

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A CHANGE
T-11144, Umatilla County) IN POINT OF DIVERSION TO A
) HYDRAULICALLY CONNECTED WELL
) TO REFLECT HISTORIC USE

Authority

ORS 540.505 to 540.580 establishes 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 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

DALE WOOD
85597 TUM-A-LUM RD.
MILTON-FREEWATER, OR 97862

Findings of Fact

Background

1. On October 14, 2010, Dale Wood filed a transfer application for authorization of an historic point of diversion to a hydraulically connected well under Certificates 33395, 80904 and 80905. The Department assigned the application number T-11144.
2. Notice of the application for transfer was published on October 19, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 8, 2012, the Department determined that the distance between the proposed well and one of the original points of diversion exceeds one of the statutory distances in ORS 540.531(2) (d), that being beyond the 500 feet from the surface water source, but appearing to be within the 1000 feet downstream (or upstream) from the original POD's. Because the proposed movement from the authorized points of diversion to a (presumed) hydraulically connected well exceeds the statutory distances cited in ORS 540.531(2), the applicant is required to submit to the Department evidence prepared by a licensed geologist that demonstrates that the use of the ground water at the new point of diversion will meet the criteria that the new diversion (well) will affect the surface water source *similarly* to the authorized points of diversion.

This is a final order in other than a 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 137-004-0080, 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.

4. On October 26, 2012 and on December 11, 2012, via e-mail, the Department sent the agent requests for the report prepared by a licensed geologist that demonstrates that the use of the ground water at the new point of diversion will meet the criteria that the new diversion (well) will affect the surface water source *similarly* to the authorized points of diversion.
5. On February 1, 2013, via e-mail, the Department sent the agent another request for information and/or the status of a report prepared by a licensed geologist that demonstrates that the use of the ground water at the new point of diversion will meet the criteria set out in OAR 690-380-2130 (2).
6. On July 9, 2013, the applicant submitted evidence prepared by a licensed geologist demonstrating that the use of groundwater at the proposed point of diversion will meet the criteria of OAR 690-380-2130 (2)(a) to (c). The Department staff hydrogeologist reviewed the report and determined the findings and analysis meets the requirements of ORS 540.531 in determining that ground water is connected to surface water and that the proposed change in point of diversion to this hydraulically connected well will affect the surface water similarly to the authorized points of diversion described in Certificates 80904 and 33395.
7. On July 15, 2013, the Department mailed a copy of a draft order proposing to approve Transfer Application T-11144 to the applicant.

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

Certificate: 80904 in the name of NORTHWEST JOINT STOCK LAND BANK
(confirmed by Circuit Court for Umatilla County)

Use: IRRIGATION of 6.8 ACRES (Tract #2)

Priority Date: 1906

Limit/Duty: The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed ONE AND A HALF MINER'S INCHES per acre, or its equivalent in case of rotation, measured at the point of diversion from the source.

Source: TUMALUM RIVER, tributary to the Columbia River

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q - Q | Measured Distances |
|-----|------|-----|-----|-------|--|
| 6 N | 35 E | WM | 24 | NE NE | TRACT #2 - 915 FEET SOUTH AND 1420 FEET EAST FROM THE N¼ CORNER OF SECTION 35* |

*Note: Certificate 80904 contains a scrivener's error in that the survey monument should be noted as Section 24, not Section 35.

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q - Q | Acres |
| 6 N | 35 E | WM | 24 | SW NE | 6.8 |

9. One and one half miner's inches per acre = 0.0375 cubic foot per second (cfs) per acre. The rate for the portion of the right transferred is 6.8 acres x 0.0375 cfs/acre = 0.255 cfs.

10. Transfer application T-11144 proposes to change the point of diversion for the above described right to reflect Historical use approximately 660 feet west to a hydraulically connected well located:

Proposed Point of Diversion:

| Twp | Rng | Mer | Sec | Q - Q | Measured Distances |
|-----|------|-----|-----|-------|--|
| 6 N | 35 E | WM | 24 | NW NE | 1260 FEET SOUTH AND 720 FEET EAST FROM THE N¼ CORNER OF SECTION 24 |

11. The portion of the SECOND right to be transferred is as follows:

Certificate: 33395 in the name of ROBERT STILL (perfected under Permit S-26709)

Use: SUPPLEMENTAL IRRIGATION of 5.9 ACRES

Priority Date: APRIL 25, 1960

Rate: 0.13 CUBIC FOOT 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 0.0375 (3/80) of one cubic foot per second, or its equivalent for each acre irrigated

Source: WALLA WALLA RIVER, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q - Q | Measured Distances |
|-----|------|-----|-----|-------|--------------------------------|
| 6 N | 35 E | WM | 24 | NE NE | - not specified on Certificate |

Authorized Place of Use:

| SUPPLEMENTAL IRRIGATION | | | | | |
|-------------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q - Q | Acres |
| 6 N | 35 E | WM | 24 | NW NE | 3.5 |
| 6 N | 35 E | WM | 24 | SW NE | 2.4 |

12. Transfer application T-11144 proposes to change the point of diversion for the above described right to reflect Historical use approximately 660 feet west to a hydraulically connected well located:

