

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

In the Matter of Transfer Application            )     FINAL ORDER  
T-7086, Josephine County                    )     APPROVING ADDITIONAL POINTS  
  )     OF DIVERSION AND CHANGE IN  
  )     PLACE OF USE

**Authority**

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. OAR Chapter 690, Division 15 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

Fort Vannoy Irrigation District (FVID)  
Attn – Herman E. Baertschiger, Jr., Manager  
665 Hunt Lane  
Grants Pass, OR 97526  
hb@hbcompany.net

**Findings of Fact**

1. On January 27, 1994, Robert J. Crouse, Secretary/Treasurer on behalf of FVID submitted a transfer application to change the points of diversion under Certificates 2803 and 8942. The Department assigned the transfer application number T-7086.
2. On October 6, 1999, Luis Hernandez, a board member of FVID, submitted an amendment to Transfer Application T-7086 requesting *additional* points of diversion for Certificates 2803 and 8942 rather than a *change* in point of diversion for the referenced certificates.
3. On November 30, 1999, Robert J. Crouse, Agent, on behalf of Ken-Wal Farms, Inc., submitted to the Department a second, separate transfer application (T-8366) affecting the same certificates. Transfer application T-8366 also requested additional points of diversion. On January 13, 2000, T-8366 was protested by FVID and Herman E. Baertschiger, Jr.
4. On May 9, 2000, the Department sent a deficiency letter to the FVID identifying numerous layered (conflicting) primary water rights and requested FVID notify the affected landowners and either (1) obtain affidavits of diminution or (2) obtain affidavits of cancellations for the layered water rights.

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 September 25, 2000, following a telephone conversation with Department staff, FVID was provided the publication notice and instructions related to timing and submission of the required affidavit of publication.
6. Notice of the application for transfer was published in the Grants Pass Daily Courier on November 27, December 4, and December 11, 2000.
7. On December 22, 2000, the Department received a Transfer Application Protest and Proof of Service on Transfer Application T-7086 from Robert J. Crouse, Agent for Ken-Wal Farms, Inc. However, the statutorily required fee of \$25 was not included.
8. On January 2, 2001, the Department sent a letter to Robert J. Crouse, Agent for Ken-Wal Farms, Inc., indicating that submission of the required protest fee must be received by the Department within 30 days of the last publication date of Transfer Application T-7086. The last day of publication was December 11, 2000.
9. Robert J. Crouse submitted the required protest fee to the Department on January 4, 2001.
10. As a result of the interconnected issues contained in Transfer Applications T-7086 and T-8366 and subsequent protests received on both transfer applications, the Department placed Transfer Application T-7086 on administrative hold.
11. On July 10, 2008, the Supreme Court of the State of Oregon, on review from the Court of Appeals, filed an opinion on Transfer Application T-8366.
12. In early 2011, the Department removed the administrative hold on Transfer Application T-7086 and initiated a review of the transfer application.
13. On May 26, 2011, a meeting was held to discuss some of the issues identified during the review of Transfer Application T-7086. The discussion included options related to the reversion of a previously approved point of diversion that had not been completed (Transfer Application F-46), the possible disposition of layered water rights, resolution of the protest filed on Transfer Application T-7086 and options to address the FVID's long-term supply needs. The meeting was attended by Robert J. Crouse (Protestant), Norm Daft (Agent for FVID's transfer application T-7086), Herman E. Baertschiger, Jr., (Manager of FVID and patron) and the following Department staff: Bruce Sund, Kathy Smith and Greg Nelson.
14. On May 31, 2011, Department staff sent all attendees of the May 26, 2011, meeting a summary of the agreements reached during the meeting and requested comments and feedback.
15. On January 2, 2013, the Department received amendments to Transfer Application T-7086 requesting eight (8) additional points of diversion for Certificate 8942 and one (1) additional point of diversion for a portion of Certificate 2803. A change in place of use for 6.0 acres of irrigation use was also received.

16. On December 2, 2014, the Department published notice of the amended Transfer Application T-7086 on the Department's weekly notice and in the *Grants Pass Daily Courier* newspaper on November 25, December 2 and 9, 2014.

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

**Certificate:** 8942 (as modified by previous orders) in the name of Fort Vannoy Irrigation District (perfected under Permit S-9692)

**Use:** Irrigation of 358.9 acres

**Priority Date:** June 21, 1930

**Rate:** 4.49 cubic feet per second (cfs)

**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-eighth of one cfs second per acre or its equivalent in case of rotation.

