

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

In the Matter of Transfer Application)
T-9493, Umatilla County)
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PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF AN
HISTORICAL CHANGE IN POINT OF
DIVERSION AND PARTIAL
CANCELLATION OF A WATER
RIGHT

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. 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. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

Raymond J. and Mary Lue Slabik
P.O. Box 724
Pilot Rock, Oregon 97868

Findings of Fact

1. On July 2, 2003, Raymond J. and Mary Lue Slabik filed an application to transfer the point of diversion to reflect the use of a historic point of diversion located approximately 0.75 mile downstream under Certificate 47434. The Department assigned the application number T-9493.
2. The portion of the right to be transferred is as follows:
 - Certificate:** 47434, in the name of A. J. Sturtevant
 - Use:** Irrigation, domestic and stock
 - Priority Date:** 1873 for 10.14 acres, 1882 for 25.35 acres, and 1895 for 15.21 acres
 - Quantity:** 0.634 cubic foot per second
 - Rate/Duty:** Subject to the provisions of Paragraph 33 of Umatilla River Decree
 - Acres:** 50.7
 - Source:** East Birch Creek, tributary to Birch Creek

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this transfer application and preliminary determination.

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼		Acres
1	S	32	E	W.M.	16	NW	SW	21.5
1	S	32	E	W.M.	16	SW	SW	29.2

3. The location of the authorized point of diversion for Certificate 47434 is not described in the certificate.
4. Application T-9493 proposes to move the authorized point of diversion approximately 0.75 of a mile downstream to a historically used pump site located:

Township		Range		Meridian	Sec	¼ ¼		Survey Coordinates
1	S	32	E	W.M.	16	NW	SW	120 FEET SOUTH AND 350 FEET EAST FROM THE W¼ CORNER OF SECTION 16.

5. Notice of the application for transfer was published on July 22, 2003, 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. On November 19, 2004, the Department received a voluntary cancellation affidavit from the Pilot Rock School District, requesting to cancel a portion of Certificate 47434. This portion of the right is for the use of 0.124 cubic foot per second from East Birch Creek, diverted from a private ditch, for the purpose of irrigation of 9.94 acres. On October 19, 2005, the Department also received a voluntary cancellation affidavit from Raymond J. and Mary Lue Slabik, requesting to cancel a portion of Certificate 47434 as well. The right is for the use of 0.071 cubic foot per second from East Birch Creek, also diverted from a private ditch, for the purpose of irrigation of 5.65 acres. On January 25, 2006, the Department also received a voluntary cancellation affidavit from Kinzua Resources, owner of certain lands in which a portion of Certificate 47434 is appurtenant to. This portion of the right is for the use of 0.13 cubic foot per second from East Birch Creek and was also diverted from a private ditch, for the purpose of irrigation of 10.5 acres. The affidavits request to cancel portions of Certificate 47434 and are broken down as follows:

Twncshp	Range	Mer	Sec	¼	¼	Landowner	TL	Acreage Per Priority Date					
								1873	1882	1895	TOTAL		
1	S	32	E	WM	9	NW	SW	Kinzua Resources	1500	0.40	1.00	0.60	2.00
1	S	32	E	WM	9	SW	SW	Kinzua Resources	1500 and 1800	1.70	4.25	2.55	8.50
1	S	32	E	WM	16	NW	SW	Pilot Rock School Dist.	9300	0.57	1.44	0.86	2.87
1	S	32	E	WM	17	SE	NE	Pilot Rock School Dist.	9300	0.30	0.75	0.45	1.50
1	S	32	E	WM	17	NE	SE	Pilot Rock School Dist.	9300	1.11	2.79	1.67	5.57
1	S	32	E	WM	16	NW	SW	Raymond & Mary Slabik	300	0.88	2.19	1.31	4.38
1	S	32	E	WM	16	SW	SW	Raymond & Mary Slabik	300	0.25	0.63	0.38	1.27

ORS 540.621 provides: “Whenever the owner of a perfected and developed water right certifies under oath to the Water Resources Commission that the water right has been abandoned by the owner and that the owner desires cancellation thereof, the commission shall enter an order canceling the water right.” These partial cancellations of a water right will be incorporated into the final order.

7. Water has been used within the last five years according to the terms and conditions of the right and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
8. The proposed (current) point of diversion has been in use for more than 10 years.
9. The Watermaster has filed a statement that no complaints of injury have been received as a result of the applicants using the proposed (current) point of diversion on East Birch Creek.
10. In accordance with ORS 540.532 (2)(c) and OAR 690-380-2120 (3), the Department has determined that there are no “affected water rights” as a result of this proposed change.
11. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The change to reflect the use of a historic point of diversion proposed in application T-9493 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and will be approved provided that protests are not filed pursuant to OAR 690-380-4030.

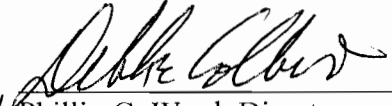
The portion of Certificate 47434 described in Finding #6 as abandoned will be cancelled.

If approved, the change and subsequent use of water shall be subject to the following conditions:

1. 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 47434 and any related decree.
2. The proposed change is effective immediately upon issuance of the special order approving T-9493.
3. Water Right Certificate 47434 will be cancelled. Certificates will be issued to confirm those portions of the right not involved in the transfer and partial cancellation.
4. The quantity of water diverted at the historic point of diversion, together with that diverted at the old point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
5. Prior to October 1, 2008, 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.
6. Prior to October 1, 2008, 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.

7. Certificate 82671 shall be issued to confirm the portion of the right changed by T-9493 under the terms of this order.

Dated at Salem, Oregon this 23rd day of October, 2006.


For Phillip C. Ward, Director

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1271

This Preliminary Determination was prepared by Kelly Starnes. If you have questions about the information in this document, you may reach me at (503) 986-0886 or Patrick.K.Starnes@wrđ.state.or.us.