

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-10773, Benton County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN POINT OF DIVERSION,
	)	PLACE OF USE, AND CHARACTER
	)	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

BENTON COUNTY NATURAL AREAS
AND PARKS DEPARTMENT
ATTN JEFF POWERS
360 SW AVERY AVENUE
CORVALLIS, OR 97330

Findings of Fact

Background

1. On January 20, 2009, the BENTON COUNTY NATURAL AREAS AND PARKS DEPARTMENT filed an application to change the point of diversion, place of use and character of use under Certificate 45861. The Department assigned the application number T-10773.
2. The portion of the right to be transferred is as follows:

Certificate:	45861 in the name of A. FRED BEAZELL (perfected under Permit S-38792)
Use:	DOMESTIC USE FOR ONE FAMILY and IRRIGATION of 1.0 ACRE
Priority Date:	MAY 27, 1975
Rate:	0.005 CUBIC FOOT PER SECOND for domestic, and 0.01 CUBIC FOOT PER SECOND from the spring for irrigation when available; with any deficiency in the available supply from the spring to be made up by appropriation from Plunkett Creek provided that the total quantity of water diverted from both sources shall not exceed 0.01 cubic foot per second

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.
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Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A SPRING, tributary to Plunkett Creek, when available, with any deficiency in the available supply from the spring to be made up by appropriation from PLUNKETT CREEK, tributary to LUCKIAMUTE RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
11 S	6 W	WM	4	NE NW	38	SPRING - 5100 FEET NORTH AND 310 FEET WEST FROM THE SE CORNER OF LENDERKIN DLC 58
10 S	6 W	WM	33	SW SE	38	CREEK - 5650 FEET NORTH AND 50 FEET EAST FROM THE SE CORNER OF LENDERKIN DLC 58

Authorized Place of Use:

DOMESTIC USE AND IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
10 S	6 W	WM	33	SW SE	38	1.0

3. Transfer Application T-10773 proposes to move the authorized deficiency point of diversion from Plunkett Creek approximately 140 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
11 S	6 W	WM	4	NE NW	38	CREEK: 3250 FEET NORTH AND 1640 FEET WEST FROM THE SE CORNER OF SECTION 33

4. Transfer Application T-10773 proposes to change the character of use to FIRE PROTECTION.
5. Transfer Application T-10773 also proposes to change the place of use of the right to:

FIRE PROTECTION						
Twp	Rng	Mer	Sec	Q-Q	DLC	
11 S	6 W	WM	33	SW SE	38	

6. Certificate 45861 does not describe a period of use; however, the Willamette Basin Program (OAR 690-502) allows irrigation from March 1 to October 31.
7. In order to allow for year round fire protection, the instantaneous rate from irrigation must be reduced from 0.01 cubic foot per second to 0.005 cubic foot per second, in addition to the 0.005 cubic foot per second from domestic use, for a total of 0.01 cubic foot per second.

8. The best currently available information indicates that beneficial use of water for irrigation in this area would not likely exceed 2.5 acre-feet per acre on 1.0 acres for a total volume of 2.5 acre-feet per year.
9. Certificate 45861 does not state an annual duty for domestic use, however, ORS 540.610 states “beneficial use shall be the basis, the measure, and the limit of all rights to the use of water in this state.” It is unlikely that the quantity of water, if diverted continuously at a rate of 0.005 cubic foot per second for 365 days of the year ($0.005 \times 60 \text{ sec/min} \times 60 \text{ min/hr} \times 24 \text{ hr/day} \times 365 \text{ days/year} \div 43,560 \text{ square feet per acre} = 3.62 \text{ acre-feet per year}$) could have been beneficially used for domestic use.
10. Use of more water per year than could have been beneficially used for the original domestic use would constitute enlargement of the right, which is not allowable. Therefore, to avoid enlarging the right in the conversion to fire protection, an annual volume limit should be added to the right, based on the best available estimate of the maximum amount of water that could have been beneficially diverted for domestic use during a year.
11. Estimates of in-house domestic use available from agencies such as the United States Geological Survey, American Water Works Associations, and Penn State Cooperative Extension indicate an average in-house domestic water use of approximately 70 gallons per person per day, with an average household having three people. Using this information a reasonable estimate for beneficial use would be 0.24 acre-feet per year ($70 \text{ gallons per day per person} \times 3 \text{ people per household} \times 365 \text{ days per year} \div 325,850 \text{ gallons per acre-foot}$).
12. Combining the maximum reasonable estimate for domestic use (0.24 acre-feet) and irrigation (2.5 acre-feet) yields an estimate of annual maximum beneficial use of 2.74 acre-feet per year.
13. Notice of the application for transfer was published on February 3, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
14. 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.
15. On March 16, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10773 to the applicant. The draft Preliminary Determination set forth a deadline of April 14, 2010, for the applicant to respond. The applicant requested that the Department include Domestic use from Certificate 45861 in the proposed changes and proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

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

16. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is 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 right were present within the five-year period prior to submittal of Transfer Application T-10773.
18. The proposed changes, if not conditioned to limit the right to the maximum beneficial use for the original character of use, could result in an enlargement of the right. However, if the right is conditioned to limit the annual volume for fire protection to 2.74 acre-feet, the changes would not result in enlargement of the right.
19. The proposed changes, as conditioned, would not result in injury to other water rights.

Determination and Proposed Action

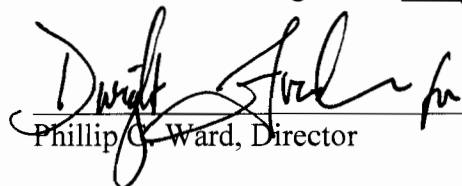
The change in point of diversion, place of use, and character of use proposed in Transfer Application T-10773 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-10773 is approved, the final order will include the following:

1. *The change in point of diversion, place of use, and character of use proposed in Transfer Application T-10773 are approved.*
2. *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 45861 and any related decree.*
3. *Water right certificate 45861 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
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 diversion rate shall be limited to 0.01 cubic foot per second from the spring for fire protection when available; with any deficiency in the available supply from the spring to be made up by appropriation from Plunkett Creek, provided that the total quantity of water diverted from both sources shall not exceed 0.01 cubic foot per second.*
6. *The annual volume for fire protection shall not exceed 2.74 acre-feet per year.*

7. *The Director may require the water user to install a totalizing flow meter or other suitable measuring devices at each point of diversion. If the Director notifies the water user to install totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.*
8. *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.*
9. *The former place of use of the transferred right shall no longer receive water under the right.*
10. *The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. A Claim of Beneficial Use prepared by a Certified Water Right 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.*
11. *When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 18 day of May 2010.


Phillip C. Ward, Director

This Preliminary Determination was prepared by Kara Morris. If you questions about the information in this document, you may reach me at 503-986-0898 or Kara.B.Morris@wrд.state.or.us.

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