

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

In the Matter of Transfer Application )  
T-10207, Klamath County )  
 ) FINAL ORDER APPROVING A  
 ) CHANGE IN POINT OF DIVERSION  
 ) TO REFLECT HISTORIC USE

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**

JOHN D. AND SANDRA N. STEWART  
34017 HIGHWAY 97  
CHILOQUIN OR 97624

**Findings of Fact**

1. On June 28, 2006, John D. and Sandra N. Stewart filed a transfer application to change the point of diversion under Certificate 36377. The Department assigned the application number T-10207.

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

**Certificate:** 36377 in the name of BERTLAND N. STANLEY (perfected under Permit S-28704)

**Use:** IRRIGATION of 3.1 ACRES

**Priority Date:** APRIL 29, 1963

**Rate:** 0.08 CUBIC FOOT PER SECOND

**Limit/Duty:** ONE-FORTIETH cfs per acre, not to exceed 3.0 acre feet per acre per year

**Source:** WILLIAMSON RIVER, tributary to UPPER KLAMATH LAKE

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
35 S	7 E	WM	16	NE SE	22	10 FEET NORTH AND 950 FEET EAST FROM THE SE CORNER, LOT 22, NESE

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	7 E	WM	16	SE SE	32	3.1

**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 is filed, the petition shall be deemed denied.

3. There is an apparent scrivener's error in the description of the original point of diversion in Certificate 36377 (described in Finding #2 above). The listing of the original point of diversion in Lot 22 (NESE), Section 16, Township 35 south, Range 7 east, W.M., being located 10 feet north and 950 feet east from the SE corner, Lot 22 (NESE) is in error. Based on the accompanying map and final proof survey for Certificate 36377, the location of the original point of diversion should be listed as Lot 22 (NESE), Section 16, Township 35 south, Range 7 east, W.M., being located 10 feet north and 950 feet east from the SW corner, Lot 22 (NESE). The new remaining right certificate shall be issued with the correct location.

4. Application T-10207 proposes to move the authorized point of diversion approximately 1273 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
35 S	7 E	WM	16	SE SE	32	57 FEET NORTH AND 795 FEET EAST FROM THE SW CORNER, LOT 32, SESE, SECTION 16

5. Notice of the application for transfer was published on July 25, 2006, 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 has determined that a fish screening and/or by-pass device may be required in the future 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.

6. 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 Finding #4, has been in use for more than 10 years.

7. In accordance with OAR 690-380-2120(2)(c), the local Watermaster provided a statement on June 19, 2006, 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.

8. Pursuant to OAR 690-2120(3), the applicant received a letter from the Watermaster dated October 10, 2006, indicating there are two water rights that may potentially be affected as a result of this proposed change. A copy of a notice and a list of the affected water right holders and their addresses were provided to the applicant.

9. As required by 690-380-2120(4), notification to the affected water right holders was hand delivered on October 26 and 27, 2006, by the applicant. The applicant then provided written proof of service to the Department on October 27, 2006. No comments were received as a result of this written notice.

10. Water has been used within the last five years according to the terms and conditions of the right, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.

11. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.

12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.

**Conclusions of Law**

The change in point of diversion to reflect historic use proposed in Transfer Application T-10207 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 in point of diversion to reflect historic use proposed in Transfer Application T-10207 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 36377 and any related decree.
3. Water Right Certificate 36377 is cancelled. A new water right certificate will be issued confirming the change in point of diversion for the portion of the right affected by the transfer, and a new certificate will be issued to describe the remaining portion of the right not affected by the transfer.
4. The proposed change is effective immediately upon issuance of this special order approving Transfer Application T-10207.
5. 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.
6. 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.
7. Within one year after receiving written notification from the Oregon Department of Fish and Wildlife (ODFW) that a fish screening and/or by-pass device is required, the water user shall install a screening and/or by-pass device, as appropriate, at the new point of diversion. The fish screening and/or by-pass device must meet ODFW's design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screening and/or by-pass device meets ODFW's criteria. Once installed the water user shall maintain and operate the fish screening 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 3<sup>rd</sup> day of December, 2006.

  
\_\_\_\_\_  
Phillip C. Ward, Director

Mailing date: DEC 08 2006