

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-9581, Polk County)	PROPOSING APPROVAL OF A
)	CHANGE IN CHARACTER OF USE,
)	PLACE OF USE AND POINTS 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

ROCK CREEK WATER DISTRICT
PO BOX 123
GRAND RONDE, OR 97347

Findings of Fact

Background

1. On September 30, 2003, Rock Creek Water District filed a transfer application to change the character of use, place of use and points of diversion under Certificates 47319 and 52404. The Department assigned the application number T-9581.
2. On June 23, 2006, the Department mailed a copy of the draft Preliminary Determination for Transfer T-9581 to the applicant. The draft Preliminary Determination proposed to deny the transfer request due to application deficiencies, and set forth a deadline of Monday, July 24, 2006, for the applicant to respond.
3. The applicant's agent at that time (Steve Applegate) met with Department staff on July 5, 2006, to determine the best way to resolve the application deficiencies identified in the draft Preliminary Determination for T-9581.
4. On October 12, 2006, Steve Applegate submitted a letter on behalf of the applicant amending Transfer T-9581 to remove the NW ¼ of Section 14, Township 6 South, Range 8 West, W.M., from the proposed place of use; and indicating that, in order to gain the ability

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 preliminary determination.
--

to divert and use water when necessary for municipal purposes throughout the year, the applicant would be agreeable to conditioning future water use so that the duty of water associated with the rights under Certificates 47319 and 52404 will not be exceeded.

- The applicant submitted additional information on April 12, 2007, documenting that consent has been obtained from all owners of the land to which the water rights are appurtenant, thereby completing the application and demonstrating that the applicant is authorized to pursue the transfer.

- The first right to be transferred is as follows:

Certificate: 47319 in the name of JUDITH ANN BURNS (perfected under Permit S-35398)
Use: IRRIGATION of 3.3 ACRES and DOMESTIC USE FOR ONE FAMILY
Priority Date: JULY 24, 1970
Rate: 0.05 CUBIC FOOT PER SECOND (CFS), BEING 0.01 CFS FOR DOMESTIC USE and 0.04 CFS FOR IRRIGATION
Limit/Duty: ONE-EIGHTIETH (1/80th) of one cfs per acre, not to exceed 2.5 acre feet per acre irrigated during the irrigation season of each year
Source: ROCK CREEK, tributary to YAMHILL RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
6 S	8 W	WM	23	NE NW	POD #1 - 400 feet South and 220 feet West from the North 1/4 corner of Section 23
6 S	8 W	WM	23	NE NW	POD #2 - 450 feet South and 180 feet West from the North 1/4 corner of Section 23

Authorized Place of Use:

DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	
6 S	8 W	WM	23	NE NW	

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	8 W	WM	23	NE NW	3.3

- The Department has information indicating the source of water described in Finding #6 (Rock Creek) is actually tributary to the South Yamhill River, rather than the Yamhill River.
- Application T-9581 proposes to move the authorized points of diversion approximately 0.85 mile upstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
6 S	8 W	WM	23	SE SW	453 feet North and 1529 feet East from the SW corner of Section 23

- Application T-9581 proposes to change the character of use under Certificate 47319 to municipal use.

10. Application T-9581 also proposes to change the place of use of the right to:

MUNICIPAL USES				
Twp	Rng	Mer	Sec	Q-Q
6 S	8 W	WM	14	NE NE
6 S	8 W	WM	14	NW NE
6 S	8 W	WM	14	SW NE
6 S	8 W	WM	14	SE NE
6 S	8 W	WM	14	NE SW
6 S	8 W	WM	14	NW SW
6 S	8 W	WM	14	SW SW
6 S	8 W	WM	14	SE SW
6 S	8 W	WM	14	NW SE
6 S	8 W	WM	14	SW SE
6 S	8 W	WM	23	NE NW
6 S	8 W	WM	23	NW NW
6 S	8 W	WM	23	SW NW
6 S	8 W	WM	23	SE NW
6 S	8 W	WM	23	NE SW
6 S	8 W	WM	23	NW SW
6 S	8 W	WM	23	SW SW
6 S	8 W	WM	23	SE SW

11. The second right to be transferred is as follows:

Certificate: 52404 in the name of LLOYD JEROME CHRISTENSEN (perfected under Permit S-40017)
Use: IRRIGATION of 0.8 ACRE
Priority Date: APRIL 21, 1975
Rate: 0.01 CUBIC FOOT PER SECOND (CFS)
Limit/Duty: ONE-EIGHTIETH (1/80th) of one cfs per acre, not to exceed 2.5 acre feet per acre for each acre irrigated during the irrigation season each year
Source: ROCK CREEK, tributary to SOUTH YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
6 S	8 W	WM	14	SW NE	1970 feet South and 1680 feet West from the NE corner of Section 14

