

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING OF A
T-12665, Baker County)	CHANGE IN POINT OF DIVERSION

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

FAY C. BREWSTER
14190 TALLEY-DOBBINS LANE
HAINES, OR 97833

Findings of Fact

1. On May 15, 2017, FAY C. BREWSTER filed an application to change the point of diversion under Certificates 7673 and 74460. The Department assigned the application number T-12665.
2. Notice of the application for transfer was published on May 23, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 29, 2017 the applicant submitted an amended application and map.
4. On December 1, 2017, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12665 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 2, 2017, for the applicant to respond. The applicant requested the completion date be extended to October 1, 2023 and for 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 February 14, 2018, the Department issued a Preliminary Determination proposing to approve Transfer T-12665 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 20, 2018, and in the Baker City Herald newspaper on February 16, 2018 and February 23, 2018, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

6. The portion of the first right to be transferred is as follows:

Certificate: 7673 in the name of W J. WELCH (perfected under Permit S-6498)
Use: SUPPLEMENTAL IRRIGATION of 101.0 ACRES
Priority Date: AUGUST 11, 1924
Rate: 0.56 CUBIC FEET PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent in case of rotation.
Source: SEEPAGE AND WASTE WATER FROM ADJOINING LANDS, AND SPRINGS CAUSED THEREBY, tributary to the NORTH POWDER RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Name
7 S	38 E	WM	11	SE SE	POD #3
7 S	38 E	WM	14	NW NE	POD #2
7 S	38 E	WM	14	SW NW	POD #1

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	38 E	WM	11	NE SE	24.5
7 S	38 E	WM	12	NE SW	40.0
7 S	38 E	WM	12	NW SW	36.5
Total					101.0

7. Transfer Application T-12665 proposes to move the authorized points of diversion approximately 5700 feet from POD #1, 3700 feet from POD #2 and 2800 feet from POD #3 downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	38 E	WM	11	NE SW	POD #4 - 1389 FEET NORTH AND 3944 FEET WEST FROM THE SE CORNER OF SECTION 12

8. The portion of the second right to be transferred is as follows:

Certificate: 74460 in the name of BARKER RANCHES (perfected under Permit S-19907)
Use: IRRIGATION of 8.4 ACRES AND SUPPLEMENTAL IRRIGATION of 99.5 ACRES
Priority Date: JUNE 21, 1950
Rate: 0.58 CUBIC FEET PER SECOND
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 ONE-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year AND SHALL BE FURTHER LIMITED TO A DIVERSION OF NOT TO EXCEED 2.5 CFS.
Source: UNNAMED STREAM, tributary of NORTH POWDER RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Name
7 S	38 E	WM	11	SE SE	POD #3
7 S	38 E	WM	14	NW NE	POD #2
7 S	38 E	WM	14	SE NW	POD #1

Authorized Place of Use:

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	38 E	WM	11	NE SE	5.5
7 S	38 E	WM	12	NW SW	2.9
Total					8.4

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	38 E	WM	11	NE SE	24.5
7 S	38 E	WM	12	NE SW	38.5
7 S	38 E	WM	12	NW SW	36.5
Total					99.5

9. Transfer Application T-12665 proposes to move the authorized points of diversion approximately 5700 feet from POD #1, 3700 feet from POD #2 and 2800 feet from POD #3 downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	38 E	WM	11	NE SW	POD #4 – 1389 FEET NORTH AND 3944 FEET WEST FROM THE SE CORNER OF SECTION 12

10. The Oregon Department of Fish and Wildlife has determined that a fish screen is not needed at the new point of diversion.

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

11. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record 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-12665.
13. The proposed change would not result in enlargement of the rights.
14. The proposed change would not result in injury to other water rights.
15. All other application requirements are met.

Conclusions of Law

The change in point of diversion proposed in Transfer Application T-12665 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 point of diversion proposed in Transfer Application T-12665 is 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 Certificates 7673 and 74460 and any related decree.
3. Water right Certificates 7673 and 74460 are cancelled. New certificates will be issued describing those portions of the rights 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 points of diversion.
5. Water use measurement conditions:
 - a. Before water use may begin under this order, the water user shall install a measuring device, at each new point of diversion and at the location in the SESE of Section 11, Township 7 S, Range 38 East, W.M., as designated by the Watermaster.
 - b. The water user shall maintain the measuring device in good working order.
 - c. The water user shall allow the Watermaster access to the measuring device; provided however, where measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.

6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2023**. 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.
7. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon, APR 05 2018.



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

Mailing date: APR 09 2018