

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

In the Matter of Transfer Application) FINAL ORDER APPROVING
T-8039, Douglas County) CHANGES IN POINT OF DIVERSION,
) PLACE OF USE, AND 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

COW CREEK BAND OF THE UMPQUA INDIANS
2371 NE STEPHENS STREET
ROSEBURG, OR 97470

Findings of Fact

Background

1. On July 8, 1998, RIVERS WEST DEVELOPMENT, INC. filed an application to change the point of diversion, place of use, and character of use under a portion of Certificate 73635. The Department assigned the application number T-8039.
2. On April 27, 2010, the transfer application was assigned to the Cow Creek Band of the Umpqua Indians.
3. On April 27, 2010, the applicant submitted a revised application, identifying 14.5 acres for transfer.
4. The portion of the right to be transferred is as follows:
Certificate: 73635 in the name of J.H. BOOTH (perfected under Permit S-7528)
Use: IRRIGATION of 14.5 ACRES
Priority Date: AUGUST 20, 1926
Rate: 0.18 CUBIC FOOT PER SECOND

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.

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: SOUTH UMPQUA RIVER, tributary to the UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
29 S	5 W	WM	7	SE SW

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
29 S	5 W	WM	7	NE SW	0.91
29 S	5 W	WM	7	NW SW	3.62
29 S	5 W	WM	7	SW SW	0.91
29 S	5 W	WM	7	SE SW	9.06
TOTAL					14.5

5. Certificate 73635 does not describe the location of the point of diversion, however information is available from the Certified Water Right Examiner who prepared the map and application indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
29 S	5 W	WM	7	SE SW	NORTH 85 DEGREES 36 MINUTES, EAST 2660 FEET FROM THE SW CORNER OF SECTION 7

6. Transfer Application T-8039 proposes to move the authorized point of diversion approximately 2,320 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
29 S	5 W	WM	7	NE SW	1820 FEET NORTH AND 1620 FEET EAST FROM THE SW CORNER OF SECTION 7

7. Transfer Application T-8039 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
29 S	5 W	WM	7	NE SW	37	1.0
29 S	5 W	WM	7	NE SW	38	1.7
29 S	5 W	WM	7	NW SW	37	2.5
29 S	5 W	WM	7	SE SW	38	2.5
29 S	5 W	WM	7	SW SE	38	1.6
29 S	5 W	WM	18	NW NE	38	0.2
TOTAL						9.5

8. Transfer Application T-8039 proposes to change the character of use for 5.0 acres of irrigation to commercial use for the following lands:

COMMERCIAL				
Rng	Mer	Sec	Q-Q	DLC
5 W	WM	7	NE SW	37
5 W	WM	7	NE SW	38

COMMERCIAL				
Rng	Mer	Sec	Q-Q	DLC
5 W	WM	7	NW SW	37
5 W	WM	7	SE SW	38
5 W	WM	7	SW SE	38
5 W	WM	18	NW NE	38

9. Notice of the application for transfer was published on July 14, 1998, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
10. Transfer application T-8039 requests that the diversion rate allowed under Certificate 73635 for 5.0 acres of irrigation be converted for commercial use. A rate of diversion of 1/80 cubic foot per second (cfs) per acre is equal to 0.0125 cfs per acre or 0.06 cfs for 5.0 acres.
11. No duty of water is listed on Certificate 73635. As defined by OAR 690-380-0100(2), the proposed character of use change could result in enlargement of the right if not conditioned so as to prevent use of more water than could have been beneficially used without waste for the existing authorized use. The best currently available information indicates that the most consumptive crop in the area is apples with an annual duty of 2.62 acre feet per acre. (*Oregon Crop Water Use and Irrigation Requirements* (Cuenca, 1992)). Utilizing an evaporative loss quantification of 10%, the maximum duty of water that could be transferred without enlargement would be 2.88 acre feet (af) per acre. Multiplying the 2.88 af per acre times the 5.0 irrigated acres to be converted to commercial use, provides a maximum annual duty of 14.4 acre-feet.
12. On April 29, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-8039 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 18, 2010, for the applicant to respond. The applicant requested that the Department proceed with the issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
13. On June 17, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Application T-8039 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 June 22, 2010, and in *The News-Review* newspaper on July 5, 12, and 19, 2010, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.
14. 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.

Transfer Review Criteria [OAR 690-380-4010(2)]

15. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
16. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-8039.
17. The proposed change to commercial use for 5.0 acres of irrigated land, as conditioned in Finding of Fact No. 11 to limit use to a total annual volume of 14.4 acre feet during the time period of March 1 through October 31 of each year, would not result in enlargement of the right.
18. The proposed changes would not result in injury to other water rights.

Conclusions of Law

The change in point of diversion, place of use, and character of use proposed in Transfer Application T-8039 are 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, place of use, and character of use proposed in Transfer Application T-8039 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 Certificate 73635 and any related decree.
3. Water right certificate 73635 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. 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.
5. The commercial use under this right is limited to a rate of diversion of 0.06 cubic foot per second and an annual volume of 14.4 acre feet during the time period of March 1 through October 31 of each year.
6. The Director may require the water user to install a totalizing flow meter or other suitable measuring devices at each point of diversion. If the Director notifies the water user to install totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water

user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.

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. The former irrigated place of use of the transferred right shall no longer receive water under the right.
9. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. A Claim of Beneficial Use prepared by a Certified Water Right 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, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 19 day of August 2010.


Phillip C. Ward, Director

Mailing Date: AUG 24 2010

