

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

In the Matter of Transfer Application    )  
T-10775, Klamath County                    )  
  )  
  )    FINAL ORDER APPROVING A CHANGE  
  )    IN POINT OF DIVERSION TO REFLECT  
  )    HISTORIC USE, AND PARTIAL  
  )    CANCELLATION OF WATER RIGHTS

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**

LILLIAN M. HILL  
P.O. BOX 843  
CONDON, OR 97823

**Findings of Fact**

***Background***

1. On January 20, 2009, Lillian M. Hill filed a transfer application to change the point of diversion under Certificates 9963, 9989, and 10000. The Department assigned the application number T-10775.
2. The portion of the first right to be transferred is as follows:  
**Certificate:** 9963 in the name of A. S. CONNER (confirmed by Sprague River decree)  
**Use:** IRRIGATION of 471.5 ACRES  
**Priority Date:** 1876

**NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW**

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-FORTIETH of a cubic foot per second per acre, prior to June 15<sup>th</sup>, and ONE-EIGHTIETH of a cubic foot per second per acre after June 15<sup>th</sup>, with a total limitation of three acre feet per acre from March 1<sup>st</sup> to October 1<sup>st</sup> of each year.

**Source:** SOUTH FORK SPRAGUE RIVER, tributary to SPRAGUE RIVER

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	14 E	WM	21	NW NE	20.0
36 S	14 E	WM	21	SW NE	40.0
36 S	14 E	WM	21	SE NE	16.0
36 S	14 E	WM	21	NE NW	40.0
36 S	14 E	WM	21	SE NW	40.0
36 S	14 E	WM	21	NE SE	40.0
36 S	14 E	WM	21	NW SE	40.0
36 S	14 E	WM	21	SW SE	40.0
36 S	14 E	WM	21	SE SE	40.0
36 S	14 E	WM	22	NE SW	18.0
36 S	14 E	WM	22	NW SW	32.0
36 S	14 E	WM	22	SW SW	40.0
36 S	14 E	WM	22	SE SW	40.0
36 S	14 E	WM	22	NW SE	0.5
36 S	14 E	WM	22	SW SE	25.0

3. Certificate 9963 does not describe the location of the point of diversion, however information is available from the adjudication map for the right, indicating that the point of diversion is located as follows:

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	14 E	WM	21	SW SW	NONE SPECIFIED

4. Application T-10775 proposes to move the authorized point of diversion approximately 3/4 mile upstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	14 E	WM	27	NE SE	2160 FEET NORTH AND 10 FEET WEST FROM THE SE CORNER OF SECTION 27

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

**Certificate:** 9989 in the name of MODOC REALTY CO. (confirmed by Sprague River decree)

**Use:** Livestock and Irrigation of 160.0 Acres

**Priority Date:** 1886 and 1888

**Limit/Duty:** ONE-FORTIETH of a cubic foot per second per acre, prior to June 15<sup>th</sup>, and ONE-EIGHTIETH of a cubic foot per second per acre after June 15<sup>th</sup>, with a total limitation of three acre feet per acre from March 1<sup>st</sup> to October 1<sup>st</sup> of each year.

**Source:** SOUTH FORK SPRAGUE RIVER, tributary to SPRAGUE RIVER

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	14 E	WM	20	NE NE	40.0
36 S	14 E	WM	20	SE NE	40.0
36 S	14 E	WM	21	NW NW	40.0
36 S	14 E	WM	21	SW NW	40.0

6. Certificate 9989 does not describe the location of the point of diversion, however information is available from the adjudication map for the right, indicating that the point of diversion is located as follows:

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	14 E	WM	28	SE NE	TRACT 1, WALLER DITCH

7. Application T-10775 proposes to move the authorized point of diversion approximately ½ mile upstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	14 E	WM	27	NE SE	2160 FEET NORTH AND 10 FEET WEST FROM THE SE CORNER OF SECTION 27

8. **Certificate:** 10000 in the name of LUKE E. WALKER (confirmed by Sprague River decree)

**Use:** LIVESTOCK and IRRIGATION of 175 ACRES

**Priority Date:** 1881

**Limit/Duty:** ONE-FORTIETH of a cubic foot per second per acre, prior to June 15<sup>th</sup>, and ONE-EIGHTIETH of a cubic foot per second per acre after June 15<sup>th</sup>, with a total limitation of three acre feet per acre from March 1<sup>st</sup> to October 1<sup>st</sup> of each year.

