

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

In the Matter of Transfer Application)
T-9666, Jackson County) SUPERSEDING FINAL ORDER
) APPROVING AN ADDITIONAL POINT
) OF DIVERSION AND CORRECTING A
) SCRIVENER'S ERROR IN A
) PREVIOUS ORDER

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

THOMAS F HUBBARD
294 HAMILTON RD
JACKSONVILLE OR 97530

Findings of Fact

1. On March 8, 2004, Thomas F Hubbard filed a transfer application to add an additional point of diversion under Certificate 16395. The Department assigned the application number T-9666.
2. Certificate 16395 was superseded by Certificate 80989 on August 26, 2005. Certificate 80989 was superseded by Certificate 81845 on February 22, 2006. Certificate 81845 was then superseded by Certificate 81846.
3. The portion of the right to be transferred is as follows:

Certificate: 81846 in the name of OTTO CANTRALL (confirmed by Rogue River (F) decree)

Use: IRRIGATION of 2.86 ACRES and LIVESTOCK

Priority Date: SEPTEMBER 1, 1857

Rate: 0.06 CUBIC FOOT PER SECOND

Source: LITTLE APPEGATE RIVER, tributary to APPEGATE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
39 S	3 W	WM	14	NE NE	NONE GIVEN

This is a final order in other than 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 either 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 & LIVESTOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	3 W	WM	33	SE SE	2.86

4. Application T-9666 proposes to add an authorized point of diversion approximately 3.5 miles downstream:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
38 S	3 W	WM	33	SW SE	300 FEET NORTH AND 1520 FEET WEST OF SE CORNER, SECTION 33

5. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice. However, the Oregon Department of Fish and Wildlife did request inclusion of a condition requiring installation of proper fish screens.
6. Water has been used within the last five years according to the terms and conditions of the rights, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
7. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present.
8. The proposed change would not result in enlargement of the right.
9. The proposed change has the potential to result in a new call on junior water rights upstream of the additional point of diversion, with the exception of 1) those on the Applegate River between the additional point of diversion and the confluence with the Little Applegate River, and 2) those on the Little Applegate River. Thus, the proposed change has the potential to injure some junior water rights upstream, unless use of water from the additional point of diversion is conditioned to limit the use of water to the quantity of water lawfully available simultaneously at the original point of diversion.
10. On February 3, 2006, the Department issued a Final Order for the transfer, recorded at Special Order Volume 68, Pages 28 to 30. Subsequent to issuance of the order the Department recognized a scrivener's error in the number of the water right certificate named in the order. The certificate was incorrectly listed in the order as number 81616 rather than 81846, and it was also incorrectly referenced in Certificate 81617 that was issued to describe the remaining portion of the right not modified by T-9666.
11. This order is issued to supersede the previous order recorded at Special Order Volume 68, Pages 28 to 30, and to correct the scrivener's error in the order. No superseding certificate will be issued at this time to correct the scrivener's error in Certificate 81617, since Certificate 81617 has already been cancelled by T-9668 and all other aspects of that certificate were correct.

Conclusions of Law

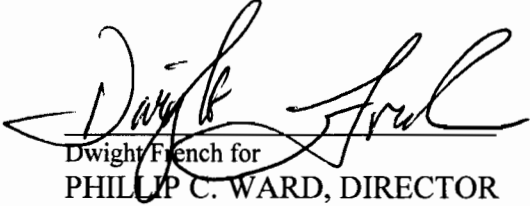
The additional point of diversion proposed in application T-9666 is consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000 and the scrivener's error in Special Order Volume 68, Pages 28 to 30 should be corrected in the record.

Now, therefore, it is ORDERED:

1. The order entered at Special Order Volume 68, Pages 28 to 30 is withdrawn and of no further force and effect and is superseded by this order.
2. The change in point of diversion proposed in application T-9666 is approved.
3. Water right certificate 81846 is cancelled. Certificate 81617 was issued describing that portion of the right not involved in this transfer, and it has since been cancelled by an order approving Transfer Application T-9668.
4. 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 81846 and any related decree.
5. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2007**. A Claim of Beneficial Use prepared by a Certified Water Rights 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.
6. The quantity of water diverted at the additional point of diversion, together with that diverted at the old point of diversion, shall not exceed the quantity of water lawfully available simultaneously at the original point of diversion.
7. Upon submittal of a Claim of Beneficial Use for this transfer, the current owner of the property to which this water right is appurtenant shall submit a time-limited transfer for the entire water right described in this transfer. Furthermore, said time-limited transfer shall request a temporary change in character of use from irrigation to instream use for fisheries enhancement, and the reach shall be defined from the original point of diversion to the mouth of the Little Applegate River.
8. 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.
9. The water user shall install and maintain a fish screen or fish by-pass device, as appropriate, at the new point of diversion. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning of construction, and shall be installed under the supervision of the Department of Fish and Wildlife.

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 29 day of March 2011.


Dwight French for
PHILIP C. WARD, DIRECTOR

Mailing date: APR 01 2011