

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A CHANGE
T-11190, Yamhill County) IN POINT OF DIVERSION TO REFLECT
) HISTORIC 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

STEVE EDWARDS
16300 SE STRING TOWN ROAD
DAYTON, OR 97114

Findings of Fact

Background

1. On January 26, 2011, STEVE EDWARDS filed a transfer application for authorization of an historic point of diversion under Certificate 21924. The Department assigned the application number T-11190.
2. The portion of the first right to be transferred is as follows:
 - Certificate:** 21924 in the name of WILLIAM KING (perfected under Permit S-19309)
 - Use:** IRRIGATION of 7.2 ACRES
 - Priority Date:** MARCH 17, 1950
 - Rate:** 0.085 CUBIC FOOT PER SECOND
 - Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

This is a final 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 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.

Source: PALMER CREEK, a tributary to the YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
4 S	3 W	WM	20	SW SE

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	3 W	WM	29	NE NE	50	1.3
4 S	3 W	WM	29	NW NE	50	2.7
4 S	3 W	WM	29	SW NE	50	2.1
4 S	3 W	WM	29	SE NE	50	1.1

3. Certificate 21924 describes the authorized place of use as 22.8 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 20 and NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, and SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, Township 4 South, Range 3 West, Willamette Meridian, Yamhill County, Oregon.

a) The transfer application depicts the place of use under Certificate 21924 as being

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	3 W	WM	29	NE NE	50	2.0
4 S	3 W	WM	29	NW NE	50	1.7
4 S	3 W	WM	29	SW NE	50	1.6
4 S	3 W	WM	29	SE NE	50	1.9

b) The applicant's CWRE submitted a transfer application that more accurately depicted section corners and DLC lines. The re-description affects only the transferred acres, as the remaining acres will remain within the original mapped quarter-quarters.

c) The following table lists the place of use as described in existing certificate 21924 and a proposed re-description based on the above findings:

Certificate	Original Description of Place of Use		Proposed Re-Description of Place of Use		
	Q-Q	Acres	Q-Q	Acres	Current Tax Lot
21924	SW SE	2.3	SW SE	2.3	200
Township 4 South, Range 3 West, Section 20					
21924	NE NE	1.3	NE NE	2.0	201
21924	NW NE	16.0	NW NE	15.0	200, 201
21924	SW NE	2.1	SW NE	1.6	201
21924	SE NE	1.1	SE NE	1.9	201
Township 4 South, Range 3 West, Section 29					

4. Transfer Application T-11190 proposes to move the authorized point of diversion approximately 4600 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	3 W	WM	20	SW SE	POD NO. 2 - 300 FEET NORTH AND 980 FEET EAST FROM THE SW CORNER OF DLC 50

5. Notice of the application for transfer was published on February 1, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. 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.
7. On October 27, 2011, the Department provided the applicants a draft Final Order proposing to approve Transfer Application T-11190 and requested ownership information. The cover letter for the draft Final Order set forth a deadline of November 28, 2011, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Final Order and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

Transfer Review Criteria (ORS 540.532 and OAR 690-380-2120)

8. 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 No. 4, has been in use for more than 10 years.
9. Pursuant to OAR 690-380-2120(2)(c), the Watermaster provided a statement 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.
10. Pursuant to OAR 690-380-2120(3), the Department provided the applicant a list of the affected water rights and a copy of the notice to be provided to each affected water right holder. The applicant has provided written proof of service of notice of the proposed transfer on all affected water right holders.
11. Water has been used within the last five years according to the terms and conditions of the right. There is no evidence available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
12. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right is 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.

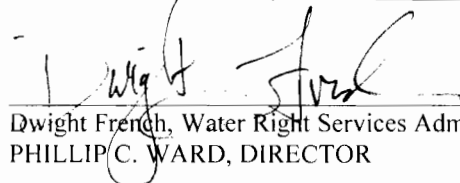
Conclusions of Law

The proposed change in point of diversion to reflect historical use in Transfer Application T-11190 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 historical use proposed in Transfer Application T-11190 is approved and effective immediately.
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 21924 and any related decree.
3. Water right certificate 21924 is cancelled. Certificate 87323 will be issued to describe the change in point of diversion for the portion of the right included in T-11190. Certificate 87324 shall be issued to describe the portion of Certificate 21924 not modified by this order. Together, the new Certificates shall supersede Certificate 21924.
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. 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.
6. Prior to October 1, 2013, 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. 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.

Dated at Salem, Oregon this 12 day of December, 2011.


Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing date: DEC 13 2011