

Findings of Fact

Background

1. On March 6, 2012, JON GAMBILL filed an application to change the point of diversion and to change the place of use under Certificate 86184. The Department assigned the application number T-11368.
2. Jon Gambill, Dennis and Luella Zuver, Dave and Carol Zientara, Thomas J. Lindbloom, Roger and Debora Bothwell, and Paul and Terry Bentley are the receiving landowners who will be responsible for completion of the changes.
3. On September 28, 2012, the applicant amended the application and submitted an amended map clarifying the location of the authorized point of diversion.
4. The portion of the right to be transferred is as follows:

Certificate: 86184 in the name of PETER J. PON (perfected under Permit S-24057)
Use: IRRIGATION of 3.0 ACRES
Priority Date: FEBRUARY 15, 1956
Rate: 0.038 CUBIC FOOT 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 a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: NORTH UMPQUA RIVER, tributary to the UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
26 S	6 W	WM	27	SW NE	42	AS PROJECTED WITHIN HANNON DLC 42

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
26 S	6 W	WM	27	NE SW	42	3.0

5. Certificate 86184 does not specify the location of the authorized point of diversion; however, information is available from the Certified Water Right Examiner that indicates the location of the authorized point of diversion is as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
26 S	6 W	WM	27	SW NE	42	2610 FEET SOUTH AND 400 FEET EAST FROM THE N¼ CORNER OF SECTION 27

6. Transfer Application T-11368 proposes to move the authorized point of diversion approximately 2270 feet downstream to six points:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
26 S	6 W	WM	27	NE SW	42	POD 1 (GAMBILL) - 1285 FEET SOUTH AND 310 FEET WEST FROM THE CENTER CORNER OF SECTION 27
26 S	6 W	WM	27	NE SW	42	POD 2 (ZUVER) - 1305 FEET SOUTH AND 350 FEET WEST FROM THE CENTER CORNER OF SECTION 27
26 S	6 W	WM	27	SE SW	42	POD 3 (BENTLEY) - 1470 FEET SOUTH AND 440 FEET WEST FROM THE CENTER CORNER OF SECTION 27
26 S	6 W	WM	27	SE SW	42	POD 4 (ZIENTARA) - 1655 FEET SOUTH AND 600 FEET WEST FROM THE CENTER CORNER OF SECTION 27
26 S	6 W	WM	27	SE SW	42	POD 5 (LINDBLOOM) - 1675 FEET SOUTH AND 620 FEET WEST FROM THE CENTER CORNER OF SECTION 27
26 S	6 W	WM	27	SE SW	42	POD 6 (BOTHWELL) - 1850 FEET SOUTH AND 760 FEET WEST FROM THE CENTER CORNER OF SECTION 27

7. Transfer Application T-11368 also proposes to change the place of use of the right to:

IRRIGATION						SUPPLEMENTAL INFORMATION		
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	Tax Lot	Name
26 S	6 W	WM	27	NE SW	42	0.5	3500	Gambill
26 S	6 W	WM	27	NE SW	42	0.5	3600	Zuver
26 S	6 W	WM	27	NE SW	42	0.1	3700	Bentley
26 S	6 W	WM	27	SE SW	42	0.4	3700	Bentley
26 S	6 W	WM	27	SE SW	42	0.5	3800	Zientara
26 S	6 W	WM	27	SE SW	42	0.5	3900	Lindbloom
26 S	6 W	WM	27	SE SW	42	0.5	4100	Bothwell
Total						3.0		

8. Notice of the application for transfer was published on March 13, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
9. On October 4, 2012, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11368 to the applicant and receiving landowners. The draft Preliminary Determination cover letter set forth a deadline of November 4, 2012, 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.
10. On November 15, 2012, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11368 and sent a copy to the applicant and receiving landowners. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on November 20, 2012, and in

the News Review newspaper on December 3 and 10, 2012, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.

11. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at each new point of diversion to prevent fish from entering the diversions and that the diversions are not currently equipped with an appropriate fish screen. The diversions may be eligible for screening cost-share funds.

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

12. 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.
13. 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-11368.
14. The proposed changes would not result in enlargement of the right.
15. The proposed changes would not result in injury to other water rights.

Conclusions of Law

The change in point of diversion and change in place of use proposed in Transfer Application T-11368 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

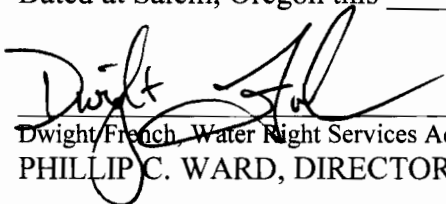
Now, therefore, it is ORDERED:

1. The change in point of diversion and change in place of use proposed in Transfer Application T-11368 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 86184 and any related decree.
3. Water right certificate 86184 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. The quantity of water diverted at the new points 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 flow restrictor, or, with prior approval of the Director, another suitable measuring device, at each new point of diversion.
 - b. The water user shall maintain the restrictors or measuring devices in good working order.
 - c. The water user shall allow the Watermaster access to the restrictors or measuring devices; provided however, where the restrictors or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.
6. Prior to diverting water, the water users shall install an approved fish screen at each new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screens meet the state's criteria, or that ODFW has determined a screen is not necessary.

The water user shall operate and maintain the fish screens at the new points of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water users to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screens are functioning properly.
7. The former place of use of the transferred right shall no longer receive water under the right.
8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2017**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the receiving landowners to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.
9. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 11 day of January, 2013.


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

Mailing date: JAN 25 2013