Paul B. and Cytha G. Dickey (perfected under Permit S-3312)

Use: IRRIGATION of 0.2 ACRE

Priority Date: MARCH 27, 1917

Rate: 0.002 CUBIC FOOT PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre

Source: EVANS CREEK, tributary to the ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
35 S	3 W	WM	5	SE NW	650 FEET NORTH AND 2610 FEET EAST FROM THE W1/4 CORNER OF SECTION 5

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	3 W	WM	5	NE SW	0.2

25. The portion of the second right to be cancelled is as follows:

Certificate: 50143 in the name of David S. Blair (perfected under Permit S-17593)

Use: IRRIGATION of 0.1 acre and SUPPLEMENTAL IRRIGATION of 0.7 acre

Priority Date: MARCH 6, 1947

Rate: 0.01 CUBIC FOOT PER SECOND

Limit/Duty: ONE-EIGHTIETH, cfs per acre, for each acre irrigated from direct flow, not to exceed 4.5 acre-feet per acre for each acre irrigated during the irrigation season from April 2 to October 31 of each year from direct flow and storage from reservoir

Source: MAY CREEK, tributary to EVANS CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
34 S	3 W	WM	32	SE NW	35 FEET NORTH AND 1675 FEET EAST FROM THE W1/4 CORNER OF SECTION 32

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	3 W	WM	5	SW NW	0.1

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	3 W	WM	5	NW NW	0.7

26. The portion of the third right to be cancelled is as follows:

Certificate: 51335 in the name of Streets, Bagley and Saunders (confirmed by Rogue River (F) State Water Board decree)

Use: IRRIGATION of 0.5 ACRE

Priority Date: 1901

Rate: 0.007 CUBIC FOOT PER SECOND

Source: MAY CREEK, tributary to EVANS CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
34 S	3 W	WM	32	SE NW	35 FEET NORTH AND 1675 FOOT EAST FROM THE W1/4 CORNER OF SECTION 32

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	3 W	WM	5	NW NW	0.5

Conclusions of Law

The changes in place of use for portions of lands under Certificates 50143, 43986 and changes in the point of diversion under Certificates 51335, 50143, 43986, 43985, and 24152, proposed in application T-10395 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned portions of the rights should be cancelled.

Now, therefore, it is ORDERED:

1. The changes in place of use for portions of lands under Certificates 50143, 43986 and the point of diversion under Certificates 51335, 50143, 43986, 43985, 24152 proposed in application T-10395 are approved. The portions of the rights that have been abandoned are cancelled.
2. Water right certificates 51335, 50143, 43986, 43985, 24152 are cancelled. New certificates will be issued describing the portions of the rights not affected by this transfer and cancellation.
3. 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 51335, 50143, 43986, 43985, 24152 and any related decree.
4. The quantity of water diverted at the new reach within which a portable pump will divert water, shall not exceed the quantity of water lawfully available at the original point of diversion.


5. Diversion of water under the transferred portions of the rights evidenced by Certificates 24152 and 51335 and 50143 is limited to availability of water at the original diversion point on May Creek, being:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
34 S	3 W	WM	32	SE NW	35 FEET NORTH AND 1675 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 32

When May Creek goes dry, irrigation will end under the transferred portions of those water rights, even if there is still water in Evans Creek.

6. The former place of use of the transferred rights shall no longer receive water under the rights.
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. Prior to diverting water, the water user shall install 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 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.
9. 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 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 28 day of November 2007.


 Phillip C. Ward, Director

Mailing date: NOV 29 2007