BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application)	FINAL ORDER
T-11512, Morrow County)	APPROVING CHANGES IN POINT OF
•)	DIVERSION AND PLACE 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

Travis Harrison P.O. Box 393 Lexington, OR 97839

Agent

Bill Porfily P.O. Box 643 Stanfield, OR 97875

Findings of Fact

Background

- 1. On December 24, 2012, Travis Harrison filed an application to change the point of diversion and place of use under Certificate 194. The Department assigned the application number T-11512.
- 2. On January 24, 2013, the applicant amended the application to include a layered supplemental water right permit, Permit 54770. A proposed change in point of diversion for this permit has already been applied for in Permit Amendment T-11664.
- 3. Notice of the application for transfer was published on January 8, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 4. On October 31, 2013, the Department mailed a copy of the draft preliminary determination proposing to approve Transfer T-11512 and to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 2, 2013, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

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.

- 5. On January 27, 2014, the Department issued a preliminary determination proposing to approve Transfer T-11512 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 4, 2013, and in the East Oregonian newspaper on January 29, and February 5, 2014 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.
- 6. The primary right and its layered supplemental water right to be transferred are as follows:

Certificate: 194 in the name of RHODA A. SUMMER (confirmed by Decree of

the Circuit Court of the State of Oregon for Morrow County)

Use: IRRIGATION OF 40.0 ACRES during the period March 1 to

August 1 of each year

Priority Dates: 1872 for 5.0 acres and 1905 for 35.0 acres

Rate: 0.08 CUBIC FOOT PER SECOND (CFS) (PRIORITY DATE 1872)

and 0.58 CFS (PRIORITY DATE 1905)

Source: WILLOW CREEK, tributary to the COLUMBIA RIVER

Authorized Place of Use:

	IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres				
1 S	25 E	WM	20	SW NW	5.0				
1 S	25 E	WM	20	SE NW	5.5				
1 S	25 E	WM	20	NE SE	2.5				
1 S	25 E	WM	20	NW SE	7.0				
1 S	25 E	WM	20	SE SE	7.0				
1 S	25 E	WM	21	SW SW	13.0				
	TOTAL:								

Permit: S-54770 in the name of Willow Creek District Improvement Company

Use: IRRIGATION AND SUPPLEMENTAL IRRIGATION OF

40.0 ACRES

Maximum

Volume: 39.4 ACRE FEET

Limit/Duty: The amount of water used for irrigation, together with the amount

secured under any other right existing for the same lands, shall not exceed 3.0 acre feet per acre for each acre irrigated during the

irrigation season of each year.

Period of Use: Primary Irrigation August 2 through October 31, Supplemental

Irrigation March 1 through August 1

Source: WILLOW CREEK RESERVOIR (CONSTRUCTED UNDER

PERMIT R-10880), tributary to WILLOW CREEK

Authorized Dam Location:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	26 E	WM	35	NW SE	1530 FEET NORTH AND 3050 FEET EAST FROM THE SW CORNER OF SECTION 35

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	25 E	WM	20	NW SE	HARRISON POD 2 – 1695 FEET NORTH AND 1325 FEET WEST FROM THE SE CORNER OF SECTION 20

Authorized Place of Use:

	PRIMARY IRRIGATION AND SUPPLEMENTAL IRRIGATION								
Twp	Twp Rng Mer Sec Q-Q Acres								
1 S	25 E	WM	20	SW NW	5.0				
1 S	25 E	WM	20	SE NW	5.5				
1 S	25 E	WM	20	NE SE	2.5				
1 S	25 E	WM	20	NW SE	7.0				
1 S	25 E	WM	20	SE SE	7.0				
1 S	25 E	WM	21	SW SW	13.0				
			•	TOTAL:	40.0				

7. Certificate 194 does not describe the location of the point of diversion, however information is available from a Final Order of the Special Order record Vol. 8, Pages 333 to 334 approving a change in point of diversion for the entire water right Certificate 194 upstream on Willow Creek to a point located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	25 E	WM	28	NE NW	560 FEET SOUTH AND 1920 FEET EAST FROM THE NW CORNER OF SECTION 28

8. Transfer Application T-11512 proposes to change the point of diversion for Certificate 194 downstream approximately 4000 feet to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1.0	25 E	33/34	1560 FEET NORTH AND 1320 FEET WI		1560 FEET NORTH AND 1320 FEET WEST
1.3	1 S 25 E WM 20	20	NW SE	FROM THE SE CORNER OF SECTION 20	

9. Transfer Application T-11512 also proposes to change the place of use of the above described water rights to:

	PRIMARY IRRIGATION AND SUPPLEMENTAL IRRIGATION									
Twp	Twp Rng Mer Sec Q-Q Acres									
1 S	25 E	WM	20	SW NW	3.5					
1 S	25 E	WM	20	SE NW	6.0					
1 S	25 E	WM	20	NE SE	8.4					
1 S	25 E	WM	20	NW SE	6.0					
1 S	25 E	WM	20	SE SE	5.0*					
1 S	25 E	WM	21	SW SW	11.1					
				TOTAL:	40.0					

^{*} Note: 5.0 acres (priority date = 1872)

10. The Oregon Department of Fish and Wildlife has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is currently equipped with an appropriate fish screen.

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

- 11. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right. There is no information in the records that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
- 12. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-11512.
- 13. The proposed changes would not result in enlargement of the rights.
- 14. The proposed changes would not result in injury to other water rights.

Conclusions of Law

The changes in point of diversion and place of use proposed in Transfer Application T-11512 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

- 1. The changes in point of diversion and place of use proposed in Transfer Application T-11512 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 194 and any related decree.
- 3. Water right certificate 194 is cancelled.
- 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. Water use measurement conditions:
 - a.**Before water use may begin** under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each new point of diversion.
 - b. The water user shall maintain the meter(s) or measuring device(s) in good working order.
 - c. The water user shall allow the Watermaster access to the meter(s) or measuring device(s); provided however, where the meter(s) or measuring device(s) is/are located within a private structure, the Watermaster shall request access upon reasonable notice.

- 6. The water user shall operate and maintain an approved fish screen at the new point of diversion. If Oregon Department of Fish and Wildlife (ODFW) determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.
- 7. The former place of use of the transferred rights shall no longer receive water under the rights.
- 8. Permit S-54839, in the name of Willow Creek District Improvement Company, is issued to replace Permit S-54770, and incorporates the change in place of use approved by this order and the order issued for Permit Amendment T-11664. Permit S-54770, in the name of Willow Creek District Improvement Company, is no longer of any force or effect.
- 9. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2015.** 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 change and full beneficial use of the water.
- 10. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this ZO day of March 2014.

Dwight Fresch, Water Right Services Administrator, for

PHILLIP C. WARD, DIRECTOR

Mailing Date: APR 3 3 2014