

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

In the Matter of Instream Transfer)	FINAL ORDER APPROVING A
Application T-10247, Polk County)	CHANGE IN PLACE OF USE AND
)	CHARACTER OF USE AND PARTIAL
)	CANCELLATION OF A WATER
)	RIGHT

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. OAR Chapter 690, Division 077 provides additional criteria for evaluating transfers to instream water rights.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

GRAND RONDE COMMUNITY WATER
ASSOCIATION
PO BOX 253
GRAND RONDE, OR 97347

Agent

JEANNE BOATWRIGHT
BOATWRIGHT ENGINEERING, INC.
2613 12TH STREET SE
SALEM, OR 97302

Findings of Fact

Background

1. On October 12, 2006, Grand Ronde Community Water Association filed an application to change the point of diversion, place of use and character of use under Certificate 15685 to quasi-municipal use as part of an exchange. The Department assigned the application number T-10247.
2. On June 25, 2008, the applicant submitted a request to amend the application, along with modified application materials, to change the place of use and character of use under Certificate 15685 to instream use.

<p>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.</p>

3. The instream transfer application is intended to provide mitigation for surface water permit application S-87207.
4. On February 29, 2012, the Confederated Tribes of the Grand Ronde Community of Oregon submitted a notarized affidavit to cancel 1.2 acres of irrigation. The applicant had previously submitted a request on February 7, 2011 to remove these 1.2 acres from the transfer application. A revised application map was also received.
5. On October 30, 2012, Jeanne Boatwright (agent), on behalf of the applicant, submitted a request to amend the application to request that water be protected instream during the period June 1 through September 30.

6. The portion of the right to be transferred is as follows:

Certificate: 15685 in the name of MARJORIE REID (perfected under Permit S-11382)
Use: IRRIGATION of 27.6 ACRES
Priority Date: AUGUST 28, 1934
Rate: 0.34 CUBIC FOOT PER SECOND (CFS)
Limit: 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, or its equivalent for each acre irrigated.
Source: COW CREEK, tributary to ROCK CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	8 W	WM	13	SW SW	NONE GIVEN

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	8 W	WM	13	SE NW	20.8
6 S	8 W	WM	13	NE SW	6.8

7. The coordinates (measured distances) for the point of diversion are not described in Certificate 15685. However, information included in the transfer application more specifically describes the location of the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	8 W	WM	13	SW SW	725 FEET NORTH AND 1240 FEET EAST FROM THE SW CORNER OF SECTION 13

8. Certificate 15685 does not specify the authorized irrigation season. However, the irrigation season established by the Yamhill River Decree is April 1 through September 30.
9. Certificate 15685 does not specify a duty limit per acre. However, the general duty for the area, as established in the Yamhill River Decree, is 2.5 acre-feet per acre.
10. A total of 69.0 acre-feet of water may be beneficially used annually under the existing right.

11. Application T-10247 proposes to change the character of use to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values.
12. Application T-10247 proposes to change the place of use of the right to create an instream reach from the point of diversion, as described in Finding of Fact #7, to the mouth of Cow Creek.
13. The applicant proposes the quantities of water to be transferred instream to be protected follows, based on the original application:

Instream Period	Rate (cfs)	Volume (acre-feet)
March 1 to October 1	0.36	72.0

14. The applicant proposes that any instream water right established as a result of this instream transfer be additive to existing instream water rights for the same reach established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process). The applicant also proposes that any instream water right established as a result of this instream transfer replace a portion of any existing instream rights established pursuant to ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency instream application process), with an earlier priority date.
15. Notice of the proposed instream transfer was provided by the Department to Polk County and Confederated Tribes of the Grande Ronde Community of Oregon on November 23, 2009, following receipt of request to amend Transfer Application T-10978 to an instream transfer.
16. Notice of the application for transfer was originally published in 2006. Notice of the application as an instream transfer was published on July 8, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice. On April 18, 2012, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10247 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of May 17, 2012, for the applicant to respond. In the cover letter, the Department requested a report of ownership prepared by a Title Company and recommended changing the beneficial use to be served by the proposed instream use. However, based upon discussions with the agent for the applicant and follow up with the Oregon Department of Fish and Wildlife, the Department has identified that water may be protected instream for the proposed beneficial instream use. The requested report of ownership was not received by the deadline identified in the cover letter.
18. On November 21, 2012, the Department mailed a revised draft Preliminary Determination proposing to approve Transfer T-10247 to the applicant. The cover letter for the revised draft Preliminary Determination set forth a deadline of December 20, 2012, for the applicant to respond, including submission of the report of ownership. The applicant requested that the Department proceed with the issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

