

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

In the Matter of Transfer Application) FINAL ORDER APPROVING
T-9417, Jackson County) CHANGES IN POINT OF
) DIVERSION AND PLACE 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

CLARE L. STEVENS
7604 HWY 238
JACKSONVILLE, OR 97530

Findings of Fact

Background

1. On April 25, 2003, Clare L. Stevens filed an application to change the place of use and point of diversion under Certificate 48666. The Department assigned the application number T-9417.
2. On March 13, 2007, the applicant submitted a revised map (dated February 20, 2007) with amendments to the application.
3. The portion of the first right to be transferred is as follows:
Certificate: 48666 in the name of JUANITA M. (YOUNG) HIATT, confirmed by Rogue River State Water Board Decree
Use: IRRIGATION of 3.5 ACRES
Priority Date: OCTOBER 1898
Rate: 0.07 CUBIC FOOT PER SECOND (cfs), *if available at the original point of diversion, Bridgepoint Ditch, SW ¼ SE ¼, Section 17, T. 38S, R. 4W, W.M.; 1075 feet North and 1660 feet West from the SE corner of Section 17*
Source: APPLGATE RIVER, tributary to ROGUE RIVER

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.

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
38 S	4 W	WM	7	NE SE	1030 FEET SOUTH AND 1350 FEET EAST FROM THE CENTER OF SECTION 7

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Proposed Changes
38 S	4 W	WM	7	NW SE	3.0	POD
38 S	4 W	WM	7	NW SE	0.5	POD & POU

4. Application T-9417 proposes to move the authorized point of diversion approximately 1900 feet downstream from the authorized point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
38 S	4 W	WM	7	SW NE	160 FEET NORTH AND 320 FEET EAST FROM THE CENTER OF SECTION 7

5. Application T-9417 also proposes to change the place of use for a portion of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	4 W	WM	7	SW NE	0.44
38 S	4 W	WM	7	SE NW	0.06

6. Notice of the application for transfer was published on May 6, 2003, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. 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.
8. On October 12, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-9417 to the applicant. The draft Preliminary Determination set forth a deadline of November 14, 2007, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
9. Further review of Transfer Application T-9417 revealed that the draft Preliminary Determination (described in Finding #8) did not accurately reflect the proposed transfer. A REVISED draft Preliminary Determination was issued and mailed to the applicant to correctly reflect the actual distance between the authorized and proposed points of diversion and to accurately identify the proposed place of use acreage located in each quarter-quarter section as shown on the revised map for Transfer Application T-9417, and as described in Findings #4 and #5. The REVISED draft Preliminary Determination also included an

ODFW requested fish screen condition that was inadvertently left out of the October 12, 2007, draft Preliminary Determination, and set forth a deadline of December 7, 2007, for the applicant to respond.

10. On November 15, 2007, the applicant agreed to the revisions and requested that the Department proceed with the issuance of a Preliminary Determination consistent with the REVISED draft Preliminary Determination.
11. On November 28, 2007, the Department issued a Preliminary Determination proposing to approve Transfer T-9417 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on December 4, 2007, and in the *Grants Pass Daily Courier* newspaper on December 13, 20 and 27, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

12. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record 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 were present within the five-year period prior to submittal of Application T-9417.
14. The proposed changes would not result in enlargement of the right.
15. The proposed changes would not result in injury to other water rights.

Conclusions of Law


The changes in place of use and point of diversion proposed in application T-9417 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore it is ORDERED:

1. The changes in place of use and point of diversion proposed in application T-9417 are approved.
2. Water right certificate 48666 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
3. 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 48666 and any related decree.

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. The former place of use of the transferred right shall no longer receive water under the right.
6. Prior to diverting water, the water user shall install 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 measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain and operate the measuring device as required by the Department.
7. Prior to diverting water, 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. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state'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.
8. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2009**. 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.
9. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 29th day of January 2008.



Phillip C. Ward, Director

Per
Mailing date: JAN 31 2008