

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼		Acres
1	S	32	E	W.M.	16	NW	SW	21.5
1	S	32	E	W.M.	16	SW	SW	29.2

- The location of the authorized point of diversion for Certificate 47434 is not described in the certificate.
- Application T-9493 proposes to move the authorized point of diversion approximately 0.75 of a mile downstream to a historically used pump site located:

Township		Range		Meridian	Sec	¼ ¼		Survey Coordinates
1	S	32	E	W.M.	16	NW	SW	120 FEET SOUTH AND 350 FEET EAST FROM THE W¼ CORNER OF SECTION 16.

- Notice of the application for transfer was published on July 22, 2003, 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.
- On October 23, 2006, the Department issued a preliminary determination proposing to approve Transfer T-9493 and mailed a copy to the applicant. Additionally, notice of the preliminary determination for the transfer application was published in the Department's weekly notice on October 31, 2006, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
- On November 19, 2004, the Department received a voluntary cancellation affidavit from the Pilot Rock School District, requesting to cancel a portion of Certificate 47434. This portion of the right is for the use of 0.124 cubic foot per second from East Birch Creek, diverted from a private ditch, for the purpose of irrigation of 9.94 acres. On October 19, 2005, the Department also received a voluntary cancellation affidavit from Raymond J. and Mary Lue Slabik, requesting to cancel a portion of Certificate 47434 as well. The right is for the use of 0.071 cubic foot per second from East Birch Creek, also diverted from a private ditch, for the purpose of irrigation of 5.65 acres. On January 25, 2006, the Department also received a voluntary cancellation affidavit from Kinzua Resources, owner of certain lands in which a portion of Certificate 47434 is appurtenant to. This portion of the right is for the use of 0.13 cubic foot per second from East Birch Creek and was also diverted from a private ditch, for the purpose of irrigation of 10.5 acres. The affidavits request to cancel portions of Certificate 47434 and are broken down as follows:

Twtnshp	Range	Mer	Sec	¼	¼	Landowner	TL	Acreage Per Priority Date					
								1873	1882	1895	TOTAL		
1	S	32	E	WM	9	NW	SW	Kinzua Resources	1500	0.40	1.00	0.60	2.00
1	S	32	E	WM	9	SW	SW	Kinzua Resources	1500 and 1800	1.70	4.25	2.55	8.50
1	S	32	E	WM	16	NW	SW	Pilot Rock School Dist.	9300	0.57	1.44	0.86	2.87
1	S	32	E	WM	17	SE	NE	Pilot Rock School Dist.	9300	0.30	0.75	0.45	1.50
1	S	32	E	WM	17	NE	SE	Pilot Rock School Dist.	9300	1.11	2.79	1.67	5.57
1	S	32	E	WM	16	NW	SW	Raymond & Mary Slabik	300	0.88	2.19	1.31	4.38
1	S	32	E	WM	16	SW	SW	Raymond & Mary Slabik	300	0.25	0.63	0.38	1.27

8. 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.
9. 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.
10. In accordance with OAR 690-380-2120(2)(c), the local Watermaster provided a statement, that to his knowledge there has been no complaint of injury due to the use of water at the proposed (current actual) point of diversion on East Birch Creek prior to the transfer request.
11. In accordance with ORS 540.532 (2)(c) and OAR 690-380-2120(3), the Department has determined that there are no “affected water rights” as a result of this proposed change. Therefore no proof of service was required.
12. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.

Conclusions of Law

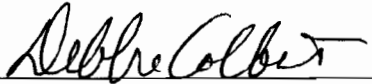
The change to reflect the use of a historic point of diversion proposed in application T-9493 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

The portion of Certificate 47434 described in Finding #7 as abandoned will be cancelled.

Now, therefore, it is ORDERED:

1. The change in point of diversion proposed in application T-9493 is approved and shall be effective immediately upon issuance of this order.
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 47434 and any related decree.
3. Water Right Certificate 47434 is cancelled. Certificates will be issued to confirm those portions of the right not involved in the transfer and partial cancellation.
4. The quantity of water diverted at the historic point of diversion, together with that diverted at the old point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
5. Prior to October 1, 2008, 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.
6. Prior to October 1, 2008, the water user shall install and maintain a fish screen or fish by-pass device, as appropriate, at the new point of diversion. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning of construction, and shall be installed under the supervision of the Department of Fish and Wildlife.
7. Certificate 82671 shall be issued to confirm the portion of the right changed by T-9493 under the terms of this order.

Dated at Salem, Oregon this 6th day of December, 2006.


Phillip C. Ward, Director *PCW*

Mailing Date: DEC 08 2006