**Source:** Rogue River, a tributary of the Pacific Ocean

**Authorized Point of Diversion (POD):**

POD #	Twp	Rng	Mer	Sec	Q-Q	Measured Distance
1	36 S	6 W	WM	14	NE SW	SOUTH 61° EAST 1580 FEET FROM THE EAST ¼ CORNER OF SECTION 15

18. Transfer Application T-7086 proposes to add eight points of diversion downstream from the authorized point of diversion at:

POD #	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2	36 S	6 W	WM	21	NE NE	420 FEET SOUTH AND 1110 FEET WEST FROM THE NE CORNER OF SECTION 21
3	36 S	6 W	WM	21	NW NE	570 FEET SOUTH AND 2920 FEET EAST FROM THE NW CORNER OF SECTION 21
4	36 S	6 W	WM	21	NW NW	515 FEET SOUTH AND 890 FEET EAST FROM THE NW CORNER OF SECTION 21
5	36 S	6 W	WM	21	NE NE	400 FEET SOUTH AND 730 FEET WEST FROM THE NE CORNER OF SECTION 21
6	36 S	6 W	WM	21	NE NE	370 FEET SOUTH AND 400 FEET WEST FROM THE NE CORNER OF SECTION 21
7	36 S	6 W	WM	21	NE NE	390 FEET SOUTH AND 215 FEET WEST FROM THE NE CORNER OF SECTION 21
8	36 S	6 W	WM	15	SE SW	550 FEET NORTH AND 2420 FEET EAST FROM THE SW CORNER OF SECTION 15
9	36 S	6 W	WM	14	NW SW	1980 FEET NORTH AND 820 FEET EAST FROM THE SW CORNER OF SECTION 14

19. The additional points of diversion are requested for the following authorized places of use:

Add'l POD requested	Twp	Rng	Mer	Sec	Q-Q	Acres
2	36 S	6W	WM	16	SW SE	1.1
2	36 S	6W	WM	16	SE SE	0.7
2	36 S	6W	WM	21	NE NE	3.8
2	36 S	6W	WM	21	NW NE	1.9
3	36 S	6W	WM	16	SE SW	5.9
3	36 S	6W	WM	16	SW SE	15.4

Add'l POD requested	Twp	Rng	Mer	Sec	Q-Q	Acres
3	36 S	6W	WM	21	NE NW	12.5
3	36 S	6W	WM	21	NE NW	15.8
4	36 S	6W	WM	16	NW NE	6.2
4	36 S	6W	WM	16	NE NW	18.0
4	36 S	6W	WM	16	SE NW	21.5
4	36 S	6W	WM	16	SW NE	25.6
4	36 S	6W	WM	16	SW NE	4.2
4	36 S	6W	WM	16	SE NE	2.2
4	36 S	6W	WM	16	NE SW	1.9
4	36 S	6W	WM	16	NE SW	13.5
4	36 S	6W	WM	16	NE SW	1.0
4	36 S	6W	WM	16	NW SW	10.0
4	36 S	6W	WM	16	NW SW	7.0
4	36 S	6W	WM	16	SW SW	40.0
4	36 S	6W	WM	16	SE SW	10.0
4	36 S	6W	WM	20	NE NE	10.0
4	36 S	6W	WM	21	NE NW	3.5
4	36 S	6W	WM	21	NW NW	14.0
5	36 S	6W	WM	16	SE SE	0.4
5	36 S	6W	WM	21	NE NE	2.7
6	36 S	6W	WM	21	NE NE	2.3
7	36 S	6W	WM	21	NE NE	3.2
8	36 S	6W	WM	15	SE SW	3.2
9	36 S	6W	WM	15	NE NE	10.0
9	36 S	6W	WM	15	NW NE	20.0
9	36 S	6W	WM	15	SW NE	38.0
9	36 S	6W	WM	15	SE NE	21.0
9	36 S	6W	WM	15	NE SE	9.0
9	36 S	6W	WM	15	NW SE	3.4
Total:						358.9

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

**Certificate:** 2803 (as modified by previous orders) in the name of Fort Vanoy Orchards  
(perfected under Permit S-4015)