**Source:** SOUTH FORK SPRAGUE RIVER, tributary to SPRAGUE RIVER

**Authorized Place of Use:**

Irrigation					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	14 E	WM	20	SE SE	15.0
36 S	14 E	WM	21	NE SW	40.0
36 S	14 E	WM	21	NW SW	40.0
36 S	14 E	WM	21	SW SW	40.0
36 S	14 E	WM	21	SE SW	40.0

Livestock				
Twp	Rng	Mer	Sec	Q-Q
36 S	14 E	WM	20	SE SE
36 S	14 E	WM	21	NE SW
36 S	14 E	WM	21	NW SW
36 S	14 E	WM	21	SW SW
36 S	14 E	WM	21	SE SW

9. Certificate 10000 does not describe the location of the point of diversion, however information is available from the adjudication map for the right, indicating that the point of diversion is located as follows:

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	14 E	WM	28	SE NE	WALKER DITCH

10. Application T-10775 proposes to move the authorized point of diversion approximately 1½ miles upstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	14 E	WM	27	NE SE	2160 FEET NORTH AND 10 FEET WEST FROM THE SE CORNER OF SECTION 27

11. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice. However, the Oregon Department of Fish and Wildlife did request inclusion of a condition requiring installation of proper fish screens.
12. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening an/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. Listed fish species are not present at the point of diversion, the originating water right diversion is not screened, cost-share funds are not currently available, and the proposed diversion may be eligible for ODFW's cost-share program. A grace period of **two years** is appropriate until such time as cost share funds become available to assist in the construction of a fish screening and/or by-pass device. If cost share funds do not become available, the water user must screen within the indicated time period regardless of the availability of cost-share funding.

**Transfer Review Criteria (ORS 540.532 and OAR 690-380-2120)**

13. Pursuant to OAR 690-380-2120(2)(a), the actual, current point of diversion for the water right in question, as described in Findings of Fact #4, #7 and #10, has been in use for more than 10 years.

14. 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.
15. The Department did not identify any affected water rights pursuant to OAR 690-380-2120(3). There were no affected water rights requiring proof of service by the applicant. Therefore no proof of service was provided.
16. 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.
17. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights are present.
18. The proposed change would not result in enlargement of the rights.
19. The proposed change would not result in injury to other water rights.

***Partial Cancellation of a Water Right***

20. On February 5, 2009, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Lillian Hill. The portion of the right to be cancelled is as follows:

**Certificate:** 9989 in the name of MODOC REALTY CO. (confirmed by Sprague River decree)

**Use:** DOMESTIC USE

**Priority Date:** 1886 and 1888

**Rate:** 0.00 CUBIC FOOT PER SECOND

**Source:** SOUTH FORK SPRAGUE RIVER, tributary to SPRAGUE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	14 E	WM	28	SE NE	WALLER DITCH

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q
36 S	14 E	WM	20	NE NE
36 S	14 E	WM	20	SE NE
36 S	14 E	WM	21	NW NW
36 S	14 E	WM	21	SW NW
36 S	14 E	WM	28	NE NW
36 S	14 E	WM	28	NW NW

21. On February 5, 2009, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Lillian Hill. The portion of the right to be cancelled is as follows:

**Certificate:** 10000 in the name of Luke E. Walker (confirmed by Sprague River decree)

**Use:** DOMESTIC USE

**Priority Date:** 1881

**Rate:** 0.00 CUBIC FOOT PER SECOND

**Source:** SOUTH FORK SPRAGUE RIVER, tributary to SPRAGUE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	14 E	WM	28	SE NE	WALKER DITCH

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q
And	14 E	WM	20	SE SE
36 S	14 E	WM	21	NE SW
36 S	14 E	WM	21	NW SW
36 S	14 E	WM	21	SW SW
36 S	14 E	WM	21	SE SW

### Conclusions of Law

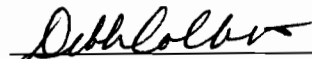

The proposed change in point of diversion in application T-10775 is consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000 and the abandoned portions of the rights should be cancelled.

**Now, therefore, it is ORDERED:**

1. The changes in points of diversion proposed in T-10775 are approved and effective immediately. The domestic 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 9963, 9989, and 10000 and any related decree.
3. Water right certificates 9963, 9989 and 10000 are cancelled. Certificates 85506, 85507 and 85508 will be issued to describe the change in points of diversion for the portions of the rights included in T-10775 and not cancelled.
4. Certificate 85504 shall be issued to describe the remaining portion of Certificate 9963 not modified by this order. Together, the new Certificates 85504 and 85506 shall supersede Certificate 9963, to describe the portions of the right not transferred or cancelled.
5. Certificate 85440 shall be issued to describe the remaining portion of Certificate 9989 not modified by this order. Together, the new Certificates 85440 and 85507 shall supersede Certificate 9989, to describe the portions of the right not transferred or cancelled.
6. 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.

7. When required by the Department, 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.
8. 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. The water user may withdraw water at the new point of diversion without screening or by-pass devices until two years after the date of this order. 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.

Dated at Salem, Oregon this 4<sup>th</sup> day of May 2009.

  
Phillip C. Ward, Director 

Mailing Date MAY 18 2009