

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

In the Matter of Transfer Application)
T-10014, Wasco County)
)
) FINAL ORDER
) APPROVING A CHANGE IN PLACE
) OF USE AND A CHANGE IN
) CHARACTER OF USE

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

JACK E. STEVENS
56100 SMOCK ROAD
WAMIC, OREGON 97063

Findings of Fact

Background

1. On October 3, 2005, Jack E. Stevens filed an application to change the place of use and character of use under Certificates 74028, 74031, and 73996. The Department assigned the application number T-10014.
2. On October 26, 2005, Larry M. Toll, CWRE for the applicant, submitted a new amended map which correctly describes the proposed "to" lands.
3. The first portion of the first right to be transferred is as follows:
Certificate: 74028, in the name of Rock Creek District Improvement Company (perfected under Permit S-6807)
Use: Irrigation of 3.0 acres
Priority Date: May 23, 1925
Rate 0.037 cubic foot per second (cfs)
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent.
Sources: Gate Creek and Rock Creek, tributaries of the White River

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.

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
4 S	11 E	WM	14	SW SE	Rock Creek - 1000 feet North and 1200 feet East from the S¼ Corner of Section 14
4 S	11 E	WM	21	SE NE	Gate Creek - 1280 feet North and 1500 feet East from the Center of Section 21

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	12 E	WM	17	NE SE	3.0

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

Certificate: 73996, in the name of Rock Creek District Improvement Company (perfected under Permit S-15519)

Use: Supplemental irrigation of 3.0 acres

Priority Date: March 13, 1939

Rate/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated UP TO JULY 1ST OF EACH YEAR AND THEREAFTER not to exceed ONE-EIGHTIETH of one cubic foot per second per acre or its equivalent for each acre irrigated FROM DIRECT FLOW AND SHALL BE FURTHER LIMITED TO A DIVERSION OF NOT TO EXCEED ONE ACRE FOOT PER ACRE DURING ANY 30-DAY PERIOD UP TO JULY 1ST OF EACH YEAR AND NOT TO EXCEED 3.0 ACRE-Feet PER ACRE FOR EACH ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR FROM DIRECT FLOW AND STORAGE FROM ROCK CREEK RESERVOIR CONSTRUCTED UNDER PERMIT R-780. THE USE OF WATER FOR STOCK AND DOMESTIC PURPOSES SHALL BE IN ACCORDANCE WITH PARAGRAPH 25 OF THE WHITE RIVER DECREE DATED NOVEMBER 30, 1923, IN WASCO COUNTY, OREGON.

Sources: Rock Creek, Threemile Creek, North Fork of Gate Creek and Rock Creek Reservoir, constructed under Permit R-780, tributaries of the White River

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
4 S	11 E	WM	10	NE NE	Threemile Creek - 726 feet South and 528 feet West from the NE Corner of Section 10
4 S	11 E	WM	14	SW SE	Rock Creek - 1000 feet North and 1200 feet East from the S¼ Corner of Section 14
4 S	11 E	WM	21	SE NE	North Fork Gate Creek - 1280 feet North and 1500 feet East from the Center of Section 21

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	12 E	WM	17	NE SE	3.0

5. Transfer Application T-10014 proposes to change the place of use and character of use of the rights described in Findings 3 and 4 to:

POND MAINTENANCE				
Twp	Rng	Mer	Sec	Q - Q
4 S	12 E	WM	17	SE NW

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

Certificate: 74031, in the name of Rock Creek District Improvement Company (perfected under Permit S-8250)

Use: Irrigation of 11.0 acres

Priority Date: December 1, 1927

Rate 0.14 cubic foot per second (cfs)

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-EIGHTIETH of one cubic foot per second per acre.