**Use:** Irrigation of 10.0 acres

**Priority Date:** March 10, 1919

**Rate:** 0.13 cubic foot per second (cfs)

**Source:** Rogue River, a tributary of the Pacific Ocean

21. For the lands listed below, Transfer Application T-7086 proposes to add an additional point of diversion downstream in the source at:

POD #	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4	36 S	6 W	WM	21	NW NW	515 SOUTH AND 890 FEET EAST FROM THE NW CORNER OF SECTION 21

22. The additional point of diversion is requested for the following authorized place of use:

Add'l PODs requested	Twp	Rng	Mer	Sec	Q-Q	Acres
4	36 S	6 W	WM	17	SE SE	10.0

23. The portion of the third right to be transferred is as follows:

**Certificate:** 8943 (as modified by previous orders) in the name of Fort Vannoy Irrigation District (perfected under Permit S-9693)  
**Use:** Supplemental Irrigation of 45.7 acres  
**Priority Date:** April 6, 1922  
**Rate:** 0.57 cubic foot per second (cfs)  
**Source:** Dutcher Creek, a tributary to Vannoy Creek, tributary to the Rogue River

24. For the lands listed below, Transfer Application T-7086 proposes to add an additional points of diversion downstream in the source at:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	6 W	WM	17	SE SE	895 FEET NORTH AND 160 FEET WEST FROM THE SE CORNER OF SECTION 17

25. The additional point of diversion is requested for the following authorized place of use:

Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	6 W	WM	16	NW NE	6.2
36 S	6 W	WM	16	NE NW	18.0
36 S	6 W	WM	16	SE NW	21.5
Total:					45.7

26. The applicant has requested a change in place of use involving 7.0 acres of irrigation under Certificate 8942. The proposed location of this acreage shall be within the FVID boundaries and delineated on the Claim of Beneficial Use and associated map.

27. Water has been used within the five year period prior to submittal of Transfer Application T-7086 according to the terms and conditions of the rights. There is no information in the records of the Department that would demonstrate the rights are subject to forfeiture under ORS 540.610.

28. An irrigation 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 Transfer Application T-7086.

29. The proposed changes would not result in enlargement of the rights.

30. The proposed changes would not result in injury to other water rights.

31. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass devices are necessary **at the new, additional points 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 the diversion is not currently equipped with an appropriate fish screen and/or by-pass device. These diversions may be eligible for screening cost share funds.

### **Conclusions of Law**

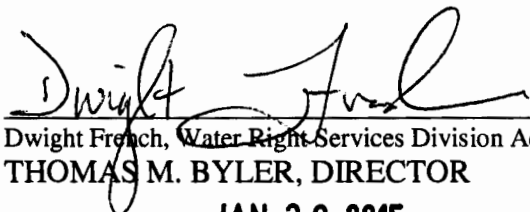
The additional points of diversion and change in place of use proposed in Transfer Application T-7086 are consistent with the requirements of 540.505 to 540.580.

### **Now, therefore, it is ORDERED:**

1. The additional points of diversion and change in place of use proposed in Transfer Application T-7086 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 Certificates 8942, 8943, 2803, and any related decree.
3. The quantity of water diverted at the additional, new points of diversion, together with the water diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
4. **Prior to diverting water**, FVID shall install an approved fish screen **at each new, additional point of diversion (excluding POD #4)** and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screens meet ODFW's criteria.
5. The District shall maintain the existing fish screen at POD #4.
6. Water use measurement conditions:
  - a. **Before water use may begin** under this order, FVID shall install totalizing flow meters, or, with prior approval of the Director, other suitable measuring devices at each new, additional point of diversion.
  - b. The District shall maintain the meters or measuring devices in good working order.
  - c. The District shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.
  - d. No later than December 31 of each year, FVID shall submit a report detailing the monthly water use for **each point of diversion**.
7. Water shall be acquired from the same source as the original point of diversion.
8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2016**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner **shall be submitted by FVID** to the Department within one year after the deadline for completion of the change and full beneficial use of the water.

9. After satisfactory proof of beneficial use is received, a new certificate confirming the changes to Certificates 2803 and 8943 will be issued.
10. Water right Certificate 8942 is modified. A new certificate will be issued describing the right on a determination that is necessary for recordkeeping.

Dated at Salem, Oregon this 21 day of January, 2015.



Dwight French, Water Right Services Division Administrator, for  
THOMAS M. BYLER, DIRECTOR

Mailing Date: JAN 30 2015