

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

In the Matter of Permit Amendment	)	<b>FINAL ORDER</b>
T-11419, Polk County	)	APPROVING AN ADDITIONAL POINT
	)	OF DIVERSION

**Authority**

ORS 537.211 establishes the process in which a water right permit holder may submit a request to change the point of diversion and/or place of use authorized under an existing water right permit.

**Applicant**

DAVID SETNIKER  
PO BOX 338  
INDEPENDENCE, OR 97351

**Findings of Fact**

***Background***

1. On May 8, 2012, DAVID SETNIKER filed an application for an additional point of diversion under Permit S-52004. The Department assigned the application number T-11419.
2. On August 3, 1999, the Department approved an extension of time for complete application of water to October 1, 2003.
3. On January 13, 2012, the Department approved an extension of time for complete application of water to October 1, 2016.
4. The applicant has submitted information that better describes the authorized points of diversion as being:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
8 S	4 W	WM	1	SE NW	3	WILLAMETTE RIVER - 1620 FEET SOUTH AND 1460 FEET EAST FROM THE NW CORNER OF SECTION 1
8 S	4 W	WM	2	NE NW		HAYDEN SLOUGH - 375 FEET SOUTH AND 2000 FEET EAST FROM THE NW CORNER OF SECTION 2.

<p>This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-080 and OAR 690-01-005 you may either 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.</p>
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5. Permit Amendment Application T-11419 proposes an additional point of diversion approximately 3.7 miles upstream from the existing point of diversion on the Willamette River to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
8 S	4 W	WM	22	SW NW	43	WILLAMETTE RIVER - 2300 FEET SOUTH AND 1150 FEET WEST FROM THE EASTERLY NE CORNER OF DLC 43

6. Notice of the application for the permit amendment was published in the Department's weekly notice on May 15, 2012, and in the Itemizer Observer newspaper on December 12 and 19, 2012, pursuant to ORS 540.520(5). No comments were filed in response to the notices.
7. The Oregon Department of Fish and Wildlife (ODFW) 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 not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

***Permit Amendment Review Criteria***

8. The change would not result in injury to other water rights.
9. The change does not enlarge the permit.
10. The change does not alter any other terms of the permit.

**Conclusions of Law**

The additional point of diversion proposed by Permit Amendment Application T-11419 is consistent with the requirements of ORS 537.211.

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

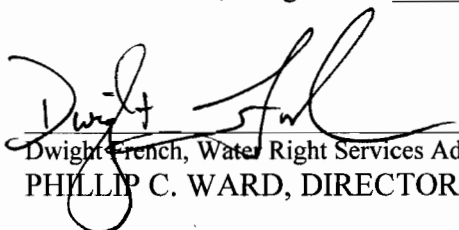
1. The additional point of diversion proposed by Permit Amendment Application T-11419 is approved.
2. Permit S-54780, in the name of DAVID SETNIKER, is issued to replace Permit S-52004, and incorporates the amendments approved by this order and the extensions of time. Permit S-52004, in the name of DAVID SETNIKER, is no longer of any force or effect.
3. The combined quantity of water diverted at the new additional point of diversion on the Willamette River, together with that diverted at the old point of diversion on the Willamette River, shall not exceed the quantity of water lawfully available at the original point of diversion on the Willamette River.

4. Prior to water use from the proposed point of appropriation, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order, and shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.

The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

5. The permittee shall install, maintain, and operate fish screening devices as required by the Oregon Department of Fish and Wildlife to prevent fish from entering the proposed diversion point. The required screens and bypass devices are to be in place, functional and inspected/approved by an ODFW representative prior to any diversion of any water.
6. Water shall be acquired from the same surface water source as the original point of diversion.
7. All other terms and conditions of Permit S-54780 remain the same.

Dated at Salem, Oregon this 3 day of January, 2013.

  
Dwight French, Water Right Services Administrator, for  
PHILLIP C. WARD, DIRECTOR

Mailing Date: JAN 16 2013