Proposed Point of Diversion:

| Twp | Rng | Mer | Sec | Q - Q | Measured Distances |
|-----|------|-----|-----|-------|--|
| 6 N | 35 E | WM | 24 | NW NE | 1260 FEET SOUTH AND 720 FEET EAST FROM THE N¼ CORNER OF SECTION 24 |

13. The portion of the THIRD right to be transferred is as follows:

Certificate: 80905 in the name of WILLIAM and CHAROTTE NEELY (perfected under Permit S-19303)

Use: IRRIGATION of 2.4 ACRES, SUPPLEMENTAL IRRIGATION of 6.8 ACRES

Priority Date: MARCH 14, 1950

Rate: 0.22 CUBIC FOOT 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, is limited to a diversion of 0.0375 of one cubic foot per second, or its equivalent for each acre irrigated

Source: SPRING BRANCH, tributary to the WALLA WALLA RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q - Q | Measured Distances |
|-----|------|-----|-----|-------|---------------------------------|
| 6 N | 35 E | WM | 24 | SW NE | -- not specified on Certificate |

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q - Q | Acres |
| 6 N | 35 E | WM | 24 | SW NE | 2.4 |

| SUPPLEMENTAL IRRIGATION | | | | | |
|-------------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q - Q | Acres |
| 6 N | 35 E | WM | 24 | SW NE | 6.8 |

14. Transfer application T-11144 proposes to change the point of diversion for the above described right to reflect Historical use approximately 500 feet west to a hydraulically connected well located:

Proposed Point of Diversion:

| Twp | Rng | Mer | Sec | Q - Q | Measured Distances |
|-----|------|-----|-----|-------|--|
| 6 N | 35 E | WM | 24 | NW NE | 1260 FEET SOUTH AND 720 FEET EAST FROM THE N¼ CORNER OF SECTION 24 |

Transfer Review Criteria (ORS 540.532 and OAR 690-380-2120)

15. Pursuant to OAR 690-380-2120(2)(a), evidence has been submitted that the actual, current point of diversion (well) for the water rights in question, as described in Findings of Fact #8, #10 and #12, have been in use for more than 10 years.
16. Pursuant to OAR 690-380-2120(2)(c), the Watermaster provided a statement that to his knowledge there has been no complaint of injury due to the use of water at the actual, current point of diversion, prior to the transfer request.
17. The Department did not identify any affected water rights pursuant to OAR 690-380-2120(3).
18. Based on Finding of Fact #6, the proposed transfer appears to meet the requirements under OAR 690-380-2130(2) for change from a surface water point of diversion to a ground water point of appropriation.
19. Evidence has been submitted with the application indicating that water has been used within the last five years according to the terms and condition of the rights. Water has been taken from a hydraulically connected well for at least 10 years. The condition of the diversion facilities at the authorized point of diversion suggests that the facilities may not have been regularly used. There is no evidence available that would demonstrate that the water rights are subject to forfeiture under ORS 540.610.
20. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
21. The proposed change would not result in enlargement of the rights.

22. The proposed change would not result in injury to other water rights.

Conclusions of Law

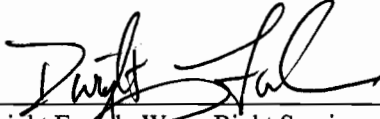
The proposed change in points of diversion to a hydraulically connected well to reflect historical use in application T-11144 is consistent with the requirements of ORS 540.505 to 540.580, and 690-380-2130 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change proposed in T-11144 is approved and effective immediately.
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 33395, 80904 and 80905 and any related decree.
3. Water right Certificates 33395, 80904 and 80905 are cancelled. Certificates 88677, 88679 and 88681 will be issued to describe the changes in points of diversion for the portion of the rights included in T-11144. Certificates 88676, 88678 and 88680 shall be issued to describe the portions of Certificates 33395, 80904 and 80905 not modified by this order. Together, the new Certificates shall supersede Certificates 33395, 80904 and 80905.
4. The quantity of water diverted at the new point of appropriation (hydraulically connected well) shall not exceed the quantity of water lawfully available at the original points of diversion.
5. The well from which water is taken under the right shall be constructed so that the use of the well will affect the surface water source similarly to the use of the original authorized point of diversion.
6. The use of water under this right shall be subject to regulation consistent with other water rights from the surface water source and to all other applicable conditions and restrictions that existed at the original point of diversion.
7. The Director may require the water user to install a totalizing flow meter or other suitable measuring device at the new point of diversion (well). If the Director notifies the water user to install a totalizing flow-meter or other measuring device, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meter or measuring device in good working order and shall allow the Watermaster access to the meter or measuring device(s); provided however, where the meter or measuring device(s) are located within a private structure, the Watermaster shall request access upon reasonable notice.
8. If, within five years after approval of the transfer, the Department finds that the transfer results in substantial or undue interference with an existing ground water right due to use of the pump, that would not have occurred in the absence of the transfer, the new point of appropriation shall be subordinate to the existing right injured by the transfer.

9. The original point of diversion of surface water shall not be retained as an additional or supplemental point of diversion under the transferred portion of the right. However, if within five years after approval of the transfer, the Department receives a transfer application to return to the last authorized surface water point of diversion, the application shall be approved.

Dated at Salem, Oregon this 2 day of August, 2013.



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

AUG 23 2013

Mailing date: _____