

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of the Proposed Allocation )	ORDER
of Conserved Water, Application 9804, for )	APPROVING APPLICATION,
Certificates 68497, 32772, 49038, and )	ALLOCATING CONSERVED WATER
Associated Application for Change in Point )	and APPROVING CHANGE IN
of Diversion for Certificate 49039 )	POINT OF DIVERSION

Jerry N. Hilger, Gary and Alice Teague, Linda Lance, G.L. and Gwen Scott, Dorothy H. Berry, Robert and Elanor Burton, Jakob Jauker, Dora M. Baines, John W. and Irene E. Loper and the Oregon Water Trust, have filed a conserved water application in which they propose to effect the conservation project by moving their points of diversion under the several water rights involved from the Williams & Whalen Ditch to Evans Creek, and reducing the amount of water diverted, appropriated and applied for irrigation of the subject lands. The applicants further proposed to allocation 100% of the water conserved to an instream right.

Pursuant to ORS 537.470 and OAR Chapter 690, Division 18, notice having been given and no comments filed within the time allowed, Conserved Water Application 98-04, together with the associated application to change a point of diversion filed by Robert and Elanor Burton, is APPROVED.

Findings of Fact

- 1) Certificate 32722 allows the use of waters of Evans Creek, tributary to the Rogue Basin, for irrigation of 10 acres in the SE $\frac{1}{4}$  SW $\frac{1}{4}$  Section 1, 7.6 acres in the NE $\frac{1}{4}$  NW $\frac{1}{4}$  and 11.9 acres in the NW $\frac{1}{4}$  NW $\frac{1}{4}$  Section 12, Township 35 South, Range 4 West, WM, all lying north of Evans Creek. The amount of water to which this right is entitled is limited to an amount actually beneficially used for irrigation and shall not exceed 0.50 cubic feet per second for said lands, under a priority of 1896.
- 2) The amount historically diverted under this Certificate is 0.448 cfs. Applicants owning land to which Certificate 32722 is appurtenant propose to reduce the amount appropriated and used from 0.448 cfs to 0.288 cfs, and to allocate the amount conserved, being 0.159 cfs, to an instream right with a priority of 1896 plus one minute. The amount so allocated will be combined with the existing instream right for 0.055 cfs beginning at river mile 11 and ending at river mile 8 on Evans Creek, established under a related conservation project completed in 1996 and evidenced by the Order recorded at Special Order Volume 50, page 853.
- 3) Applicants owning land to which Certificate 32722 is appurtenant further requested that the Department permanently cancel from this Certificate the right to appropriate and use water for irrigation of 1 acre in the SE  $\frac{1}{4}$  SW  $\frac{1}{4}$  of Section 1, 1.18 acres in the NE $\frac{1}{4}$  NW $\frac{1}{4}$  Section 12 and 1.82 acres in the NW $\frac{1}{4}$  NW $\frac{1}{4}$  Section 12, T35 S, R 4 W, WM, which has been forfeited for nonuse.

- 4) Certificate 68497 allows the use of waters of Evans Creek, tributary to the Rogue Basin, for irrigation of 2.86 acres in the SE $\frac{1}{4}$  SE $\frac{1}{4}$  Section 1, and 3.06 acres in the NE $\frac{1}{4}$  NE $\frac{1}{4}$  Section 12, Township 35 South, Range 4 West, WM, all lying north of Evans Creek. The amount of water to which this right is entitled is limited to an amount actually beneficially used for irrigation and shall not exceed 0.14 cubic feet per second for said lands, under a priority of 1896.
- 5) The amount historically diverted under this Certificate is 0.077 cfs. Applicants owning land to which Certificate 68497 is appurtenant propose to reduce the amount appropriated and used from 0.077 cfs to 0.048 cfs, and to allocate the amount conserved, being 0.029 cfs, to an instream right with a priority of 1896 plus one minute. The amount so allocated will be combined with the existing instream right for 0.055 cfs beginning at river mile 11 and ending at river mile 8 on Evans Creek, established under a related conservation project completed in 1996 and evidenced by the Order recorded at Special Order Volume 50, page 853.
- 6) Applicants owning land to which Certificate 68497 is appurtenant further requested that the Department permanently cancel from this Certificate the right to appropriate and use water for irrigation of 0.26 acre in the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 1 and 1.24 acres in the NE $\frac{1}{4}$  NE $\frac{1}{4}$  Section 12, T35 S, R 4 W, WM, which has been forfeited for nonuse.
- 7) Applicant Hilger further withheld 0.37 acre from this conserved water application and requests that a remaining right certificate for 0.37 acre in the SE $\frac{1}{4}$  SE $\frac{1}{4}$  Section 1, T35S R4W, be issued.
- 8) Certificate 76182 (previously C. 42921) was issued following approval of transfer application T4037 filed by applicant Baines for a change in place of use for 1.5 of the 3.0 acres allowed under Certificate 42921. Certificate 76182 allows the use of waters of Evans Creek, tributary to the Rogue Basin, for irrigation of 1.5 acres in the the NE  $\frac{1}{4}$  NE  $\frac{1}{4}$  and 1.5 acres in the SE $\frac{1}{4}$  NE $\frac{1}{4}$  Section 11, Township 35 South, Range 4 West, WM, all lying north of Evans Creek. The amount of water to which this right is entitled is limited to an amount actually beneficially used for irrigation and shall not exceed 0.05 cubic feet per second for said lands, under a priority of 1896.
- 9) The amount historically diverted under this Certificate was 0.06 cfs. Applicants owning land to which Certificate 76182 is appurtenant propose to reduce the amount historically appropriated and used by 38%, from 0.06 cfs to 0.037 cfs, and to allocate the amount conserved, being 0.023 cfs, to an instream right with a priority of 1896 plus one minute.
- 10) The maximum amount allowed under this Certificate is 0.05 cfs. A 38% reduction of 0.05 cfs, the maximum rate allowed, is 0.031 cfs, leaving 0.019 cfs for allocation to an instream right. The amount so allocated will be combined with the existing instream right for 0.055 cfs beginning at river mile 11 and ending at river mile 8 on Evans Creek, established under a related conservation project completed in 1996 and evidenced by the Order recorded at Special Order Volume 50, page 853.