Source: Threemile Creek, tributary of the White River

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
4 S	11 E	WM	10	NE NE	Threemile Creek - 726 feet South and 523 feet West from the NE Corner of Section 10

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	12 E	WM	16	NW SW	11.0

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

Certificate: 73996, in the name of Rock Creek District Improvement Company (perfected under Permit S-15519)
Use: Supplemental irrigation of 11.0 acres
Priority Date: March 13, 1939
Rate/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated UP TO JULY 1ST OF EACH YEAR AND THEREAFTER not to exceed ONE-EIGHTIETH of one cubic foot per second per acre or its equivalent for each acre irrigated FROM DIRECT FLOW AND SHALL BE FURTHER LIMITED TO A DIVERSION OF NOT TO EXCEED ONE ACRE FOOT PER ACRE DURING ANY 30-DAY PERIOD UP TO JULY 1ST OF EACH YEAR AND NOT TO EXCEED 3.0 ACRE-FEET PER ACRE FOR EACH ACRE IRRIGATED DURING THE IRRIGATION SEASON OF EACH YEAR FROM DIRECT FLOW AND STORAGE FROM ROCK CREEK RESERVOIR CONSTRUCTED UNDER PERMIT R-780. THE USE OF WATER FOR STOCK AND DOMESTIC PURPOSES SHALL BE IN ACCORDANCE WITH PARAGRAPH 25 OF THE WHITE RIVER DECREE DATED NOVEMBER 30, 1923, IN WASCO COUNTY, OREGON.

Sources: Rock Creek, Threemile Creek, North Fork of Gate Creek and Rock Creek Reservoir, constructed under Permit R-780, tributaries of the White River

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
4 S	11 E	WM	10	NE NE	Threemile Creek - 726 feet South and 528 feet West from the NE Corner of Section 10
4 S	11 E	WM	14	SW SE	Rock Creek - 1000 feet North and 1200 feet East from the S¼ Corner of Section 14
4 S	11 E	WM	21	SE NE	North Fork Gate Creek - 1280 feet North and 1500 feet East from the Center of Section 21

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	12 E	WM	16	NW SW	11.0

8. Transfer Application T-10014 proposes to change the place of use of the rights described in Findings 6 and 7 to:

IRRIGATION AND SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	12 E	WM	16	SW SE	11.0

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

Certificate: 74028, in the name of Rock Creek District Improvement Company (perfected under Permit S-6807)

Use: Irrigation of 4.0 acres

Priority Date: May 23, 1925

Rate 0.05 cubic foot per second (cfs)

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent.

Sources: Gate Creek and Rock Creek, tributaries of the White River

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
4 S	11 E	WM	14	SW SE	Rock Creek - 1000 feet North and 1200 feet East from the S $\frac{1}{4}$ Corner of Section 14
4 S	11 E	WM	21	SE NE	Gate Creek - 1280 feet North and 1500 feet East from the Center of Section 21

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	12 E	WM	16	NW SW	4.0

10. Transfer Application T-10014 proposes to change the place of use of the above described right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	12 E	WM	16	SW SE	4.0

11. Notice of the application for transfer was published on October 11, 2005, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

12. On May 5, 2008, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10014 to the applicant. The cover letter for the draft Preliminary Determination set forth a deadline of June 6, 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.

13. On September 2, 2008, the Department issued a preliminary determination proposing to approve Transfer T-10014 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 9, 2008, and in the The Dalles Chronicle newspaper on September 19, 26, and October 3, 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)]

14. 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.
15. Diversion structures and canals sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-10014.
16. The proposed changes would not result in enlargement of the rights.
17. The proposed change would not result in injury to other water rights.

Conclusions of Law

The changes in place of use and the change in character of use proposed in Transfer Application T-10014 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in place of use and the change in character of use proposed in Transfer Application T-10014 are 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 Certificates 74028, 74031 and 73996 and any related decree.
3. Water right certificates 74028, 74031 and 73996 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.
4. The former places of use of the transferred rights shall no longer receive water under the rights.
5. When required by the Department, the water user shall install, maintain and operate 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.

6. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2010**. 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.
7. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 6th day of November 2008.

Phillip C. Ward
Phillip C. Ward, Director

Mailing date: NOV 10 2008