

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A CHANGE
T-10809, Josephine 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

ROBERT AND PAMELA WHITE
831 HAYES CUT OFF ROAD
CAVE JUNCTION OR 97523

Findings of Fact

Background

1. On March 9, 2009, ROBERT AND PAMELA WHITE filed a transfer application for authorization of a historic point of diversion under Certificate 30549. The Department assigned the application number T-10809.
2. The portion of the first right to be transferred is as follows:

Certificate: 30549 in the name of JAMES G. DICK AND CLARA DICK (confirmed by Sucker Creek Decree)
Use: IRRIGATION of 5.0 ACRES
Priority Date: 1857
Rate: 0.10 CUBIC FOOT PER SECOND
Source: SUCKER CREEK, tributary to the ILLINOIS RIVER

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.

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	8 W	WM	36	NW SW	5.0

3. Certificate 30549 does not describe the point of diversion. However, Sections XXXII (2) and (3) of the Sucker Creek Decree state:

(2) "That William Bunch, claimant herein, is the owner of about sixty (60) acres of land situated in the N½ of SW¼ and SW¼ SW¼ of Section 36, T 39 S, R 8 W. W.M., and said Sucker Creek Flows over and across said lands, and said lands are riparian in character. . . ."

(3) "That about the year 1857 the predecessors in interest of said claimants, Fulk and Bunch, commenced the construction of a ditch, tapping Sucker Creek at a point in the SW¼ of Section 31, Tp. 39 S. R. 7 W. W.M."

Therefore, the authorized point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q
39 S	7 W	WM	31	SW¼

4. Transfer Application T-10809 proposes to move the authorized point of diversion approximately 1.5 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	8 W	WM	36	SW SW	800 FEET NORTH AND 145 FEET EAST FROM SW 1/4 CORNER OF SECTION 36

5. Notice of the application for transfer was published on March 17, 2009, 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 March 25, 2010, the Department provided the applicants a draft Final Order and requested ownership information pursuant to OAR 690-380-4010(5)(b). In addition, the Department provided a listing of the affected water right holders along with a Notice of Change in Water Right Point of Diversion to be served by the applicant on the affected water right holders.
8. On April 12, 2010, the applicants provided the ownership information, submitted proof of service of the Notice of Change in Water Right Point of Diversion, and requested the Department proceed forward with issuance of the Final Order.

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

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 No. 4, has been in use for more than 10 years.
10. Pursuant to OAR 690-380-2120(2)(c), the Watermaster provided a statement that to her 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.
11. 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. On April 12, the applicants provided written proof of service of notice of the proposed transfer on all affected water right holders.
12. 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.
13. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
14. The proposed change would not result in enlargement of the right.
15. 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 application T-10809 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 proposed in T-10809 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 30549 and any related decree.
3. Water right certificate 30549 is cancelled. Certificate 86233 will be issued to describe the change in point of diversion for the right included in T-10809. Certificate 86233 shall supersede Certificate 30549.
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. Water use measurement conditions:

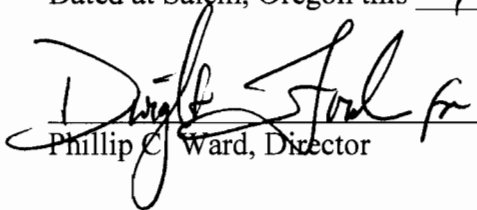
a. Prior to October 1, 2011, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of diversion.

b. The water user shall maintain the meter or measuring device in good working order.

c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.

6. Prior to October 1, 2011, 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 7 day of May 2010.


Phillip C. Ward, Director

Mailing date: MAY 10 2010