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acre
6 S	8 W	WM	14	SW NE	0.5
6 S	8 W	WM	14	SE NE	0.3

12. Application T-9581 proposes to move the authorized point of diversion approximately 1.6 miles upstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
6 S	8 W	WM	23	SE SW	453 feet North and 1529 feet East from the SW corner of Section 23

13. Application T-9581 proposes to change the character of use under Certificate 52404 to municipal use.

14. Application T-9581 also proposes to change the place of use of the right to:

MUNICIPAL USES				
Twp	Rng	Mer	Sec	Q-Q
6 S	8 W	WM	14	NE NE
6 S	8 W	WM	14	NW NE
6 S	8 W	WM	14	SW NE
6 S	8 W	WM	14	SE NE
6 S	8 W	WM	14	NE SW
6 S	8 W	WM	14	NW SW
6 S	8 W	WM	14	SW SW
6 S	8 W	WM	14	SE SW
6 S	8 W	WM	14	NW SE
6 S	8 W	WM	14	SW SE
6 S	8 W	WM	23	NE NW
6 S	8 W	WM	23	NW NW
6 S	8 W	WM	23	SW NW
6 S	8 W	WM	23	SE NW
6 S	8 W	WM	23	NE SW
6 S	8 W	WM	23	NW SW
6 S	8 W	WM	23	SW SW
6 S	8 W	WM	23	SE SW

15. Notice of the application for transfer was published on November 4, 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.

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

16. Water was used within the five-year period prior to submittal of Application T-9581 on September 30, 2003, according to the terms and conditions of the rights, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.

17. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Application T-9581 on September 30, 2003.

18. Transfer T-9581 proposes to change the character of use under the rights evidenced by Certificates 47319 and 52404 to year-round municipal purposes. As defined in OAR 690-380-0100(2), the proposed change could result in enlargement if not conditioned so as to prevent the use of more water than could have been beneficially used without waste for the existing authorized uses.

19. On April 16, 2007, Mel Wheeler (Secretary, Rock Creek Water District) indicated that the use of water for municipal purposes is to be used on a non-continuous basis as a backup supply to their existing municipal water source(s), and that the District would like to maintain the ability to divert water at the same rate allowed in the original rights while not exceeding the total maximum annual volume of water allowed under the rights. Mr. Wheeler also indicated the District will be installing a totalizing flow meter to monitor and record the amount of water diverted for the proposed municipal use.
20. The proposed changes, including change of the season to year round, would not result in enlargement of the right, as long as the diversion rate for the new use does not exceed the total maximum instantaneous diversion rates authorized by the water rights (being 0.06 cfs) on a non-continuous basis, and does not exceed the total duty allowed for the original uses, being 17.49 acre feet per year.
21. The proposed changes, as conditioned, would not result in injury to other water rights.

Determination and Proposed Action

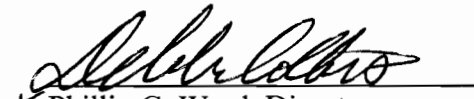
The changes in character of use, point of diversion and place of use proposed in application T-9581, as conditioned, appear to be consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000, and will be approved provided that protests are not filed pursuant to OAR 690-380-4030.

If application T-9581 is approved, the final order will include the following:

1. *The changes in character of use, point of diversion and place of use proposed in application T-9581 are approved.*
2. *Water right certificates 47319 and 52404 are cancelled.*
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 Certificates 47319 and 52404 and any related decree.*
4. *The former place of use shall no longer receive water for irrigation or domestic purposes as part of these rights, except as may be provided under the Rock Creek Water District distribution system for municipal purposes.*
5. *The quantity of water diverted at the new point of diversion may occur year-round at a total rate not to exceed 0.06 cfs on a non-continuous basis and shall be further limited to a total volume of water diverted not to exceed 17.49 acre feet per year.*
6. *Prior to diverting water, the water user shall install and maintain a totalizing flow meter for measuring and recording the quantity of water diverted. The type and plans of the totalizing flow meter 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. *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.*
8. *The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2012**. 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, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 31 day of August 2007.


Phillip C. Ward, Director

This Preliminary Determination was prepared by Lisa Jaramillo. If you have questions about the information in this document, you may reach me at 503-986-0880 or Lisa.J.Jaramillo@ wrd.state.or.us.

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer Street NE, Suite A, Salem, OR 97301-1266.