19. On January 28, 2013, the Department issued a preliminary determination proposing to approve Transfer T-10247 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 February 5, 2013, and in the Sun newspaper on February 6, 13, and 20, 2013, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

Instream Transfer Review Criteria (OAR 690-77-0075 and 690-380-4010)

20. Evidence was submitted with the application indicating that water has been used within the last five years according to the terms and conditions of the right.
21. Information was submitted with the transfer application indicating that 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-10247.
22. The instream use requires modification. The application has been amended to reduce the number of acres of irrigation proposed for instream use and the application requests to protect water instream March 1 to October 1. The irrigation season for the area is April 1 through September 30. In addition, at the full rate and volume requested water may not be protected instream over the full irrigation season without injury and enlargement. The applicant has requested, as identified in Finding of Fact #5, that the instream period be modified to June 1 through September 30.
23. Based upon Finding of Fact #22, the instream use has been modified from the original request and the quantities to be transferred and protected instream are as follows:

Instream Rate	Instream Volume	Instream Period
0.29 CFS	69.0 AF	June 1 through September 30

24. The proposed change, as modified, would not result in enlargement of the right.
25. The proposed change, as modified, would not result in injury to other water rights.
26. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
27. The protection of flows within the proposed reach is appropriate, considering:
- a) The instream water right begins at the recorded point of diversion;
 - b) The location of confluences with other streams downstream of the point of diversion;
 - c) There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
 - d) Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right.

28. There do not appear to be any existing instream water rights for the same reach as that proposed for the new instream water right. Nor are there any instream water rights on Rock Creek. However, based upon comments from the Oregon Department of Fish and Wildlife, instream flows in Cow Creek will benefit winter Steelhead, listed under the Endangered Species Act, which rear in this stream system year-round.
29. By replacing a portion of any instream water right established pursuant to 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency instream application process), the instream right established by this transfer will provide protection for streamflows identified as necessary for pollution abatement under an earlier priority date.
30. By adding to any instream water rights for the same location established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process), the instream right established by this transfer will provide protection for additional streamflows necessary for pollution abatement.
31. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose and do not exceed the estimated average natural flow.

Partial Cancellation of a Water Right

32. On February 29, 2012, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from the applicant.
33. ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or portion thereof, has been abandoned and to voluntarily request that it be cancelled.
34. The portion of the right to be cancelled is described as follows:

Certificate: 15685 in the name of MARJORIE REID (perfected under Permit S-11382)

Use: IRRIGATION of 1.2 ACRES

Priority Date: AUGUST 28, 1934

Rate: 0.02 CUBIC FOOT PER SECOND (CFS)

Limit: 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, or its equivalent for each acre irrigated.

Source: COW CREEK, tributary to ROCK CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	8 W	WM	13	SW SW	NONE GIVEN

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	8 W	WM	13	NE SW	1.2

Conclusions of Law

The changes in character of use and place of use to instream use proposed in Transfer Application T-10247 are consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075 and the abandoned right should be cancelled.

Now, therefore, it is ordered:

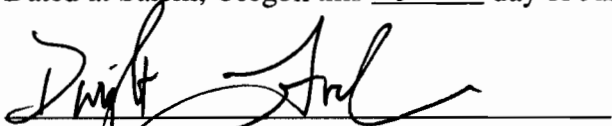
1. The changes in character of use and place of use to instream use proposed in Transfer Application T-10247 are approved. The portion of the right that has been abandoned is cancelled.
2. Water right certificate 15685 is cancelled. A new certificate confirming the instream water right shall be issued.
3. The instream water right shall provide for the protection of streamflows from point of diversion, as described in Finding of Fact #7, to the mouth of Cow Creek.
4. The quantities of water to be protected under the instream water right are:

Instream Rate	Instream Volume	Instream Period
0.29 CFS	69.0 AF	June 1 through September 30

5. Water rights upstream of the original point of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original point of diversion.
6. Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion.
7. The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.
8. 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 15685 and any related decree.

9. The former place of use of the transferred water shall no longer receive water as part of this right.

Dated at Salem, Oregon this 25 day of June, 2013.


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

Mailing Date: III 03 2013