BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON

In the Matter of Transfer Application T-6627, Douglas County	))	FINAL ORDER APPROVING A CHANGE IN POINT OF DIVERSION

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

STUART MURDOCK
2066 DEL RIO RD.
ROSEBURG, OR 97471

Findings of Fact

Background

1. On October 23, 1991, Jerome C. and Jean E. Farman filed an application to change the point of diversion under Certificate 57553. The Department assigned the application number T-6627.

2. Certificate 57553 has been superseded by Certificate 84207.

3. On February 19, 1993, the Department received an amended transfer application and map identifying 1.28 acres for transfer.

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

   Certificate: 84207 in the name of G. H. HARRELL (perfected under Permit S-28837)
   Use: IRRIGATION of 1.28 ACRES
   Priority Date: MAY 13, 1963
   Rate: 0.016 CUBIC FOOT PER SECOND (cfs)
   Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre during the irrigation season of each year; provided further that right to the use of water is limited to the period when the flow of the North Umpqua River is more than 525 cfs at its mouth.

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.

Source: NORTH UMPQUA RIVER, tributary to the UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
26 S	6 W	WM	14	SW SE	McKinney DLC 45	2550 FEET SOUTH AND 2620 FEET WEST FROM THE E1/4 CORNER OF SECTION 14

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	6 W	WM	14	SE SW	1.19
26 S	6 W	WM	23	NE NW	0.09

5. Transfer Application T-6627 proposes to move the point of diversion approximately 400 feet downstream in the source to the following location:

Proposed Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
26 S	6 W	WM	23	NE NW	McKinney DLC 45	125 FEET SOUTH AND 3080 FEET WEST FROM THE NE CORNER OF SECTION 23

6. Notice of the application for transfer was published pursuant to OAR 690-380-4000.

7. WaterWatch filed a response to the notice requesting that prior to diverting water at the new location, the water user install and maintain fish screening devices to the specifications of the Oregon Department of Fish and Wildlife (ODFW).

8. 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.

9. On February 26, 2009, the Department mailed a copy of the *draft* Preliminary Determination proposing to approve Transfer Application T-6611 to the applicant. The cover letter that accompanied the *draft* Preliminary Determination set forth a deadline of March 26, 2009, for the applicant to respond. On March 11, 2009, the applicant requested that the Department proceed with issuance of a Preliminary Determination.

10. On April 15, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-6627 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on April 21, 2009, 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)]

11. 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.

12. A pump 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 Transfer Application T-6627.

13. The proposed change would not result in enlargement of the right.

14. The proposed change would not result in injury to other water rights.

Conclusions of Law

The change in point of diversion proposed in Transfer Application T-6627 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 in point of diversion proposed in Transfer Application T-6627 is approved.

2. Certificate 84207 will be cancelled. A new certificate will be issued describing that portion of the right not affected by Transfer Applications T-6609, T-6610, T-6611 and T-6627.

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 84207 and any related decree.

4. The quantity of water diverted at the new point of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.

5. 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.

6. When required by the Department, the water user shall install, maintain and operate 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.

7. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2010**. 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.

8. When satisfactory proof of the completed change is received, a new certificate confirming the portion of the right transferred will be issued.

Dated at Salem, Oregon this 21ST day of May, 2009.

Phillip C. Ward, Director pa

Mailing date: JUN 01 2009