- 11) Certificate 49039 is appurtenant to 1.7 acres in the NW ¼ NW ¼ Section 12, owned by applicants Robert and Elanor Burton. Applicants Robert and Elanor Burton have filed an application proposing to move the point of diversion for Certificate 49039 from the Williams Whalen Ditch to the same pump to be utilized under C. 32772 for 4.64 acres owned by applicants in the NW¼ NW¼ Section 12, T35S, R4W, under this conserved water application. Applicants have further voluntarily authorized cancellation for nonuse of the portion of the right appurtenant to 0.2 acre allowed under Certificate 49039, and seek approval of the new point of diversion and issuance of a remaining right certificate for irrigation of 1.5 acres.
- 12) The applicants have filed a notice with the Department that the project is complete, and have requested a final allocation of the water conserved under this project.

#### Conclusions of Law

- 1) The allocation of the water conserved under this project will not injure existing water rights and no conserved water is needed to mitigate injury.
- 2) The allocation of conserved water is consistent with OAR 690-05-045.
- 3) The allocation of conserved water is consistent with ORS 537.455 to 537.500 and with OAR 690-18-010 to 690-018-050.

#### ORDER

NOW, THEREFORE, it is ORDERED:

1. Certificate 32722 be and the same is hereby cancelled.
2. The Department is directed to issue a superseding Certificate with a priority date of 1896 for diversion and use of 0.288 cfs, from Evans Creek, not to exceed 122.8 acre feet, for irrigation of 21.46 acres, being 9 acres in the SE¼ SW¼ Section 1, 6.42 acres in the NE¼ NW¼ and 10.08 acres in the NW¼ NW¼ Section 12, Township 35 South, Range 4 West, WM, all lying north of Evans Creek, representing the reduced rate and duty and the cancellation of 4 acres.
3. It is further ordered that Certificate 68497 be and the same is hereby cancelled.
4. The Department is further directed to issue a superseding Certificate for diversion and use of 0.048 cfs from Evans Creek, not to exceed 20.47 acre feet, for irrigation of 2.86 acres in the SE¼ SE¼ Section 1, and and 3.06 acres in the NE¼ NE¼ Section 12, Township 35 South, Range 4 West, WM, all lying north of Evans Creek, with a priority date of 1896.
5. The Department is further directed to issue a remaining right Certificate for diversion and use of 0.007 cfs from Evans Creek, not to exceed 3.0 acre feet during the irrigation season, for irrigation of .37 acre lying north of Evans Creek in the SE¼ SE¼ of Section 1, Township 35 South, Range 4 West, WM, under a priority of 1896.

6. It is further ordered that Certificate 76182 be and the same is hereby cancelled.
7. The Department is further directed to issue a superseding Certificate for diversion and use of 0.031 cfs from Evans Creek, not to exceed 15.78 acre feet, for irrigation of 1.5 acres lying north of Evans Creek in the NE $\frac{1}{4}$  NE $\frac{1}{4}$  and 1.5 acres lying north of Evans Creek in the SE $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 11, Township 35 South, Range 4 West, WM, with a priority date of 1896.
8. It is further ordered that Certificate 49039 be cancelled and a superseding certificate be issued showing the new point of diversion from Evans Creek, allowing the diversion and use of 0.019 cfs, not to exceed 4.5 acre feet per acre, for irrigation on 0.9 acre lying north of Evans Creek in the NW $\frac{1}{4}$  NW $\frac{1}{4}$  and 0.59 acre lying north of Evans Creek in the NE $\frac{1}{4}$  NW $\frac{1}{4}$  of Section 12, Township 35 South, Range 4 West, WM, with a priority date of 1975, and representing the cancellation of 0.2 acre as requested by the applicant.
9. The Department is further directed to issue a Certificate for an in-stream water right for the State's portion of the water conserved under this application, being 0.21 cfs (93.8 acre feet), to an instream water right beginning at river mile 11 and ending at river mile 8 on Evans Creek. The water conserved will be combined with the existing instream right for 0.055 cfs at this location, established under a related conservation project completed in 1996 and evidenced by the Order recorded at Special Order Volume 50, page 853, with a priority date of 1896 plus one minute.

Witness the signature of the Water Resources Department Director, affixed 6/10/99

  
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Martha O. Pagel

NOTICE: This is a final order in other than a contested case. You are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this Order. Pursuant to the provisions of ORS 183.484, judicial review is by the Marion County Circuit Court or to the circuit court for the county in which the petitioner resides or has a principal place of business.