

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-11063, Jackson County)	CHANGE IN 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

JACK AND DOROTHY STEINHOEFEL
10290 BUTTE FALLS HWY
EAGLE POINT, OR 97524

Agent

GARY D. KAISER
KAISER SURVEYING
19440 HIGHWAY 62
EAGLE POINT, OR 97524

Findings of Fact

Background

1. On April 20, 2010, JACK AND DOROTHY STEINHOEFEL filed an application to change the place of use and to change the character of use under Certificate 86073. The Department assigned the application number T-11063.
2. Concurrent with submission of transfer application T-11063, the applicants submitted Eagle Point Irrigation District's consent to the proposed water right transfer.

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

Certificate: 86073 in the name of EAGLE POINT IRRIGATION DISTRICT (perfected under Permit S-6396)
Use: IRRIGATION of 0.62 ACRE
Priority Date: APRIL 21, 1915
Rate: 0.007 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 a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: SOUTH FORK BIG BUTTE CREEK, tributary to the ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	2 E	WM	10	NE NE	1130 FEET SOUTH AND 700 FEET WEST FROM THE NE CORNER OF SECTION 10

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	1 E	WM	35	SW NE	0.62

4. Transfer Application T-11063 proposes to change the character of use to multi-purpose pond storage. Water is proposed to be diverted for storage (one-time fill) during the irrigation season and to remain in the pond during the off season.

5. Transfer Application T-11063 also proposes to change the place of use of the right to:

MULTI-PURPOSE				
Twp	Rng	Mer	Sec	Q-Q
34 S	1 E	WM	35	NW NE
34 S	1 E	WM	35	SW NE

6. The duty of water listed under Certificate 86073 is 4.5 acre feet per acre. As defined by OAR 690-380-0100(2), the proposed character of use change could result in enlargement of the right if not conditioned 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 a net irrigation requirement of 3.06 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 3.4 acre feet (af) per acre. Therefore, to prevent enlargement of this right, the maximum diverted annual volume of water for the new use under this right is limited to 2.1 acre feet (0.62 acre x 3.4 af = 2.1 af).

7. Notice of the application for transfer was published on April 27, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

8. On June 4, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11063 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of July 7, 2010, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and

provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.

9. On June 25, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11063 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on June 29, 2010, and in the Upper Rogue Independent newspaper on July 6, 13, and 20, 2010, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.

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

10. Water has been used within the last five years 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.
11. A diversion structure and ditch 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-11063.
12. 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-11063.
13. The proposed changes would not result in enlargement of the right provided the annual volume of water diverted for storage does not exceed 2.1 acre-feet during the irrigation season of each year.
14. The proposed changes would not result in injury to other water rights.

Conclusions of Law

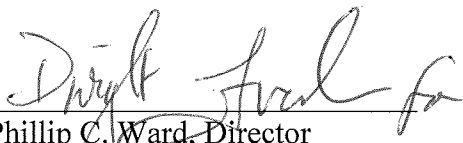
The change in place of use and change in character of use proposed in Transfer Application T-11063 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in place of use and change in character of use proposed in Transfer Application T-11063 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 86073 and any related decree.
3. Water right certificate 86073 is modified. The Department will issue a superseding certificate describing the right when it determines that is necessary for record keeping.
4. The former place of use of the transferred right shall no longer receive water under the right.

5. The use of water under this right is limited to an annual volume of 2.1 acre feet. Water is to be diverted for storage as a one-time fill during the irrigation and will remain in the pond during the off season.
6. Eagle Point Irrigation District shall maintain the existing headgate and measuring device at the diversion and shall make such improvements as may be required by the Department.
7. 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.
8. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued to Eagle Point Irrigation District.

Dated at Salem, Oregon this 23 day of August 2010.


Phillip C. Ward, Director

Mailing Date: AUG 24 2010