

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

| | | |
|---------------------------------------|---|-----------------------------|
| In the Matter of Transfer Application |) | FINAL ORDER |
| T-12034, Wallowa County |) | APPROVING A CHANGE IN PLACE |
| |) | OF USE AND A CHANGE IN |
| |) | CHARACTER OF USE |

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

WALLOWA LAKE COUNTY SERVICE DISTRICT
101 S RIVER ST ROOM 103
ENTERPRISE, OR 97828
wdjibutler@gmail.com

Findings of Fact

1. On April 15, 2015, WALLOWA LAKE COUNTY SERVICE DISTRICT filed an application to change the place of use and character of use under Certificate 20569. The Department assigned the application number T-12034.
2. Notice of the application for transfer was published on April 28, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On October 29, 2015, the applicant submitted a revised application and map.
4. On November 6, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12034 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of December 7, 2015, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination, and requested the completion date be extended to October 1, 2020.

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 29, 2016, the Department issued a Preliminary Determination proposing to approve Transfer Application T-12034 and sent 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 2, 2016, and in the Wallowa County Chieftain newspaper on February 3 and 10, 2016, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.

6. The right to be transferred is as follows:

Certificate: 20569 in the name of OREGON STATE HIGHWAY COMMISSION
(perfected under Permit S-21554)

Use: PUBLIC PARK PURPOSES IN WALLOW LAKE STATE PARK

Priority Date: JUNE 25, 1952

Rate: 0.50 cubic foot per second

Source: UNNAMED CREEK, tributary to the WALLOWA LAKE

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q |
|-----|------|-----|-----|-------|
| 3 S | 45 E | WM | 20 | NW SE |

Authorized Place of Use:

| PUBLIC PARK PURPOSES | | | | |
|----------------------|------|-----|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q |
| 3 S | 45 E | WM | 20 | NE SE |
| 3 S | 45 E | WM | 20 | NW SE |
| 3 S | 45 E | WM | 20 | SW SE |
| 3 S | 45 E | WM | 20 | SE SE |

7. The survey engineer through field examination found that the delivery system, (re-diversion), was inadvertently described as the point of diversion on the final proof survey map dated October 10, 1953. The actual point of diversion is described as follows:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|------|-----|-----|-------|--|
| 3 S | 45 E | WM | 20 | NE SW | 1579 FEET NORTH AND 972 FEET WEST FROM THE S¼ CORNER OF SECTION 20 |

8. Transfer Application T-12034 proposes to change the place of use of the right to:

| MUNICIPAL USES | | | | |
|----------------|------|-----|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q |
| 3 S | 45 E | WM | 20 | NE SE |
| 3 S | 45 E | WM | 20 | NW SE |
| 3 S | 45 E | WM | 20 | SW SE |
| 3 S | 45 E | WM | 20 | SE SE |
| 3 S | 45 E | WM | 21 | NE SW |
| 3 S | 45 E | WM | 21 | NW SW |
| 3 S | 45 E | WM | 21 | SW SW |
| 3 S | 45 E | WM | 21 | SE SW |
| 3 S | 45 E | WM | 28 | NW NW |
| 3 S | 45 E | WM | 28 | SW NW |
| 3 S | 45 E | WM | 29 | NE NE |
| 3 S | 45 E | WM | 29 | NW NE |

| MUNICIPAL USES | | | | |
|----------------|------|-----|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q |
| 3 S | 45 E | WM | 29 | SW NE |
| 3 S | 45 E | WM | 29 | SE NE |
| 3 S | 45 E | WM | 29 | NE SE |
| 3 S | 45 E | WM | 29 | NW SE |
| 3 S | 45 E | WM | 29 | SW SE |
| 3 S | 45 E | WM | 29 | SE SE |

9. Transfer Application T-12034 proposes to change the character of use to municipal uses.

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

10. 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.
11. 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-12034.
12. The proposed changes would not result in enlargement of the right.
13. The proposed changes would not result in injury to other water rights.

Conclusions of Law

The change in place of use and change in character of use proposed in Transfer Application T-12034 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 place of use and character of use proposed in Transfer Application T-12034 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 20569 and any related decree.
3. Water right Certificate 20569 is cancelled.

4. 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 point of diversion.
 - b. The water user shall maintain the meter or measuring device in good working order.
 - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device are located within a private structure, the Watermaster shall request access upon reasonable notice.
5. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2020**. 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.
6. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 18 day of March, 2016.



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

Mailing date: MAR 31 2016